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LIMITED RESPONSIBILITY.

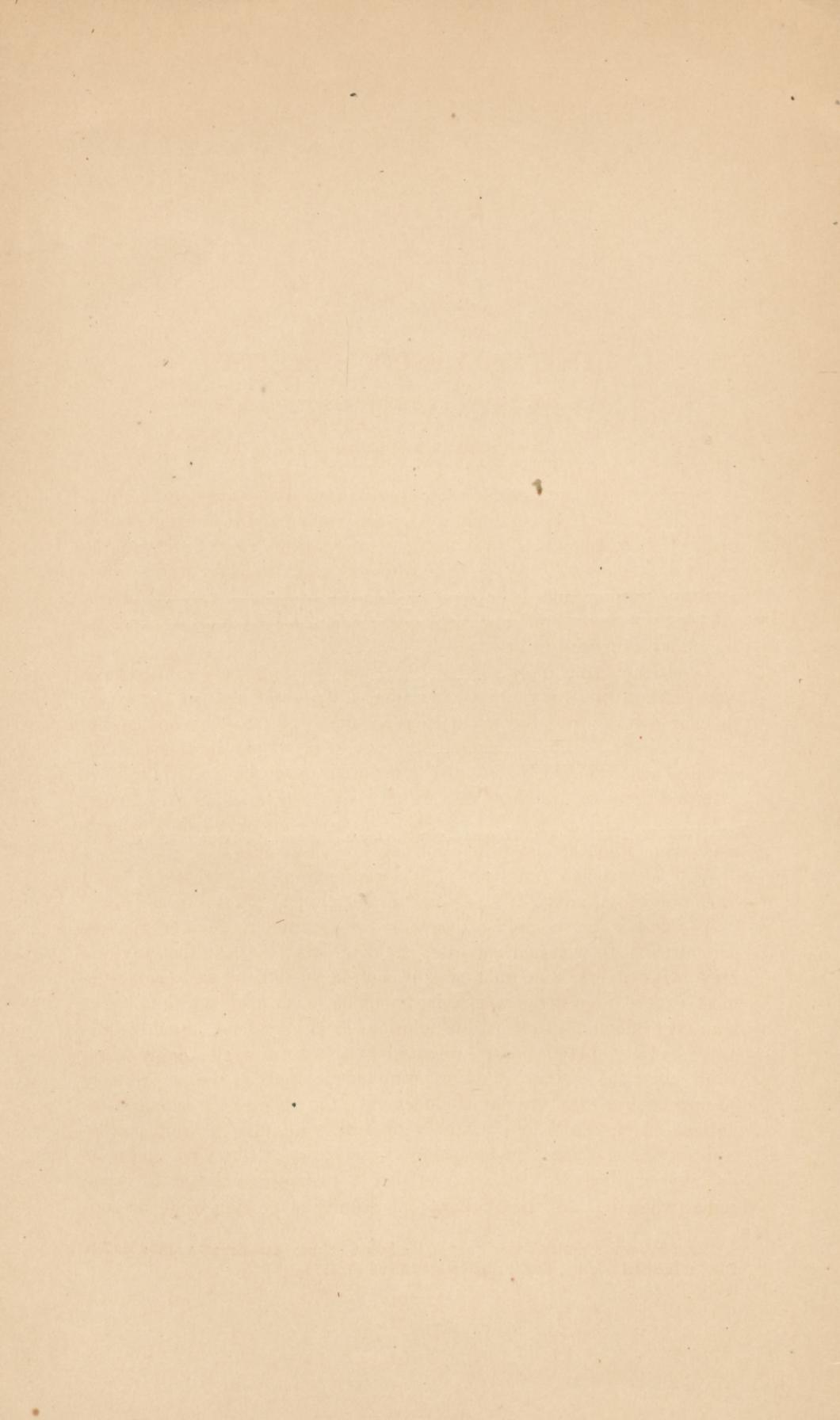
A DISCUSSION OF THE POMEROY CASE.

