PHELPS (R. M.)

Are there degrees of insanity?

SURGEON GENL'S OFFICE
523
LIBRARY.

COMPLIMENTS OF
AUTHOR.

ARE THERE DEGREES OF INSANITY?*

By R. M. PHELPS, M. D.,

OF ROCHESTER, MINN., ASST. SUPT. ROCHESTER STATE HOSPITAL, MEMBER AMERICAN NEUROLOGICAL ASSOCIATION, ETC.

In the January number of the *Journal of Insanity* is to be found an editorial which presents, in an admirable style and with great clearness, the perplexities which result to the jury, to the judge, and to the community, when, as frequently is the case, experts upon the subject of insanity testify to directly opposite opinions and to mutually exclusive views. After pointing out that a plain, uninformed jury has finally to decide upon all differences, it goes on as follows:

"For why should the jury be expected to decide when our aphorism implies plainly that no one can decide? No one surely but the doctors themselves could be expected to decide questions that no one else can fully understand. Why, then, do the doctors not decide? Why, in other words, do they disagree so radically in the first instance? Is the subject with which the doctor deals so vague and occult that the mind cannot compass it clearly with finality? If so, why is the doctor so positive in his assertions regarding it? Or, is the subject so vast, so many sided, that diverse views of it, of equal worth, may be had from different standpoints? If so, why does the doctor speak with such certitude in advancing his own opinion as the only correct opinion?

"We are referring, of course, not to the doctor's ordinary opinion, but to the expert opinion. To those cases where, usually with a human life at stake, the doctor is asked to give an opinion because his experience is supposed to be such that his opinion on that particular subject is of great worth. His knowledge of the question at issue is supposed to be definite, tangible, practical. He states his opinion positively and unequivocally. The jury, grasping vaguely the general drift of what he says, feel that their task of deciding is becoming easier. Their eyes are opening.

*Read before the Section of Nervous Diseases of the Minnesota State Medical Society, June 20, 1894, and reprinted from the Northwestern Lancet of August 1, 1894.

SURGEON GEN'L'S OFFICE
523
LIBRARY.

But scarcely has the positive opinion of the doctor found lodgment with such clarifying force in their mind, before there appears another doctor, also an expert, who, with equal solemnity and equal positiveness, propounds an opinion exactly opposite to the one just heard. The two are utterly incompatible, mutually exclusive. Each expert plainly knows all that can be known on the subject, yet the knowledge of each completely antagonizes and neutralizes that of the other. Chaos again in the mind of the unhappy juror. We extend him our sympathy, and leave him to his fate. * * * And what if these cases were cited, may be asked? May not physicians, like other mortals, have an honest difference of opinion? Truly. But suppose a human life is at stake: suppose the conditions are necessarily such that one is open to the imputation, however false in fact, of having his theories biased by the 'jingle of the guinea.' Suppose a mere debatable opinion to which the holder had a perfect right may be made by the weight of that person's reputation to turn the scale against the life of a fellow mortal; then plainly opinion and theory cease to have the same significance that they would have before a scientific society or in ordinary discussion. A degree of dogmatism that would be quite permissable in the latter case, might be little less than criminal in the former."

The editorial goes to show that testimony conflicts with testimony, opposing sides counterbalance each other, and the jury have to decide as they would if no expert testimony had been heard.

But in reading this and more, we find that nothing more than a hint is given as to the reason of all this. It is hinted that the experts are themselves somewhat to blame, but in what way is not clearly said. Now, for such a complication of things there must be *some reason*, and inasmuch as the evidences are often very exactly stated and agreed on, it must be a quite fundamental one. With this in mind, we would take up the subject where it was left off by the article.

In searching for our solution, we might seek to logically corner the missing reason by asking questions mutually exclusive. First, are the two opposing experts both honest? The answer is: They are reputable and honorable, by all ordinary tests. Second, are both opposing experts perfectly capable. And again comes the puzzling answer: By all reputation and learning they stand at

the head. The puzzled questioner can then stop and finally find a logical corner out in the question: Can both opposing experts be so faulty in knowledge of insanity as to differ in decision? But the answer is still rather equivocal, saying: They are our *best* judges; they ought to agree if anybody. But after a little more of study, our questioner finally brings forward still another question of a little more definite form. Cannot the opposing experts use *different standards* for insanity in judging of the contested cases? And here, finally, I believe the questioner finds a valuable clue to much that is puzzling to courts and people. Let us follow up this clue. This clue leads us to the question, Where are the outlying boundaries between sanity and insanity? But we find at once that it has been many times declared that a definition of insanity is "impossible," and still more light seems breaking on our subject. But an objector will at once state that there is no logical reason why experts should *differ,* but only why they should be *uncertain.*

Let us follow our clue still further. The next question will be: If insanity cannot be defined, can it be always determined? Is there any exact boundary line to be found? You will see that the question is not "is it difficult to find?" but "does there *exist* any line to be found?" Is there any exact instant *before* which a man was sane and *after* which he was insane? In getting well from an attack of insanity, is there any exact instant when he changes from insanity back to sanity? Is not the change rather like one from youth to old age? It has no limits, no boundaries, except such as the imperfect judgment of man arbitrarily assigns to it. Is not here the central wedge, the key log of the log jam of trials and opposing experts, of escapes of criminals and hanging of insane men, of medical claims upon judges which have reasons but which are unreasonable, of judicial reflection upon medical testimony, which, though felt unjust, is yet not without foundation.

