# Criminal Insanity: From a Historical Point of View

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Medical and legal professionals—as well as scientists and those who see themselves as "practical"—tend to look on historians with tolerant benevolence. Some are actively intolerant. Yet physicians and lawyers have always had a strong consciousness of history, deploying historical myths at the heart of their self and public images. Academic historians are reared to other commitments, which are sometimes antipathetic to medical or legal values. These are interesting circumstances for someone trained as a scientist but turned historian: he or she perhaps has special perspectives on the reasonableness, or otherwise, of conforming to medical, legal, or historical conventions. Inevitably, these perspectives raise questions about the value of historical inquiry. The security of contributing to well-established practices may be exchanged for a questioning attitude.

What then *is* the value of historical study of forensic psychiatry or, to use a less anachronistic label, the medical jurisprudence of insanity? Most obviously, it must be conceded this study cannot be avoided, since Anglo-American law is constitutively historical: past procedure and decisions are causally active in the present. Or, rather, and this is a decisive contribution of historical intelligence, an *interpretation* of the past is active in the present; *and* with reinterpretation, the future may become different. In day-to-day practice, of course, these historical factors may well be overwhelmed by more forceful causes, requiring the attention of sociologist, lawyer, or psychiatrist. The multiple determination of events is highly characteristic in the medicolegal field. What the historian's disciplined—even pedantic—attention to the past can achieve in this context is the critical examination of the manner in which we interpret and reinterpret the past as it leads through to the present. History, for example, describes the polemics and rhetoric of medicolegal politics, how prescriptive judgment is wrapped in descriptive language. In such study, historians necessarily develop analytic frameworks of wider significance than the topic for which they are devised. And, naturally enough, this analytic work doesn't endear itself to propagandists for current professional interests. The resulting danger is that historians will dismiss psychiatrists or other professionals, believing they have a necessary interest in a particular biased version of the past; conversely, for example, psychiatrists will dismiss historians for a lack of concern with the history of *medicine* as such. Both conclusions abdicate the responsibility to communicate, and certainly both are much too exclusive.

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The past is a dimension of lived experience that excludes decision and action. Present problems require decisions; to reach decisions, we necessarily bring into operation a series of constraints on the range of our reflections and even on our desire to understand. Indeed, from this point of view, the criminal and civil courts are institutions whose value lies in techniques to simplify complexity to a point where a decision is possible. The same is true for the diagnostic manuals and procedures of the psychiatrist's consulting room. By contrast, since the historian is not faced by specific questions of what is to be done, she or he can focus on the *range* of causal variables—rather than on their restriction. This is a much more substantial point than the relatively banal one that historians may be able (though it is not always obvious they are able) to distance themselves emotionally from the effect of decisions.

Historical understanding, then, has the inestimable advantage that it can afford to be complex. It is then possible to translate consciousness of complexity into an argument that is both philosophical and political: in taking decisions we *chose* between techniques of refinement and simplification. Further, I would argue that such choice reflects the ends we have in view: our choice is not only a consequence of the circumstances (for example, of professional training) in which we find ourselves. Historians are extremely wary of claiming their knowledge is "useful"; but this need be so only when "use" is restricted to its technocratic meaning. Unfortunately, in the present Anglo-American climate, such restrictions of meaning are all too apparent, to the detriment of our political and cultural life.

These reflections are by way of introduction. My own work has been concerned with the history of the English insanity defense, though it is now spreading to consider wider issues concerning scientific evidence and legal processes. It began with an interest in the history of physiological psychology, at the same time a history of the mind-body problem—as the two roughly linked terms "physiology" and "psychology" imply. Innocent of all medicolegal knowledge, I perceived that the nineteenth-century phrase "criminal lunatic" also rudely linked two terms, with implicit reference to the incompatible categories of mind and body. Criminal lunacy therefore posed something that was both an esoteric philosophical problem and a dramatic and emotive social issue. Unpacking the implications of the phrase criminal lunatic turned out to take eight years (something that will not surprise those familiar with the river of literature on the topic, in quantity out of all proportion to the actual numbers of people classified as criminally insane).

