



# THE UNIVERSITY *of* EDINBURGH

This thesis has been submitted in fulfilment of the requirements for a postgraduate degree (e.g. PhD, MPhil, DClinPsychol) at the University of Edinburgh. Please note the following terms and conditions of use:

- This work is protected by copyright and other intellectual property rights, which are retained by the thesis author, unless otherwise stated.
- A copy can be downloaded for personal non-commercial research or study, without prior permission or charge.
- This thesis cannot be reproduced or quoted extensively from without first obtaining permission in writing from the author.
- The content must not be changed in any way or sold commercially in any format or medium without the formal permission of the author.
- When referring to this work, full bibliographic details including the author, title, awarding institution and date of the thesis must be given.

**The Natural Guardians of the Race: Heredity, Hygiene, Alcohol, and  
Degeneration in Scottish Psychiatry, c. 1860 – 1920**

**James Wood**

Ph.D.

The University of Edinburgh

2011

## Declaration

I hereby declare that this thesis is entirely my own work and has not been submitted in part or whole for any other degree or professional qualification.

## **Acknowledgements**

“In considering the significance of this strangely neglected topic. . . This *what* neglected topic? This strangely what topic? This strangely neglected what?” [*Lucky Jim*]

Thanks mum, I’ll never forget it

This work was supported by the Economic and Social Research Council

## Abstract

This thesis investigates the ways in which hereditary degeneration was discussed by Scottish psychiatrists in the late nineteenth and early twentieth centuries with particular reference to the anti-alcohol debate. I examine the theoretical writings of both clinical and forensic psychiatry to show how the theory of degeneration functioned as part of a new understanding of legal medicine and that psychiatric knowledge was always implicitly related to a broader conception of criminal capacity and the role of the modern state. While the argument is situated in the wider literature covering psychiatry and degeneration in Europe and America during the late nineteenth and early twentieth centuries, I trace a rather singular story rooted in the institutional peculiarities of Scotland, showing how psychiatrists attempted to use the problem of alcoholic degeneration to mould their science into a branch of public health, propelling them into their preferred role as guardians of the race.

This public health campaign facilitated the creation of new categories of psychiatric knowledge consisting of mental abnormalities that did not amount to absolute insanity, but that none the less had a bearing on how people thought about the mind, conduct, and criminal capacity. All the leading figures of Scottish psychiatry had a significant interest in alcohol as a cause of degeneration, and in their descriptions of the condition, the legal applications of the doctrine were never from view. One reason for this was undoubtedly the autonomous nature of the Scottish legal system which, when combined with the relatively small professional population of Scotland, greatly increased the rate of intellectual exchange between psychiatrists and lawyers while intensifying the political implications of associating with certain doctrines. Thus, a large part of my thesis will also be devoted to the legal interpretation of psychiatric claims, and in later part of the thesis I examine in depth the extent to which psychiatric knowledge claims were able to modify the laws of Scotland. Three substantive themes protrude from the documents consulted: Heredity, degeneration and alcohol, and medico-legal interaction. In analysing these themes, I engage with specific aspects of the social and institutional life of Scottish psychiatrists in the late-nineteenth and early-twentieth centuries.

## Table of Contents

1. Introduction .....	1
1.2 Sources .....	9
1.3 ‘Scottish’ Psychiatry.....	14
2. Literature Review	
2.1 The Rise of Social Pathology.....	20
2.2 Psychiatry without Symptoms.....	28
2.3 The Political Dimensions of Heredity.....	37
2.4 Forensic Psychiatry.....	42
3. A Double Tide of Barbarians: Heredity and Degeneration in French Psychiatry	
3.1 Introduction.....	45
3.2 Alcohol, Heredity, and Degeneration in Morel’s First Treatise.....	48
3.3 Valentin Magnan: The St. Paul of Degeneration Theory.....	62
3.4 Conclusion.....	74
4. From Peculiar Insanity to Insane Peculiarity	
4.1 Pathological Consolidation.....	76
4.2 The Rusting Lancet: From Disease to Constitution.....	78
4.3 Pathological Continuity.....	85
5. Priests of the Body: Thomas Clouston and Degeneration	
5.1 Introduction.....	91
5.2 Manias: Old and New.....	97
5.3 Manias: Interesting and Banal.....	104
5.4 The Neuroses of Development.....	123
5.5 The Small Thumbed Patient and the Potential Killer.....	134
5.6 From Psychiatry without Symptoms to Psychiatry without Sentiment.....	142
5.7 Conclusion.....	152
6. Psychiatry and the Scottish Courts: Alcohol, Partial Responsibility, and Experts in Insanity	
6.1 Introduction.....	154
6.2 Tonight: The Robbers! Murder and Expertise Prior to Culpable Homicide.....	157