Admit that insanity *gradually grows* out of sanity, and see if it does not light up this whole subject with a flood of light. But first, of course, we must establish the fact by as good arguments as we can. We would mention arguments as follows:

First—Insanity, according to most advanced ideas, is a mental symptom of physical disease. If it is admitted that physical disease or diseased state comes on slowly and has all gradations

of intensity, it would be logically probable that insanity will follow the gradations in the same degree.

Second—All the history of cases is against an instantaneous change. Acute mania—most sudden, perhaps, of all—still will always give a pro-dromal state, and friends cannot locate even to the week, usually, the time of beginning. But the large bulk of our cases, general paresis, senile dementia, paranoia and defectives generally grow so insidiously, that at times no one ever knows even the year of beginning.

Third—A long study and experience of cases reveals a usually previous instability of mind and a previous defective state in many cases. This will be noted as something different from heredity. This includes hysteria, eccentricities, nervous defects, and defects oftentimes tending toward feeble-mindedness.

Fourth—Special cases, such as senility, inebriety, and especially epilepsy, bring on mental changes so gradually and so symmetrically as to be easily noted in their gradual invasion of years.

Fifth—The growing responsibility of children up from complete irresponsibility, in infancy, through varying gradations of the same to adult responsibility, gives us an analogue to make it easily believed.

Besides our own arguments, we ought, of course, to consult the thought and wisdom of others. And, at first, the writers would seem to have considered the subject under the heading "Partial Insanity," and to have relegated it to the lumber shed of old, unused timber.

We find that Hale(1), in the seventeenth century, tried to place the standard of knowledge necessary to sanity as equal to that of a child of fourteen, and that a partial responsibility was thus recognized.

The main discussions to be found are in the descriptions of the famous trials of history. From the most noted, the McNaughton trial of 1843, down to the recent trials of Guiteau, Riel and Prendergast, a series of great interest can be outlined. But the main question discussed in these is only, Is a knowledge of the character of the act sufficient to prove responsibility? or in further detail, Must inability to control the will be also proven? Rarely has there been hinted any question of "*gradations*" between total responsibility and total irresponsibility.

Lord Brougham(2) in 1850 discussed "partial insanity," but not in the full sense of gradations. He spoke more of the old monomania. Fothergill(3), in 1889, wrote of "Moods of the Sane." Hughes(4), in 1884, "The Border Lines of Psychiatric Records;" while perhaps the most clear statement I have met until very recently is that of Ira Winchell(5), under the heading of "Border Lands of Insanity." In 1890, Wille(6), as reported in *Journal of Insanity and Nervous Diseases*, declares squarely for recognition of "diminished responsibility." He names such conditions as these: "First, in certain periods of life, in that of infancy and old age. Second, in certain physiological sexual conditions in females, namely, the menstrual period, childbirth, pregnancy and the climacteric. Third, under the influence of certain nervous diseases, such as hysteria, hypochondria, epilepsy, somnambulism and hypnotism. Fourth, in the conditions of alcoholism, morphinism, fever and traumatism. Fifth, under the influence of hereditary taint, and after a former attack of insanity." It is manifest, however, that these conditions noted are themselves variable or graded states, and that if one grants a separate grade for these cases, he can hardly stop from logically granting an unlimited number of grades. By the law diminished responsibility seems only recognized in a partial way by reason of alcoholism and youth.

Last year, as the result of some growing convictions on the subject, I ventured to outline(7) the progress from sanity to insanity, as by imperceptible steps, under an article entitled "Gradation of Responsibility in Insanity." L. Carter Gray, in two articles published last year, in one(8) advocates placing a commission of medical men with the judge; in the other(9) rather tends to deny gradations, as expressed in the summarizing phrase which reads "a seeming partial mental defect is really a general one." In the discussion following, Moyer took the ground of gradations to the extent that a different degree of impairment was needed to break a will than to free from a crime.