The first and most concrete historical result from my work is a description of the factors affecting the introduction and reception of the M'Naghten Rules in 1843. In this, I have built on the administrative history of the law and insanity by the criminologist, Nigel Walker, now at Cambridge, England, and on the few serious historical papers, notably the study of M'Naghten's case by Jacques Quen. I have described the very wide range of

social, medical, legal, and intellectual variables that must be considered if these famous Rules are to be known in historical context. Part of this context exists in the many cases other than M'Naghten's that I reviewed. For many historians this reconstruction of the past would be an end in itself. Indeed, it should be valued as such, particularly since little medicolegal or even medical history committed to the ordinary standards of historical scholarship has existed until recently. The present growth in the social history of medicine is an exciting development, though since its results call into question the whole notion of insanity "reform" in the nineteenth century, its results have not always been welcomed by psychiatrists.

The social history of criminal lunacy is clearly concerned with very complex issues indeed. But it's exciting: here are materials not just for the history of social change but for the history of the concepts in which social reality is conceived, thought about, and responded to. As a historian of science or ideas, I have tried to relate medicolegal events to categories of knowledge. In such work, an important distinction must be borne in mind, one still relevant, separating reasons for a particular decision (to admit insanity in a particular case) and reasons for controversy about criminal lunacy in general. At one level, I have certainly been concerned to understand individual cases. Individual cases show, for example, that the M'Naghten Rules were a verbal umbrella under which all manner of decisions were reached: the Rules focused controversy but were a symptom—not *the* cause—of controversy. At another level, I argue that debate about criminal lunacy in general was an extreme, almost exaggerated, vehicle for the much more extensive issue of individual responsibility. Questions that reflect confusion about responsibility—in the mundane and everyday world, in the political sphere, and in the exotically criminal act—have logical and historical priority over the relatively technical and narrow issue of the insanity defense. Historical analysis suggests that technical improvements in the insanity defense's administration may help decide a particular case but cannot by themselves supply solutions to the *general* controversy. Further, attention should always be given to *which* interest "help" is actually given.

This means that mediolegal problems can never be restricted to expert debate. This view is supported by examining the forms of knowledge providing the language of medicolegal controversy. Criminal lunacy was a topic that agitated Victorians—an agitation often detrimental to their understanding. I try to understand this agitation by describing the existence, in their culture as a whole, of two polarized means of representing human nature. This polarity existed in a range of parallel conceptual oppositions: free-will-determinism; mind-body; head-hand; culture-nature; man-woman. Such dualities may be considered as ideal types—as abstract forms of existence—which constituted the available intellectual resources with which to contrast and classify different conduct. In addition, of course, these paired opposites were not neutral; the evaluative meaning of ascribing

a piece of human conduct to mind or body, or to culture or nature, was fundamental to the shared experience of the social world.

From the perspective of such a theoretical framework, it is apparent that two nineteenth-century characteristics were in opposition: at one pole, the developing physicalist medicine, with which leading alienists (a less anachronistic term for psychiatrist) strongly identified; at the other pole, a strongly individualist political temper and cultural sensibility, often evangelical, closely associated with the supposed causes of social and economic progress. On the one hand, psychological medicine sought for a secure and objective foundation for its authority in knowledge of the nervous system and in blood chemistry. On the other hand, social theorists, moralists *and physicians* alike sought for a secure foundation for social order in authoritative knowledge of individual wills and motives. As an aside it may be observed that it was significant for the difficulties that faced medical witnesses in court, that most physicians drew on different forms of explanation in different aspects of their work. Victorian psychological medicine characteristically used both a physicalist and a moralist rhetoric; the logical difficulties this involved were easily exposed by the courts.

When the polarized forms of knowledge were developed in extreme terms — exactly what tended to happen during a defense of insanity—the boundary between health and disease acquired an intolerable burden. It *represented* the two forms of knowledge and their correlated social assumptions; no medicolegal decisions could possibly do justice to all the ramifications of such a burden. Physicians in general, but alienists in particular, effectively made decisions in such a way that the empirical diagnosis of a disease was also the moment at which they switched from ascribing free will to ascribing physical determinism to a person's conduct. This was profoundly illogical, since no amount of empirical knowledge can be sufficient to change the *categories* of causal attribution. What is needed in addition, to validate such a change of categories, is an evaluation, a choice in the light of definable ends, to adopt a different approach to causal attribution.