By CHARLES F. FOLSOM, M. D.

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A DISCUSSION OF THE POMEROY CASE.

BY CHARLES F. FOLSOM, M. D.

IN speaking of the duty of the expert who is called upon to testify as to the insanity of any individual who has committed a crime, Conolly says, "His business is to declare the truth; society must deal with the truth as it pleases." Westphal, Meynert, and Maudsley have reiterated this opinion, and, keeping it in mind, I purpose discussing briefly the case of Jesse Pomeroy, convicted of murder by a Massachusetts jury, and sentenced to be hanged.

Either the boy is insane or he is not; and he cannot be said to have something of this disease and something of that, and some of the symptoms of still a third; but his malady, if such it be, must be one of the well-recognized forms of mental disease; that is, just as in any other diseased condition, the first step is to make an exact diagnosis. Of these manifold forms of disease, there are only five which, as far as I know, have been considered as the morbid processes under which Pomeroy was acting when he committed murder, and these are —

(1.) Delusional insanity. (2.) Insanity from masturbation. (3.) Epileptiform insanity. (4.) Moral insanity. (5.) Moral imbecility.

The first is the commonest form of disease under which crimes are committed. In well-marked cases the diagnosis is so easy that any one may make it, while in mild cases it is often so difficult as to baffle the most expert alienist for weeks, inasmuch as a shrewd and intelligent man may effectually conceal his delusions for a long time. Such people are generally able to control themselves to a considerable degree, and often when the disease is quite pronounced; that is, under ordinary circumstances, with ordinary inducements, they can resist ordinary impulses. A cigar after dinner, or a glass of wine, may be sufficient to restrain one of them from smashing his windows or throwing chairs at his physician's head; but suppose that a strong inducement to crime comes when he has an excellent opportunity of getting what he con-

¹ Read before the Health Department of the Social Science Association and the Suffolk District Medical Society, Boston, December 16 and 18, 1875.

siders a great advantage to himself at only the cost of killing another man, his self-control is a mere nothing. Sometimes these patients recognize and acknowledge the fact that murder is wrong for them and for all people; sometimes, and that more commonly, they think that it is wrong in the abstract, but that there are special circumstances which make it right for them.

I can call to mind a number of such men, who used to say that they were insane, and not responsible before the law, and that they should therefore commit such and such acts of violence, which they would proceed at once to do. Three of these patients—a physician, a naval officer, and a merchant—I have reason to remember quite well; and a gentleman formerly in the McLean Asylum, using this argument, once made a deadly assault on the late Dr. Bell, who fortunately escaped with only a scalp wound.

Again, the moral sense is often so keen, and the intellect so clear, with many of them, that they will take great precautions so as not to allow their delusions to get the upper hand of them. A gentleman far advanced in convalescence once, while eating his dinner, threw his knife and fork violently through the window, and then calmly turned around to my friend standing at his side, and said, "I wanted to kill you, and I should have done it if I had n't thrown them out of the window."

It is especially with reference to this class of the insane that the remark has been made that people do not cease to be men and women in becoming insane. There can be no doubt, and it is quite well acknowledged, that patients with delusional insanity do sometimes commit acts of violence from the same motives which actuate ordinary criminals, and with sufficient power of self-control to have restrained them. I know, however, of only one case where experts have held this opinion in court. Nevertheless, it is almost without exception beyond the power of human insight to say in what cases they act in virtue of their insanity and in what they do not; and therefore, once granted that any insane individual has definite delusions, I think that there must be very few physicians who have seen much of the disease, who would under any circumstances hold him fully responsible for a crime which he may have committed.

The idea that Pomeroy may be suffering from delusional insanity has now been quite generally abandoned. No delusions have been found, and a person of his limited intelligence could not have concealed them had they existed.

The case of Blampied was one of this kind. He was discharged, as recovered, from an insane asylum upon the certificates of four experts, of whom three were officers of the asylum, and the fourth was in practice in the town where Blampied lived.