Of authors we find that Blandford, Bevan Lewis, Gray, Kirchoff and Hamilton omit meeting the issues brought up by this question of "diminished" or "modified responsibility," as it has been variously called. Bucknill and Tuke quite nearly state it incidently in discussing the difference between legal and medical ideas of insanity. Folsom, in his admirable outline, comes still

nearer, as indicated by one sentence, which reads as follows: "Indeed, if we could measure nicely, no two of us could be fairly held to the same degree of accountability." Savage states that no person is perfectly sane in all his mental qualities any more than that he is perfectly healthy; he does not clearly state, however, modified responsibility. In Tuke's "Psychological Medicine," W. Orange, on "Criminal Responsibility," criticises "partial unsoundness," but does not attack thereby the main question of the existence of gradations. It is reserved for H. C. Wood, in Pepper's "American Text Book of Medicine," 1893, to make the most full, uncompromising statement of this doctrine that I can find. I quote him in full:

"Before entering into the discussion of the classifications of insanity, the question of how much abnormal mental action is compatible with sanity seems naturally to present itself. Its answer involves the definitions of the words sanity and insanity, and like these definitions probably will always be unsatisfactory. Insanity is not a definite disease, but an abnormal state, varying indefinitely in its intensity, separated by no tangible line from sanity; arising from a number of diverse diseases, and terminating in most various ways.

"Moreover, the manifestations of insanity are simply alterations, exaggerations or perversions of the normal faculties, and therefore offer nothing that is absolutely new. Emotional depression deepens into the profoundest melancholia; emotional exaltation lifts itself into the highest mania, by a gradation as insensible as that by which the beach slopes into the deep ocean or the mountain rises into the air; and who shall say where the dividing line is between the state in which the man is master of the mood or the mood is master of the man?

"Probably as good a definition of insanity as the expert can frame to meet the clamor of lawyers is that insanity is a condition of mental alteration sufficiently intense to overthrow the normal relations of the individual to his own thoughts and acts, so that he is no longer able to control them through the will. The difficulty of applying this definition to the individual case consists in the fact that the will does not all at once lose its grasp on the lower faculties, but that little by little these slip from under its control. Of degrees of responsibility none but the All-knowing can judge, and to say with assured correctness just when the con-

trol has been lost is not given to mortals. In a court of justice it becomes the expert to state, as nearly as may be, the exact mental condition of the prisoner, leaving to the judge the decision as to his legal responsibility, *i. e.*, the relation of his mental condition to the law of the commonwealth in which the trial is held."

And again, speaking of the neuropathic class: "Perverse drifting almost of necessity into criminal eccentric, such unfortunates are a long series of human atoms, whose faulty brain organization separates them from their more fortunate fellows. When this separation is sufficiently wide, when the mental organization is so bad that every one can perceive that the man is the victim of his own imperfectly developed brain, he is said to be insane. But when the unfortunate individual is a little more like the normal human being, he is looked upon simply as eccentric, perverse or wicked, and unloved or pitied drifts through life, sometimes to poverty, sometimes to the hospital, sometimes to jail, and it may be to the hangman's scaffold. Sanity, insanity, criminality, power over self, free will, mental attributes—these and similar terms are household words with all of us, but no man knows whence they came, or what they are, or how far the individual is master of himself or driven by the hand of fate, as represented in the physical conformation of the nerve cells and fibres of the brain."

Now, in regard to the practical outcome of this doctrine, the most important ultimate result of the adoption of the idea of modified responsibility from gradations of insanity would be, of course, modified penalties to fit the modified mental state. Our knowledge is, however, only complete enough to make a few of these grades. If the principle is once established, others will probably become clear. That the homicidal paranoiac ought to be confined for life seems to be the first one to start with. Instead of a fight over the question, Shall he hang or go free? the idea should be to simply and descriptively make clear the degree of mental soundness, when formal commitment would follow as a matter of course.

Whether, in case of a trial at court, or in a case of more ordinary medical examination, the medical judgment should be one and the same, and should be merely a judgment of *the degree of mental impairment*. The legal question is then another and entirely different one. It is in two parts: First, how much has

the adjudged mental defect impaired his mental responsibility? Second, how much impairment does the guardianship of the safety of society allow us to overlook?

From the above you will see that the medical and legal elements in a trial are often talking about entirely different questions. The medical man says the man is insane, because he detects *some* mental impairment. The legal man says the man does things in a responsible way and the man is responsible, and ought, for society's sake, to be punished. The legal man has assumed the word insanity to be equal to total irresponsibility, and as he looks at the prisoner is naturally skeptical. If at this time another expert will declare the man to be sane, on the standard that he knows what he is doing, most of the people will accept the latter decision. The first medical man is considering the finding of *any* point of mental impairment according to the medical standard he may have adopted. The legal man is considering the finding of *so much* impairment as to make the man totally irresponsible. They are on two different questions whether they know it or not. Insanity is not the synonym of total irresponsibility. The name "insanity" means *mental defect*. The degree of defect necessary to apply this name varies according to the standard of the physicians making the judgment. It is manifest, then, that a medical man ought never to appear on either legal side. The only fit place is a judicial place, to examine and to find how much the man's mind is impaired. This, moreover, is a matter of *judgment rather than of fact*, of *comparison* rather than *exact statement*.