6.3 Diminished Responsibility and Expert Evidence: The Trial of Dingwall.....	163
6.4 Monomania, Degeneration, and Culpable Homicide.....	169
6.5 The Development of Diminished Responsibility .....	177
6.6 Conclusion .....	188
7. From Moral Insanity to Insane Morality	
7.1 Introduction.....	195
7.2 Vengeance amongst Rabid Dogs: Anti-Codification and Vituperation in Scottish Legal History.....	199
7.3 History’s Greatest Illusion: Free Will, Degeneration, and Legal Reform.....	208
7.4 Against Ancient Doctrines: The Search for Stable Stigmata.....	220
8. Conclusion.....	233
Bibliography.....	240

## 1 Introduction

In 1866 the members of the British Asylum Officers' Association made a statement of scientific intent by changing the title of their professional organisation to the Medico-Psychological Association [MPA]. At the inaugural meeting of this new organisation the president-elect, Scottish asylum-doctor W. A. F. Browne noted to those assembled that the change of title reflected both a broadening of the association's intellectual interests and recognition of the increasingly public role psychiatrists would play in "anticipating, preventing and modifying mental maladies." This new public health campaign would be conducted under the aegis of "the laws of *hérédité*, moral and intellectual degeneration, and of intermarriage" which were said to "constitute a science in themselves; and, perhaps, contain the basis of the future development and utility of prophylactic medicine."<sup>1</sup> Browne's address succinctly captured the sequence of sub-discourses which combined to form the theory of degeneration in the second half of the nineteenth century, offering a series of guarantees to the public that the promotion of psychiatry was intrinsic to the national interest:

1. *Prophylaxis and public hygiene* – the political guarantee that psychiatrists would operate as an essential element in the constitution of nineteenth-century states.
2. *The laws of heredity* – the *a priori* guarantee of the discipline's truth as a medical speciality from which its statements would flow as credible ones.

---

<sup>1</sup> W. A. F. Browne, 'Address: on medico-psychology', *Journal of Mental Science*, xii, 1866, pp.309-327. The term 'psychiatry' [Ger. *Psychiatrie*] was imported into the English language as early as 1846, with reference to 'psychiatrists' from the 1890s. Even so, neither term was in popular English usage before the 1930s; indeed, it was not until 1971 that the British Medico-Psychological Association became known as the College of Psychiatrists. During the nineteenth century, specialists in mental disease were more typically known as 'alienists' or 'medical officers of asylums'. While there is an acknowledged anachronism in continuing to refer to nineteenth-century mental scientists as 'psychiatrists', I will generally employ this practice throughout. There are two good justifications for this: First, both terms are in common use amongst historians of psychiatry and serve as convenient and recognisable labels; second, and more significantly, the various groups of actors I cover in this thesis did not pursue a rigorous and precisely defined programme of research, hence, in labelling their discourse as 'psychiatric', I am able to capture the fluidity of professional boundaries that was so characteristic of their approach. That is to say, the term 'psychiatrist' functions as an 'analyst's category' rather than an 'actor's category'. When it is necessary to draw more precise distinctions, I will specify the institutional roles played by various actors. On the history of the term psychiatry in the English language, see J L Crammer, 'Training and Education in British Psychiatry, 1770 – 1970', in G. E. Berrios and H. Freeman, *150 Years of Psychiatry: The Aftermath, Volume II*, London: Athlone Press, 1996, p.209



3. *Moral and intellectual degeneration* – the guarantee offered to society that psychiatric research would address its concerns over the fate of the race.
4. *Concerns over intermarriage* – though closely related to concerns over the laws of heredity, this guarantee was in fact offered as a sign of psychiatry’s alignment with democratic and progressive movements.

Indeed, from the mid-nineteenth century onward the notoriously aristocratic practices of intermarriage and consanguinity were subjected to a growing scrutiny in both medical and popular literature. Already by 1860 *The Lancet* was using the language of degeneration to re-situate debates over consanguinity, introducing controversy with a piece considering whether the aristocratic practice of consanguineous marriage was to blame for the rise in mental alienation and physical deformity.<sup>2</sup> Similarly, when *The Spectator* came to review Galton’s *Hereditary Genius* (1865), it offered ample demonstration of just how seriously questions of heritage and transmission were taken as indicators of political affiliation, considering Galton’s claims concerning heredity in reference to aristocratic, theological, and democratic notions of ancestral descent before turning to examine theories of universal equality.<sup>3</sup> These controversies were not short lived, and James Arthur Thomson, Regius Professor of Natural History at the University of Aberdeen and populariser of the term ‘heredity’ in the English language, was still working with this issue in his 1908 treatise on the subject when he stated that: “The idea that the marriage of near kin is a cause of degeneracy seems to be relatively modern, and is probably based in a large measure on the observed degeneracy in closely intermarried noble families.”<sup>4</sup>

---

<sup>2</sup> ‘The Degeneration of Race’, *The Lancet*, Dec. 22, 1860: 619-20: Degeneration was described as a condition well known to affect the progeny of consanguineous marriages; however the rise in deformity and mental illness contemporary with the article’s publication gave the author reason to believe there must have been other causes of these degenerations which not specifically tied to the breeding patterns of the bourgeoisie.