At his trial for a murder which he committed some years after leaving the asylum, and apparently from ordinary motives, no expert testimony was called.

The superintendent whose patient Blampied had formerly been, gave his written opinion as to his recovery, complaining of that very fact, that no expert opinion had been asked during the trial, and stating that Blampied should be hanged, not as an insane though responsible man, but as a sane and responsible one; and so far he seems to me to be right.

To make his position stronger, he also said that even in the asylum, Blampied never belonged to that class of the insane who lose their self-control to a great degree, which was perfectly true. His opinion also was that if Blampied had committed a murder while there, he would have been properly held fully responsible. In that I cannot agree with him. My only object in citing the case originally was to show that there are alienists who think that the doctrine of non-responsibility has been pushed too far.

Not very long ago, Mr. J., an insane Scotch clergyman, attempted to commit rape upon a young maid, and afterward on a young lady. Two of the first authorities in Scotland testified in court that the gentleman was suffering from well-marked mental disease, that he knew that the acts which he had attempted were wrong, that he had sufficient self-control to have restrained him from so doing, and that there was no reason why the law should hold him to a limited degree of responsibility in these cases.

On May 21, 1873, Mr. Lutwidge, while visiting one of the asylums of England, in discharge of his duty as one of the commissioners in lunacy, was struck on the right temple by a patient, with a nail. He died from the effects of the injury a week later. I quote the following passage from the official report¹ published a year after Mr. Lutwidge's death. In speaking of the patient, the commission, composed of three physicians and three lawyers, say, "He was well known to those members of our board who from time to time during that period had visited the asylum where he was confined. . . . Those of our number who, as just mentioned, knew the man, describe him as being a person of a weak, imperfectly developed intellect, but they agree in considering that he was quite responsible for his actions."

Last September, a patient in one of the large asylums of England killed an attendant against whom he had long had a grudge. He stabbed him in the back with a table-knife. The superintendent of the asylum and several other alienists have maintained his responsibility for the act. They say that the insane hear of such cases as the unfortunate one of Mr. Lutwidge, and become emboldened to commit crimes which they would not think of, provided they did not know that the law

¹ Twenty-Eighth Report of the Commissioners in Lunacy for England, page 2.

would hold them irresponsible. This opinion, of course, is open to criticism.

As to the second head, masturbation is common in the insane, and is one of the many symptoms of loss of self-control and self-respect. As a *cause* of insanity it is rare, so rare that many doubt its existence. The prognosis is generally about as unfavorable as it well can be, and the disease is progressive, that is to say, dullness, moroseness, ill-temper, and suspicion are followed very rapidly by loss of memory, considerable diminution of the intellect, and some loss of flesh, not infrequently emaciation. Such patients complain of headache, a symptom to which I do not generally attach much importance, as I find it so common, especially in boys who attend school in badly-ventilated buildings. The characteristic symptoms of this disease are certainly not found in Pomeroy.

In these cases, too, there is not often difficulty in ascertaining the fact. Often the patient will use his thighs, if his hands are tied. I should doubt the existence of this form of disease in all cases where there was any possibility of the existence of a doubt as to the habit. When it is actually persisted in to such a degree as to cause insanity, the victim has lost self-respect and self-control in too great a degree to render concealment possible. We all know how common this vice is in prisons, in reform-schools, in industrial-schools, etc. We seldom see insanity come from it.

As to the third form, Maudsley states that in epileptiform insanity the sufferer is just as unable to control himself as is the man who tumbles to the floor in tonic and clonic convulsions, and justly says that it would be as fair to punish the one as the other. Pomeroy, however, has been perfectly able to control himself while under observation at the reform-school and at the jail. Yes, more, the presence of a third person has always been sufficient to restrain him from committing crimes or acts of cruelty.