So much for differences between medical and legal decisions. They do not decide the same question: they do not meet issues. But between medical men as seen at court trials, the differences, as far as they are conscientious, have similar though modified reasons. They are due to the adoption of different standards. For example, ordinary inebriates are often, by Crothers and other specialists, said to be irresponsible. Others say they are not. The difference is not necessarily in the facts, but in the adoption of a different standard. By close questioning we may find that though they both agree as to the facts of mental impairment. One would say it does not deserve the name "insanity" because impairment is *not sufficient*. The other would say it deserves the name insanity because it *is* mental impairment.

The standards for insanity differ. For my own judgment I

would say that there are sum grades of mental impairment which ought not to be denominated insanity in the ordinary *social* meaning of "insanity." The moods of the sane, hysterical acts of ordinary degree, inebriety of only ordinary severity, eccentricities not so extreme as to interfere with social relations, changes of only mild degree of the character of feeble-mindedness, manifested chiefly as lack of judgment and foolish actions, hypochondriacal states, condition after a former attack of insanity, and many others should be clearly outlined on the side of sanity for safety and responsibility's sake, though really insanity in the logically technical sense. These varying opinions in regard to special cases of insanity are often not weakness, but an ordinary finiteness of judgment—an element in most judgments. The medical witness should state descriptively *how much* mental impairment exists. The lawyer can then decide how much shall constitute legal responsibility. Or, when the law shall have admitted modified penalties, the judge can decide what degree of responsibility is represented. Until he is allowed a judicial position, however, the medical man, if conscientious, can only decide *both* these elements, the medical and legal, for himself, and use the name insanity in such a way as to bring the justice desired. That is, he can fix in his own mind, *arbitrarily,* about how much of impairment shall carry over the line of division, and shall make the patient (or criminal) clearly irresponsible, and then use the word sanity or insanity according as the case lies one side or the other of this arbitrary line.

But it is to be further remembered that even more extreme derangements than those named in previous paragraphs are ordinarily excluded from the use of the name "insanity" by reason of *policy.* The derangements of acute intoxication are excluded because of the ability to prevent the intoxication; the derangements of the delirium of fever because of its transient character; somnambulism and hypnotism because of its artificial causation, etc., etc.

In conclusion, then, we will restate our ideas as follows:

First—Insanity means in the *medical* mind "some arbitrarily adjudged degree of mental impairment. *Legally* it means "complete" irresponsibility.

Second—Insanity, whether in its broadest sense, or in ordinary medical sense, is *not* complete irresponsibility.

Third—Insanity means technically mental impairment, but

some mental impairments, such as delirium and intoxications, do not deserve the name insanity, because the name carries the idea to most people still of chronic character and complete irresponsibility.

Fourth—The mildest derangements, as hysterias, moods, eccentricities, do not deserve the name insanity, *even in a medical sense*, because responsibility ought not to be impeached. No one is perfect, and it is not just to impeach everybody.

Fifth—Experts and lawyers do not usually mean the same by the word insanity, and opposing experts, usually, more or less unconsciously, adopt different standards of sanity (aside from any quibbling over technical wordings).

Sixth—The only remedies seem: (a) The assumption of a judicial position (to be made to say "sane" or "insane" without chance to explain modifying facts is unjust and wrong). (b) The allowing of modified penalties by the courts to meet modified mental states. (c) The temporary adoption by the physician of the method of judging both the degree of sanity and of the deserving of punishment as well, and then deciding "sane" if deemed irresponsible enough to deserve punishment, "insane" if not. In this way the physician decides both the medical and legal elements of the question in his own mind, and makes his decision on both.

REFERENCES.

(1)Hale: Tuke's Psychological Dictionary.

(2)Lord Brougham: *Journal of Insanity*, 1880, p. 308.

(3)Fothergill: *Alienist and Neurologist*, 1889, p. 248.

(4)Hughes: *Alienist and Neurologist*, 1889, ref.

(5)Ira Winchell: *Alienist and Neurologist*, 1884, p. 457.

(6)Willie: *Review of Insanity and other Nervous Diseases*, 1891, p. 115.

(7)Phelps: *Hospital Bulletin*, Aug., 1893.

(8)Gray: *N. Y. Medical Journal*, May 20, 1893.

(9)Gray: *Journal American Medical Association*, Sept. 23, 1893.

OTHER LITERATURE.

Gapen: *Journal American Medical Association*, Sept. 23, 1893, on the degrading criticisms of expert testimony.

Trials in files of *Journal of Insanity*.