<sup>3</sup> W Adam, ‘Consanguinity in Marriage’, *Fortnightly Review*, **2**, 1865, 710 – 31 (Part I); **3**, 1865, 74 – 89 ; ‘Review of Hereditary Genius’, *The Spectator*, Nov. 27, 1869

<sup>4</sup> J A Thomson, *Heredity*, London: John Murray, 1908 (p.387). However, Thomson suggested that experimental evidence of interbreeding in plants and animals did not demonstrate that heredity proximity was, in itself, responsible for the transmission of particular heredity taints since “the same consequences would probably result if matings took place among *unrelated* organisms with the same kind of taint.” (p.391) c.f. Mercier’s “Law of Sanguinity”, relating to the degree of similarity and dissimilarity between parents (consanguinity and exsanguinity), with consanguineous couples producing “either no children or degenerate children.” See Maurice Craig, *Psychological Medicine: A Manual on Mental Diseases for Practitioners and Students*, London: J & A Churchill, 1912 (2<sup>nd</sup> ed.) p.27

Degeneration was, according to this account, the bio-social consequence of the artificial constraints placed on the free circulation, an increasingly prominent and recurring theme in the late-nineteenth century as growing economic concerns over the restricted circulation of goods fused seamlessly with growing medical concerns surrounding the restricted circulation of blood.<sup>5</sup> One commentator, drawing upon Lankesterian images of parasitism, alleged in 1887 that while the ‘Aryan and Proto-Aryan’ races had ruled throughout the history of civilisation, there was a general tendency observable in the historical record for these groups to become “an aristocracy, and, therefore, degenerate into a still more sensual, still more self-indulgent, still lazier condition.” In the rigorous and temperate climate of Britain, he continued, “we have two well-marked classes living side by side. We have an aristocracy and a democracy”; the former with failing health and low fertility – both notorious stigmata of degeneration – causing it such difficulties in self-perpetuation that “the British House of Lords, in spite of the artificial efforts to drag in collateral branches to the family titles, cannot maintain its numbers without continual reinforcement from picked specimens of the most energetic of the democracy.”<sup>6</sup>

While the tensions of political legitimacy and franchise that played out in the national press were formed from the specificity of the British social climate, the notion of hereditary degeneracy that entered British psychiatry was unquestionably French in its origins, being attributed by both historians and contemporary commentators to the Superintendent at Saint-Yon Asylum, Bénédict Augustin Morel (1809 – 1873). Indeed it is said that toward the end of the nineteenth century the documentation used to record a patient’s symptoms at French psychiatric institutions would begin by simply stating ‘Diagnosis: Mental Degeneration and –’.<sup>7</sup> The remarkable appeal of degeneration, so ubiquitous that it came pre-printed on admission forms, seemed for a time invisible in its omnipresence, though already by 1909 the French psychiatrist and historian René Semelaigne was recalling in the *British Journal of Mental Science* that “Some years ago, degeneration and chronic delirium were all the fashion” in France, a situation that was rendered all the more

---

<sup>5</sup> See Foucault, *History of Sexuality, Volume I: The Will to Knowledge*, Penguin, 1998 (orig. 1976), p.24

<sup>6</sup> Williams, M, ‘Science Notes’, *Gentleman's Magazine*, 263, Dec. 1887, p.616

<sup>7</sup> Schachter et al. *Behavioural Aspects of Epilepsy: Principles & Practice*, Demos Medical Publishing, 2002, p.502

puzzling by the fact that the term was “not sufficiently precise, and might be applied to various forms of insanity.”<sup>8</sup>

Yet it was precisely this lack of precision in terminology that allowed the concept of degeneration to rise to such prominence in both medical and popular discourse during the last quarter of the nineteenth century, a time when scientific publications, popular broadsheets, and urbane periodicals carried a wealth of discussion surrounding the issue. In this way degeneration crossed quickly from an explanatory tool in the medico-psychiatric exploration of morbid heredity to a popular panic over the fate of the Teutonic race and the closure of an era in European civilisation – as the English translator of Zola’s *Dr Pascal* asked fearfully in his preface: “The century is rapidly drawing towards its close, and what manifestations are there of the improvement of the race either psychologically or somatically? . . . Much of present-day vice and degradation of the human species is due to hereditary influence.”<sup>9</sup> As late as 1911 *The Edinburgh Review* was writing of the “mournful dirges” of the British degenerationist, noting that to gauge just how deeply such ideas had rooted themselves in the national consciousness it was “only necessary to take up a copy of the ‘Times’, with tolerable certainty of finding in it some positive statement of degeneration bracketed with extensive proposals for arresting it.” The journal continued to note that the “craze for finding symptoms of degeneration” was so popular that articles discussing it seldom needed to supply any positive facts as to its existence, for they could be sure that the “popular fetish” of degeneracy would go unchallenged by their readership.<sup>10</sup> Indeed, even amongst psychiatrists there was occasional awareness that while “mental degeneration [played] a very large part in [the] conception of mental pathology”, it was “becoming a more and more indefinite expression,” whose tendency to incorporate an increasing diversity of cases would make it soon “impossible to find an ordinary human being who is not degenerate, let alone a lunatic.”<sup>11</sup>