I do not think, either, that the amount of deliberation and calculation shown by him is compatible with the diagnosis of epileptiform insanity, although it would not invalidate the diagnosis of other forms of mental disease; and I should say that, in this case, the absence of forgetfulness is a symptom which is of considerable importance. Finally, epilepsy in all its forms, in the immense majority of cases, especially where there is no medical treatment, is progressive. If anything, the contrary is true with Pomeroy.

Fourthly, the discussion of moral insanity is comparatively simple. Pomeroy does not deny that he knows that the acts committed by him were wrong; and I do not suppose that any one will maintain that he lost his knowledge of right and wrong just when he committed the murders, and at no other times. This question resolves itself, then, into the

inquiry whether he was acting from a temporary impulse against which he was powerless to contend. This is a well-recognized morbid condition, both as a disease and as a stage of disease, and that too while the intellect remains perfectly clear. It has been described again and again from Pinel's day down. The Germans say that the patient acts from a *Trieb*, that is, from something which drives him on, in spite of himself. People who know that it is wrong to lie, and who are most conscientious and upright when well, will fabricate the basest falsehoods; others will steal, and others will commit acts of violence. These impulses are by no means as uncommon as most people would suppose. Fortunately for society, the three conditions necessary for the commission of crime under them — the impulse, the opportunity, and the lack of self-control — do not very often coincide in point of time. A milder form of this morbid condition, the homicidal idea, or the idea of doing wrong generally, is very far from being uncommon.

Alienists, especially those with what Herbert Spencer calls the theological bias, have denied the existence of moral insanity; but all must acknowledge that the brain is necessary for all intellectual and emotional manifestations, and it is only a step further to the position that a variety of organs are necessary for a variety of manifestations. Given these various organs, of course any one of them may be diseased, while the others remain sound. It is tolerably certain that different ganglionic cells in the spinal cord have different functions; and many clinical observations, especially the symptom aphasia, make the same fact more than probable with regard to the brain. At all events, the authority of Pinel, Marc, Ray, Maudsley, Tuke, Bucknill, Morel, Esquirol, and many others is conclusive on this point.

I saw not long ago a man with this disease. He had killed his superior officer. In prison (he was too powerful to be in an asylum), he had stabbed one fellow-prisoner, had bitten off the lip of another, and had tried to kill his physician by throwing a heavy stool at his head, and at all these times when the odds were entirely against him, as there were plenty of officers about. I think that this form of disease must be excluded in Pomeroy's case for the following reasons: —

(1.) There was too much premeditation in the acts committed by him.

(2.) The boy could exercise self-control while under observation.

(3.) There was a motive in his acts, in his love of torturing; for I do not think that he ever meant to murder; and experience had taught him that up to that time, at least, he could enjoy his horrible sport without undergoing anything that was really punishment to him.

Cases of moral insanity get into asylums for the insane, but neither confinement there nor punishment (which latter has usually been first tried at home) ordinarily does any good. If the [patient cannot steal

anything he likes, he will steal at least *something*; if he cannot attack a boy, he will make an attack upon an attendant.

Fifthly, I have for the sake of definiteness considered moral insanity and moral imbecility separately, although they are commonly confounded. Dr. Ray discriminates carefully between the two. I suppose the latter of the two terms in a certain sense covers the meaning of the gentlemen who think that Pomeroy is weak-minded.

Moral imbecility may affect the intellect also, and exist in every degree up to complete idiocy, the only form of insanity that is at all common before puberty. In fact, as Maudsley says, even mania so early in life may be generally described rather as excited idiocy.

Every child (to take an extreme case) recognizes the mimetic creature of a spinal cord and cerebellum who kills a baby because he has just seen a butcher kill a calf, and without being able to see any difference between the degrees of criminality of the two acts.

Jesse Pomeroy, unlike an idiot or an imbecile, seems to me a boy who has had his wits sharpened by contact with the many people who have examined him, and who has shown a considerable degree of skill in his attempts to make his case a plausible one for executive clemency.