These abstract points are not abstruse: they existed with dramatic consequences in criminal trials where the accused pleaded insanity. Here were public occasions—pieces of social theatre—that required sharp decisions between responsibility and disease *and* between the explanatory categories of individual action and physical causes. The stakes could hardly have been higher: in view was a hanging, the containment of gross assaults on social order, the authority of medicine, and the politics of individual responsibility. But the point to be emphasized is that *both* legal and medical institutions were committed to providing *empirical* accounts of the conduct being tried. Further, both medical and legal institutions operated with what might be called an "absolutist" empiricism: if an event was describable as one thing, then it could not simultaneously be describable as something else. Yet since legal and medical institutions assumed incompatible forms of causal attribution, the empirical descriptions of a crime could — and often did — contradict each other. Lawyers (and their view of course possessed power since

it was entrenched in court procedure and judicial authority) required the jury to consider a defendant's state of mind and whether that state of mind was of a kind to imply non-responsibility. Defense medical witnesses wanted the jury to consider diseases: the symptoms they, as experts, would describe and the abnormality in the body of which the symptoms were a sign. It was a matter of contingent circumstance whether law and medicine provided descriptions that overlapped. But to progressive medical men, this contingency was an outrage against science, which by definition excluded other categories of empirical statement. Physicians claimed that the persistence of legal claims to describe the facts of insanity, in disagreement with psychological medicine, was prejudice—comparable perhaps with the Catholic church's bigotry toward Galileo.

I suggest two points about this. The first is empirical: it is obvious in reading nineteenth-century cases that medical psychologists frequently provided very poor and publicly unconvincing descriptions of the symptoms of lunacy. Most damagingly, whereas they reiterated that insanity had a *physical* nature, when they described insanity they described disordered states of *mind* and abnormal *conduct*. It therefore appeared to their critics that, though they might possess some experience, they did not really possess knowledge that surpassed that of lay people. *In practice*, for medicine, law, and common sense, insanity was a certain degree of abnormality. In consequence, in court, judges repeatedly instructed juries that, not only was the jury the proper authority, but also jurymen possessed the requisite knowledge to assess abnormality. For example, in one judge's words: "You are not to be deprived of the exercise of your common sense because a gentleman comes from London and tells you scientific sense."

My second point questions the relation between disease and non-responsibility. If it were disease that produced non-responsibility, then we would all be non-responsible, sane or insane. It is illogical to suppose that with the advent of disease we are subject to a physical determinism that in health we avoid. The ill person is subject to an external physical constraint not normally present, but then the judgment of responsibility concerns constraint not determinism. Forensic specialists are now familiar with this argument; but in the nineteenth century, alienists—with naive enthusiasm for scientific progress—slid from describing disease to describing determinism and thereby to believing that in diagnosing diseases they produced objective argument for non-accountability. Lawyers were correspondingly scathing. Only with time and with more experience of the courts did a few psychiatric specialists emerge who were willing to defer to juridical procedure and to accept, in the legal context, that states of mind, and not health or disease, produce accountability or non-accountability.

These two points are respectively empirical and logical. But for historical participants they also had deeply emotive and political qualities. Most Victorians took it for granted that social stability depended on the stability of the concept of individual responsibility. Emotive individualism took many forms, from Samuel Smiles's exhortations to self-help, to the jurist Sir

James Fitzjames Stephen's attack on "liberty, equality, fraternity" in his book of that title. But it would be hard to find a more concentrated symbol for fears about devaluing individual responsibility than the criminal lunatic. In jargon, the category "criminal lunatic" was causally overdetermined.

In one context, criminal lunacy was a category that highly self-conscious medical psychologists wanted to establish as part of a taxonomy of nature and, in doing so, to establish the place of science (and their own expertise) — in science — in social affairs. In a parallel but separate context, jurists drew on legal tradition to circumscribe closely an exculpatory category, defined in the legal terms of states of mind. In a broader public context, debate about the proper use of the category condensed debate about alternative political programs to regulate the overriding value of individual responsibility. The violence of both crime and punishment (since a majority of those for whom insanity was pleaded were murderers) added a further emotive dimension.