---

<sup>8</sup> René Semelaigne, ‘France’, *JMS.*, **55** (229), 1909, p.366

<sup>9</sup> Zola (Ernest Vizetelly trans.), *Dr Pascale*, London: 1893; for a review of Zola’s place within the understanding of degeneration in France, see Pick, *Faces of Degeneration*, pp.74-87 (on Dr Pascale see esp. 79-83)

<sup>10</sup> Anon, ‘Degeneration and Pessimism’, *Edinburgh Review*, 1911, July, 214:437, pp.138-164 (147)

<sup>11</sup> Review of J. Roubinovitch, ‘Des Variétés de la Folie en France et en Allemagne’, *Journal of Mental Science*, **43** (181), 1897, 341 - 42

While this great degeneracy debate attracted much attention (and many sympathisers) amongst Britain's new cultural elite, British doctors were generally more reserved in their assessment of the phenomenon, which, as the Professor of Practice of Physic at the University of Glasgow complained in an open letter to *The Scotsman*, was antithetical to the methods of "the more restrained scientists of the north."<sup>12</sup> Even scientists of the north who were largely convinced of the vitality of the theory of degeneration, such as Thomas Clouston of the Royal Edinburgh Asylum, felt obliged to temper their optimism with qualifications: "No doubt most of us who have looked through the books of Lombroso and Havelock Ellis and others are inclined to admit that it is a little overdone by some of our continental brethren" he commented at a discussion of the Medico-Psychological Association in 1895, before bearing witness to his own pervasive obsession with the same theme by noting that he had, however, "had once occasion to carefully examine the inmates of the Edinburgh prison, and if there was one thing that impressed itself upon me it was that I had to do with a degenerate aggregation of human beings."<sup>13</sup>

This inability to settle the question of degeneration once and for all strikes at the heart of its role in nineteenth-century medicine, and at an Association meeting in Dublin just a year earlier, in discussion of Semelaigne's paper on 'Delusions in Persecutory Mania', Clouston had "referred to the abuse of the term 'degenerate'" as a delusion peculiar to the modern age. On hearing these words the President of the Association, Dr Conolly-Norman spoke of "a most interesting work which he had lately read, by Dr Max Nordau, a German writer" in which:

all writers, novelists, poets, musicians, and painters were described as 'degenerate.' Wagner, Tolstoi, and our own countryman, Oscar Wilde, were included in this class, while Zola was described as morally and physically degenerate (laughter). The book was very amusing, and [I] admired its literary merits, but as a scientific work [I] consider it a failure (applause).<sup>14</sup>

We can see instantly the complexities the terms 'degeneration' and 'degenerate' generated; mocked as unscientific in their broad applications, they nonetheless met

---

<sup>12</sup> William T Gaedner, 'The Criminal Stigmata Theory', *The Scotsman*, Sept 4, 1896, p.6

<sup>13</sup> Clouston in D. Nicolson, 'Presidential Address', *JMS*, 1895, **41**(175), 567-591 (589)

<sup>14</sup> *The Dublin Evening Herald*, Jun 14, 1894: Report from the MPA meeting in Dublin in LHB 7/12:5

with a mixture of admiration and suspicion. Indeed Continental theories of degeneration were experienced first-hand at the 1896 International Congress of Criminal Anthropology in Geneva, where the illustrious British psychiatric and biological scientists Thomas Clouston, William Bevan-Lewis, David Nicolson, Henry Maudsley, Havelock Ellis, and Francis Galton gathered to hear the organisers declare: “Both lunatics and criminals belong to the large, pitiable family of the abnormal, the sick, the degenerate, the anti-social beings”, before attending papers on “Sexual Inversion”, “The Results of Ancestral Alcoholism”, “Unrecognised Insanity and the Need for More Frequent Medical Intervention”, and Cesare Lombroso’s discussion of “The Treatment of Criminals.”<sup>15</sup>

Continental fashions aside, the central tenet of the degenerationist’s faith in an unseen ‘pathological nexus’ existing between the various species of social deviance, and the prominent place ascribed to alcohol in this chain, appeared to be indispensable to the institutional administrators of Scottish society, who viewed the nation’s problems with crime and insanity as largely stemming from a degenerate alcoholic over-indulgence. When John Francis Sutherland, Senior Deputy Commissioner in Lunacy for Scotland, met Lombroso to discuss the latter’s theory of criminal anthropology, he informed the Italian doctor that no such scientific sophistication was needed in Scotland, where crimes were “committed by persons more or less completely under the influence of alcohol, and suffering from varying degrees of mental and physical degeneration incidental to the alcoholic habit long indulged.”<sup>16</sup> The pronouncements of Scottish High Court judges throughout the century offer