Dr. Ray describes the moral imbecile as torturing children from the same motive which makes a cat torture a mouse before killing it. He does not know that his acts are wrong, and he does not forget them. Like the cat, to continue the comparison, he makes no attempts at concealment and feels no remorse. Cat-like, too, he will sometimes direct attention to what he has done.

Granting, however, for the sake of the argument, that Pomeroy is not responsible, the position does not seem to me at all tenable that his confessions and retractions and contradictions merely embody the uncertain and incoherent ideas of an insane person. If such were the case, they would be indications of so great disorder of the intellect that the insanity would not fail to be easily apparent; for these symptoms, like cough and night-sweats and emaciation, are evidences of well-marked disease.

At best, I do not see how the boy can be called anything more than weak-minded. This term I should use as being in a measure synonymous with moral imbecility, differing from it in degree only. I should not, however, consider it as an initial stage of that disease, nor should I hold that it indicates sufficient deviation from the normal type to place the sufferer from it outside of the pale of ordinary criminals. Of course he is weak-minded; every criminal is weak-minded, every man is weak-minded who deliberately places himself in opposition to any well-organized society. Any one else must know that in the long run it does not pay. The question for us to decide is whether Pomeroy is any more weak-minded than the whole criminal class.

No one can doubt that disease and crime are closely allied. The criminals with insane and consumptive parents, and the many who themselves become insane or consumptive, must alone convince us of the fact. In the cells of the penitentiary one will see the imperfectly developed ear, first pointed out by Darwin as a mark of inferior organization, as often as he will in Westphal's wards in the Charité.

Dr. Manning in his Report on Lunacy (page 221) says, "At Millbank and Perth prisons, special wards are set apart for epileptic and weak-minded criminals. The former require some extra watching; and the prison routine, especially where isolation is practiced, is thought to conduce to absolute insanity in the latter. Both classes are, therefore, kept apart from the ordinary prisoners, in large, well-ventilated wards; work, eat, and drink in common, and sleep either in cells or dormitories, as seems most fit. The number of these cases at Millbank (1868) is nearly two hundred," that is, nearly one sixth of the whole.

Last September, in the famous Millbank prison there were sixteen suicidal convicts who required watching day and night, and three more were so desperately bent on self-destruction that they were kept in padded rooms. It must be borne in mind in this connection that there is in England, as there is also in Scotland, a special asylum for the criminal insane.

Weak-minded people abound everywhere. As boys, they run away from home or from school, and do a host of things that vex the saint and puzzle the psychologist. As men, they perhaps have abundant energy but lack steadfastness and definiteness of purpose, or they fail to carry out plans well laid, for want of perseverance and ability to make the necessary continuous effort. Society says that they have been failures, but they are just the people who, if they fail to get the healthy influences of sound educations, form our criminal class.

In boyhood, punishment sometimes cures them; in youth, if they are sent to insane asylums, that often cures them because it is simply a punishment, and they regard it as such. Their friends also tell them plainly that they can have their liberty as long as they behave well, but no longer. We may not expect the club-footed boy to run, but he can stand or walk, and may strike out from his shoulder a blow that will knock you down.

I suppose that it is under this head that Pomeroy's attempt to escape from the prison is described, as one not showing much judgment, and as being one such as is often seen in insane asylums. It is worth while to stop a moment and consider this statement; Pomeroy's plans were as well laid and as judiciously carried out as the average of such attempts in the State Prison at Charlestown, the immense majority of which have ended in just as signal failure.

Lately, three men have tried to escape from the prison where Pom-

eroy would be confined if sentenced for life, and in the face of what are ordinarily called impossibilities. One broke his thigh after jumping twenty-six feet from a roof of one of the work-shops to the prison wall, and was captured after rolling over and over some rods away; the second was taken after a short run; the third escaped entirely.