In such circumstances, the law's response to these cases never could have been concerned solely with the individual—as some psychiatrists in retrospect might think it should have been. Rather, the label "guilty" reasserted a moral order in which offenders were subsumed *directly* under group interests. The label "criminal lunatic," however, belonged to a much more utilitarian conception of a social order, in which a professional and expert administration would differentiate different forms of individual offense, *indirectly* subsuming offenders under the general interest. These two responses, which we may call the retributive and the utilitarian, have existed side by side—in both Europe and North America—since the late eighteenth century. There has been extreme political indecision toward them as social strategies, accurately reflecting mixed public opinion. The insanity defense exposed this ambivalence in stark and embarrassing form. Just as Regency and early Victorian England dismantled the so-called "Bloody Code" of criminal law, criminal lunatics captured public attention with the most outrageous violence. And at the same time when colossal urbanization was popularly associated with increased crime, when the Great Reform Bill of 1832 expanded the franchise with politically unknowable consequences, and when a new industrial proletariat appeared threatening in organized Chartism, physicians stepped into the limelight and apparently called into question the basic tenet of individual responsibility. No wonder debates were emotional and, in the confusion of layer upon layer of meaning, protagonists resorted to over-simplification!

In making these general comments, I deliberately used the past tense and directed the comment to Victorian England. But it will not have escaped anyone's attention that comments of this generality might also be expressed in the present tense and directly to present Anglo-American debates. Such a change of tense would obviously have to take into account changed circumstances; in particular, I would emphasize the manner in which the psychiatric specialism has become built into the criminal administration, achieving a

social authority it never had in the nineteenth century. As a consequence, the insanity defense is now a relative rarity and practical forensic expertise concentrates on the pre-trial (and non-public) assessment of accused people and on the role of the prison medical service. These are really twentieth-century developments building on nineteenth-century foundations. In parallel with these changed administrative practices, psychiatrists have achieved much wider recognition of their claims to possess expertise. In this sense, utilitarian rather than retributive social policy has become dominant, though there are occasions when psychiatry becomes an obvious target for those wishing dramatically to reassert the politics of individual responsibility.

Many other differences could and should be discussed. But I want to return to the question about the value of historical inquiry with which I began. I think it is fair to say that the dominant medicolegal attitude toward its past sees that past in terms of key cases: M'Naghten's of course, and also James Hadfield in 1800, the French cases of impulsive insanity (especially Henriette Cornier's) from the 1820s, Edward Oxford's in 1840, Guiteau's trial for the assassination of President Garfield in 1881, and so on, through to the present. Many individual cases have an intrinsic biographical fascination, as well as important medicolegal aspects, as my own work on many much less well-known cases from the mid-nineteenth century shows. But there is a very real danger with a 'famous case' approach in assuming that the procedure and outcome of *specific* cases circumscribes the *process* of historical change. This would give explanatory status to events that are themselves only symptoms; in short, it would be a reification.

There is also some temptation to assume that the procedural details of how an administration assesses a person's sanity circumscribes forensic psychiatric debate. To restrict the topic, and to express the debate in terms of individual cases, is something that one would expect with the refinement of issues accompanying any decision-making activity. Whatever the obvious need for decisions, it nevertheless seems to me that such a restriction of interest generates an inability to understand the content of debate from the nineteenth century to the present. At a general level, there *is* continuity; the polarized languages of mind and body, medical assumptions about the freedom of health and the determinism of disease, and conflict between legal and medical construals of factual statements—these all persist. At the same time we continue to be fascinated by—but fail to act consistently on or articulate a coherent view of—the moral and political value of individual responsibility; thus our judicial systems vacillate around retribution and utility as social goals.

All the issues I have raised in so brief a manner are of a daunting complexity. But historical research and writing is a form of activity that can give complexity its due. In this, it is indeed rightly to be compared with literature. History and literature are forms of activity that cannot respond to narrow utilitarian demands. But this is not at all the same as saying they have no use.

In my own work, history is a medium both for uncovering the origins (and thereby comprehending in a broad cultural context) the intellectual content of present practices, and for discussing how theories of human nature relate to social life. The polarities of humans as machines and humans as free-floating agents are equally unreal. And yet these are the terms in which we try to understand ourselves. One of the fascinations of psychiatry, undoubtedly, is that it has endlessly enriched these terms. Here, then, there will always be a fertile ground for those for whom the past does not embody the absolutes of progress, of knowledge, or of some other god but the lived reality of choice and fallibility. □