---

<sup>15</sup> ‘Congress at Geneva’, *Journal of Mental Science*, **42** (178): 1896, p.690; Heinrich Oppenheimer, *The Criminal Responsibility of Lunatics: A Study in Comparative Law*, London: Sweet & Maxwell, 1909, p.309. The 1896 Geneva Congress was the first such event to attract significant British participation (a result of much effort by the organising committee). Following their “lamentable and discouraging abstention from the very successful Congress of 1889 at Paris”, the “support of English alienists [was] not invited” to the 1892 Congress at Brussels, (‘The Approaching Congress of Criminal Anthropology’, *Journal of Mental Science*, **38** (161): 1892, p.329.) Robert Nye has argued that it was at the 1889 and 1892 Congresses that significant fault lines opened up between Italian criminal anthropologists and French proto-criminologists (Nye, ‘Heredity or Milieu’). One would therefore imagine that the organising committee had good reasons to solicit participants from Britain and Germany at the following Congress of 1896. Indeed, a scrap-book held at the Royal Edinburgh Hospital’s Archive contains a card signed by Lombroso himself, inviting delegates to the 1894 International Medical Congress in Rome (Section on Psychiatry, Neurology and Criminal Anthropology). [LHB7/12:5]

<sup>16</sup> Sutherland J F. ‘Jurisprudence of Intoxication’, *EJR*, **10**, 1898, 309-23 (313) Sutherland’s obituary notes that he had devoted his career to campaigning for “more scientific and humane treatment of degenerates”; *BMJ*, Jan 13, 1912, p.107

ample confirmation of Sutherland's belief that, in Scotland, alcohol consumption lay at the root of all evil:

“Almost every crime has its origin more or less in drinking.” – Judge Gurney; “Ninety-nine cases out of every hundred are caused by drink.” – Judge Erskine; “Intemperance has destroyed large numbers of people, and will at its present rate of increase in time destroy the country itself.” – Justice Grove.<sup>17</sup>

Thus, a particularly intriguing question is posed concerning the relationship between the empiricist's heresy of degeneration, the diagnoses and taxonomies of psychiatrists, the social spectacle of drunkenness, and the underlying assumptions made by both doctors and judges concerning the biological threads to which human destiny was tied.

## 1.2 Synopsis

This thesis investigates the ways in which hereditary degeneration was discussed by Scottish psychiatrists in the late nineteenth and early twentieth centuries, focusing in particular on the role alcoholism played in their descriptions of insanity. I examine the theoretical writings of both clinical and forensic psychiatry in order to address why alcohol played such a prominent role in psychiatric discussions, and how the debates over alcohol were used to broaden the scope of mental medicine, allying its claims with degenerationist ideas relating to State medicine and social reform. I argue that two principle themes recur throughout the period under investigation: Firstly, I argue that a new understanding of state and legal medicine way central to psychiatry during this period, showing how the theme of degeneration was always implicitly related to a broader conception of criminal capacity and the role of the modern state. Secondly, I argue that degeneration functioned as part of this debate by allowing the various 'social' discourses that began to define themselves during this period (anthropology, sociology, criminology, psychiatry) to address one and the same malleable object (the degenerate). Hence, this thesis is situated with the existing (and voluminous) literature covering psychiatry and degeneration in Europe and America during the late nineteenth and early twentieth centuries. However, within this broad framework I will

---

<sup>17</sup> Anon, 'Judicial Dicta on Drink', *EJJ*, **16**, 1872, p.607

trace a rather singular story rooted in the institutional peculiarities of Scotland, showing how the leading figures of Scottish psychiatry were particularly interested in the topic of hereditary degeneration and the role of alcohol as a cause and effect of insanity.

I will show how psychiatrists in Scotland attempted to use the problem of alcoholic degeneration to mould their science into a branch of public health, propelling them into their preferred role as guardians of the race. This public health project facilitated the creation of new categories of psychiatric knowledge consisting of mental abnormalities that did not amount to absolute insanity, but that none the less had a bearing on how people thought about the mind, conduct, and criminal capacity. All the leading figures of Scottish psychiatry had a significant interest in alcohol as a cause of degeneration, and in their descriptions of the condition, the legal applications of the doctrine were never from view. One reason for this was undoubtedly the autonomous nature of the Scottish legal system which, when combined with the relatively small professional population of Scotland, greatly increased the rate of intellectual exchange between psychiatrists and lawyers while intensifying the political implications of associating with certain doctrines. Thus, a large part of my thesis will also be devoted to the legal interpretation of psychiatric claims, and in later part of the thesis I examine in depth the extent to which psychiatric knowledge claims were able to modify the laws of Scotland. Three substantive themes protrude from the documents consulted: Heredity, degeneration and alcohol, and medico-legal interaction. In analysing these themes, I engage with specific aspects of the social and institutional life of Scottish psychiatrists in the late-nineteenth and early-twentieth century.