A gentleman of Boston, not a physician but a sound psychologist, saw Pomeroy in his cell. Upon being asked whether he should commit murder if allowed to go out, the boy said, in a swaggering way, "Oh, I don't know; I could n't say whether I would or not." In reply to a question concerning what he was in the habit of reading, he said, in the same manner, "Oh, I like the blood-and-thunder stories in the newspapers better than anything." When visited by a member of the Board of State Charities, who has been familiar with his history for several years, he said, "I suppose I did these things — they say I did," although at other times he made no pretense to any forgetfulness. My ideas of a moral imbecile are certainly something very different from this.

I cannot see, then, that there is any evidence of Pomeroy's insanity, except in the horrible character alone of the crimes which he committed. This has been somewhat insisted upon in his case; but alone, without other symptoms, it is really no evidence of insanity whatever. If we allowed it to be such, we should, as Westphal well says, be only opening the door to excuse every criminal.

The absence of remorse, too, has been considered a strong argument in favor of the boy's insanity; but that could not be insisted upon by one who had spent much time in prisons. General Chamberlain states that remorse is an unusual emotion among convicts, except with that class of them who have committed crimes from impulse, while under strong temptation, or under the influence of alcoholic liquor, etc. The same observations have been made by others.

Jesse Pomeroy, then, it seems to me, is responsible for the crimes which he committed; not as fully responsible as you and I would be, but yet responsible before the law. In fact, if we could measure nicely, no two of us would probably be found who could justly be held to precisely the same degree of responsibility.

And here I would say one word as to the object of punishment. Of course, the first idea was revenge; the next was a step higher, and is generally called justice: "an eye for an eye, and a tooth for a tooth." But with the thinking classes, who have been again and again disappointed in their hope to see some reformatory method successful enough to become general, and who judge dispassionately, the real motive in punishment of criminals is the protection of society.

Leaving out the general question of the advisability of capital punishment as not belonging here, is it fair to suppose that anything else

than death will protect society from such a monster as Pomeroy, when the chances of escape from prison are so many, and when we know that out of 266 men sentenced to imprisonment for life at Charlestown from 1828 to 1875, 135 have been pardoned? From the adoption of the constitution in 1780 to the year 1875, 137 persons have been convicted of capital offenses in the Supreme Court of Massachusetts; of whom 76 were executed, 25 were pardoned, 34 had sentences commuted, and 2 died in prison.

I have not seen the accounts of the horrible deeds recently committed, and quoted at a late meeting of one of our medical societies, and I have not had the time to investigate and consider them carefully enough to form opinions in regard to them. I should not, however, consider it safe to base my diagnosis upon the accounts in the daily papers.

It seems to me, too, that the average bad boy does fully as wrong things as to throw stones at his mother and then tell her that he is sorry for it.

I read in the London *Times* a few weeks ago an account copied from the St. Louis *Globe* of the trial of a midwife who delivered women and "disposed of" their babies. She was in the habit, as shown by indisputable evidence, of throwing the infants, dead or alive, into a stove and burning them up. What possible motive, you may say, could such a wretch have in killing with so much cruelty, when it was just as easy to do it without inflicting pain or causing suffering?

Crimes of a horrible character have been fearfully frequent of late, especially in Italy and the United States, in both of which countries punishment for crime has become lamentably uncertain. I think that this terrible danger to society can be removed; but, to quote the words of one of the first alienists now living, it is necessary in order to do it to hang some of these murderers.

After having tried all sorts of treatment for criminals, the so-called "humane" and others, England has finally settled upon the "stern and deterrent system" approved by Chief Justice Sir Alexander Cockburn as the best; and, according to Major Du Cane, Inspector-General of Prisons, it has already begun to have its effect in reducing the number of commitments for crime. I fully believe that the stern treatment would have upon boys of Pomeroy's class the same effect which the return to the use of the lash on the bare back had on the garroters of London.

Among the experts who have seen Pomeroy, and consider him irresponsible, there are two opinions on this point:—

(1.) That punishment would have no effect upon him or upon others of his class.

(2.) That punishment would deter them from crime, but that the same thing might also be said of a considerable proportion of the inmates of our insane asylums.