Following a review of literature (chapter two) I begin in chapter three by examining the main features of degeneration within French psychiatry, and the role played by alcohol in the description of degeneracy, from its origins in 1857 through its development in the second half of the nineteenth century. Here I consider the work of the two canonical theorists of degeneration – Morel and Magnan – drawing in particular on those elements of their writings that influenced Scottish contemporaries. In chapter four I examine the impact of degeneration in Great Britain, discussing both the early reception of Morel's treatise and how its claims influenced and intersected

with existing medical, psychiatric, and criminological ideas. From this wide-ranging survey of medical and psychiatric literature I move in chapter five to a detailed study of the writings of Thomas Clouston, the most prominent Scottish psychiatrist of the late nineteenth century, showing how the concept of degeneration structured his thought throughout his long and distinguished career. In chapter six I examine the transcripts of Scottish High Court cases in which forms of ‘semi-madness’ were invoked by the defence, discussing the relationship between ‘official’ legal discourse on insanity and the claims made by psychiatrists. Finally, in chapter seven I chart the changing nature of psycho-legal knowledge in jurisprudential treatises and manuals of forensic psychiatry throughout the second half of the nineteenth century, showing how degenerationist assumptions were tied to a particular political school across Europe.

### 1.3 Sources

The evidence upon which this argument is based is drawn from a wide variety of primary sources, including psychiatric, medical, and legal journals, textbooks, student theses, daily newspapers, periodicals, and the Justiciary Reports of the High Court of Scotland. In particular I am grateful to the staff and curator of the Lothian Health Services Archive of the Royal Edinburgh Hospital. These archives contained many useful documents and much fascinating insight into the workings of Scottish psychiatry in the nineteenth century. Housed in this archive there were two particularly useful resources: Firstly, the collection of publications by hospital staff, containing pamphlets, essays, and clinical notes relating to a wide array of topics.<sup>18</sup> This made available wealth of material in a conveniently accessible form, making researching this thesis a much less arduous task. Secondly, the Press Cuttings Books offered me a vast array of newspaper articles and pamphlets preserved by members of the Royal Edinburgh Asylum between 1862 and 1903.<sup>19</sup> This scrapbook, instituted by David Skae (1814 – 1873), Medical Superintendent at the Royal Edinburgh Asylum from 1846 until his death, reveals a world of journalistic reporting that would

---

<sup>18</sup> LHB7/14

<sup>19</sup> LHB7/12 (stored in six volumes)



otherwise be exceedingly difficult to locate. While some of the newspapers catalogued during this period such as *The Times* and *The Scotsman* have remained in circulation and keep their own excellent and fully searchable archives, others have disappeared without a trace, making the Press Cuttings Book an invaluable resource. Additionally, the very nature of this book reveals the issues that preoccupied Edinburgh's psychiatrists (certain articles were selected for preservation, ordered, highlighted, annotated etc.). Skae, who had worked as a clerk in a law office before turning to medicine, was, like most alienists of his age, particularly interested in the medico-legal relations of insanity and the frequency of legal cases and lunacy legislation within these books is in itself revealing.<sup>20</sup>

A further important insight into the psychiatric culture of Edinburgh in the period under review was provided by analysing MD theses submitted to the University's Medical Faculty. These offer fascinating glimpses into the ways in which doctors in training approached psychiatric topics, and, since a high percentage of these theses were submitted by doctors practising in Scotland, it is particularly instructive to see how they situated their discussion of local cases in regard to broader theoretical approaches. Around 20% of the theses submitted toward the degree of Doctor of Medicine during this period dealt with 'psychiatric' themes, broadly defined, and, I will show, a high proportion of these theses were either explicitly concerned with the study of alcohol and degeneration, or made frequent reference to these topics as a theoretical support for their claims, a fact that further strengthens the argument that such issues were of extreme interest to Scotland's psychiatric community in the late nineteenth century.

A substantial body of evidence for my study of the relationship between psychiatry and the law in reference to alcohol, degeneration, and responsibility will be drawn from transcripts of diminished responsibility cases tried at the High Court. This source will allow psychiatric claims to be situated in the context of legal developments and compared against the types of claims which were made within publications aimed at the psychiatric community. There is a solid precedent for this type of research in the history of psychiatry, with Joel Eigen and Roger Smith in

---

<sup>20</sup> See, for example, Skae D. *The Legal Relations of Insanity*, Edinburgh: Murray & Gibb, 1861.

particular contributing to our understanding of the role of expert medico-psychiatric testimony in criminal cases.<sup>21</sup> There are two main sources for the details of these criminal cases in Scotland. Detailed reports of serious criminal cases were taken by court-room stenographers and subsequently printed in the *Justiciary Reports* (housed in the University of Edinburgh Law Library). These reports are often very detailed and contain extensive commentary on the cases presented by the defence and prosecution, as well as the legal guidelines set by the High Court Judges who presided over them. This official reporting may be productively supplemented by cross-checking the case reports which appeared in *The Scotsman* and, to a lesser extent, *The Times*. Often newspapers give more salacious details than are found within the justiciary reports and, on occasion, contain some important medical evidence which the official report omitted for the sake of brevity (particularly as the former source was more concerned with the legal dimensions of the case).

In addition to these High Court cases, I will draw extensively upon discussions of psychiatry and allied topics which were carried in Scotland's legal press. Peter Bartlett has done much to advance the claim of legal studies as an important aspect of psychiatric history, cataloguing the documents and sources available to historians.<sup>22</sup> Bartlett argues that while the role of criminal law tends to be well documented in histories of psychiatry, particularly in studies focusing upon High Court cases, civil laws of confinement, capacity, testate, and marriage have been widely neglected. However, one may approach medico-legal interaction in a third way by utilising legal journals, since these offer important insights into how psychiatric ideas were appreciated by the larger legal profession. This type of source is particularly useful to historians of psychiatry, providing a far more nuanced picture of medico-legal interaction, yet it has hitherto been either ignored entirely or underexploited in the existing literature. The typically sharp divide between 'psychiatry' and 'the law' that scholars have emphasised is, I suggest, largely a consequence of selective reading. The legal profession was not universally, or even predominantly opposed to

---

<sup>21</sup> See, for example, Joel Eigen, *Unconscious Crime, Mental Absence and Criminal Responsibility in Victorian London*, Baltimore and London: The Johns Hopkins University Press, 2003; *Witnessing Insanity: Madness and Mad-doctors in the English Court*, New Haven and London: Yale University Press, 1995; Roger Smith, *Trial by Medicine, Insanity and Responsibility in Victorian Trials*, Edinburgh: Edinburgh University Press, 1981

<sup>22</sup> Peter Bartlett, 'Legal Madness in the Nineteenth Century', *Social History of Medicine*, **14**, 1, pp. 107 – 131

psychiatric descriptions of conduct and capacity, and there is much evidence that psychiatric theories were read with great interest by the wider legal profession.

As Scotland's institutional hub, Edinburgh played host to a distinct and vibrant culture of legal journalism which showed much interest in the science of psychiatry. Part of the reason for this was undoubtedly Edinburgh's notable tradition of education in forensic psychiatry, which had been taught at the University's Law Faculty from 1792, before finally gaining acceptance within the medical school in 1825.<sup>23</sup> This gave Edinburgh's doctors in training a unique opportunity to acquaint themselves with legal principles, evidential standards, and the finer points of court-room etiquette. More generally, the idiosyncratic details of Edinburgh's legal culture in nineteenth century illuminate why legal journalism should be such a productive source for a historical account of the city's psychiatric knowledge.

In a chronological study of the history of legal journals in Scotland, Reinhard Zimmerman has noted that it was not until the second quarter of the nineteenth century that such publications became tentatively available, a situation which contrasts with England where, in the early years of the century, there was already a well established periodical literature dealing with the law.<sup>24</sup> The first two legal journals to appear in Scotland were the *Law Chronicle of Journal of Jurisprudence and Legislation* (1829) and the *Edinburgh Law Journal* (1832), though both titles folded around four years after their initial publication.<sup>25</sup> The reasons for the relatively late appearance, and subsequent failure, of journals aimed at the Scottish legal profession are numerous. Firstly, the prevalence of 'law tracts' in Edinburgh's Advocates' Library would have provided ample background reading for the metropolitan jurist, while periodical titles such as the *Edinburgh Review*, aimed at a more general, though well educated, audience frequently carried notices and discussions of legal books. In addition, there were undoubtedly important demographic factors at work in restricting the market for dedicated legal titles; with a

---

<sup>23</sup> White B. 'Training medical policemen: forensic medicine and public health in nineteenth-century Scotland', in Clark M. & Crawford C. (eds.), *Legal Medicine in History*, Cambridge University Press, 1994

<sup>24</sup> See S Vogenauer, 'Law journals in nineteenth-century England', *Edinburgh Law Review*, 2008, 12, pp.26-50 (p.35)

<sup>25</sup> Zimmerman R. 'Law Journals in Nineteenth-Century Scotland', *Edinburgh Law Review*, 2008, 12:9: 9-25 (10)

population of around two and a half million people by 1841, and a correspondingly small body of legal professionals running to just over 1,500 in total, the “Scottish legal profession of the 1830s did not offer a sufficient market for a specialised legal journal to establish itself.”<sup>26</sup> Indeed, when Scotland’s first national and financially viable legal periodical, *The Edinburgh Journal of Jurisprudence* appeared in 1857, a note to the reader explained that the title had subsumed a previously existing regional title into its pages as the Scottish market could not support two separate publications.<sup>27</sup> The restrictions imposed on financially viable journalism by a low population were compounded by the fact that Edinburgh’s relatively small legal elite circulated in the intellectual milieu of the late eighteenth- and early nineteenth-centuries, where a culture privileging personal relationships and verbal exchange at dinner parties, gentlemen’s clubs, and private debating societies was preferred to the vulgarity of publishing opinions to be circulated indiscriminately.<sup>28</sup> Indeed, the world of the High Court Judge was one of order, title, and privilege, frowning upon the existence of public institutions, sentiments *The Scotsman* highlighted when it described the growth of public offices and institutions in Edinburgh as a sure sign of the city’s decline, arguing that “Associations and Institutions are, in fact – as our friend Mr. Punch used to say – refuges for the weak and destitute.”<sup>29</sup>

By the middle of the nineteenth century however, the Edinburgh-based *Journal of Jurisprudence* had established itself as the national outlet for printed legal discussion, covering case reports, new legislature, book reviews, general articles, and commentaries. Given the size of Scotland’s legal community and the attendant economic difficulties faced by legal publications, it is safe to assume that this title was received by a large proportion of those working under the Scottish judiciary, and that legal professionals who neglected to subscribe to the nation’s only dedicated legal journal would have been conspicuous in their abstention. It is important to emphasise here just how Edinburgh-centric the Scottish legal profession was. For instance, while Glasgow had two professorial chairs in law, only the capital possessed what could be

---

<sup>26</sup> Zimmerman (2008), p.16. The total number of legal professionals in Scotland during the 1850s were 15 judges working on the Court of Sessions, around 120 Advocates, and around 1,500 “law agents or solicitors”

<sup>27</sup> ‘The Month’, *Edinburgh Journal of Jurisprudence*, 1857,1, p.138

<sup>28</sup> Zimmerman (2008), p.16

<sup>29</sup> ‘The Athenaeum on the Modern Athens’, *The Scotsman*, June 3, 1857

considered a School of Law (itself composed of four chairs).<sup>30</sup> Additionally, according to Zimmerman, many professors were also “practising members of the Faculty of Advocates”, and their students would often attend classes at the end of a day working as clerks.<sup>31</sup> Hence, the articles carried in the *Journal of Jurisprudence* were not marginal contributions to legal theory, but were part of an ongoing exchange born of the tensions inherent to Edinburgh’s profession.

Towards the end of the century a new journal appeared, the *Juridical Review* (1889). While the editors were aiming to produce a new national journal of law, they nonetheless emphasised a cosmopolitan stance which transcended national borders, arguing at the outset of the first issue that the increasing popularity of the English language, coupled with the introduction of modern means of transport and communication, had moved America and “the principal cities of the Continent” as close to Edinburgh as the Scots capital had formerly been to London.<sup>32</sup> Pursuing this initial aim, the journal proceeded to publish a wide variety of pieces examining both foreign and antiquated systems of jurisprudence, and gave a far broader scope to its authors. Yet, at the same time, this was to be the first “academically orientated” legal journal in Scotland, carrying pieces marked by a theoretical and scholarly rigour largely absent from the *Journal of Jurisprudence*. Perhaps as a result of its wider conception of the scope of legal discussion, the *Juridical Review* elicited several articles discussing psychiatry, alcoholism, and responsibility and offered a forum for those not working in the legal profession to speak directly to the Judges and Advocates they wished to influence.

#### **1.4 ‘Scottish’ Psychiatry**

As this thesis deals largely (though by no means exclusively) with Scottish materials, it would seem that an analysis of what constitutes ‘distinctly Scottish’ psychiatry is called for. Historians of psychiatry have searched for an answer to this question in

---

<sup>30</sup> Anon, ‘Law Studies in Scotland’, *Journal of Jurisprudence*, 1866, 10, p.281

<sup>31</sup> Zimmerman (2008), p.18

<sup>32</sup> ‘Prefatory Note’, *Juridical Review*, 1889, 1:1, p.2

recent years, though no concrete conclusions have yet been given.<sup>33</sup> Indeed, when charting the history of porous notions in medical theory, it is *prima facie* unclear as to what a distinctly Scottish approach would actually entail. How, after all, does one quantify ‘Scottish’ approaches to a science such as psychiatry in which peregrination and intellectual cosmopolitanism were distinctive features of its most prominent figures? This mobility raises a problem concerning the relationship between physical and intellectual space: Do we take a figure such as Thomas Laycock, born in England yet conducting his major work in Edinburgh in later life, to be representative of the Scottish or English approach to psychiatry? Conversely, to what extent must we consider the hugely important Diasporas that spread Scottish trained medical graduates throughout the British Empire? Does speaking of a distinctly Scottish form of psychiatry suggest that there was an explicit and conscious process at work on the part of doctors who self-identified with a particular form of national identity, or does it merely refer to a set of influences (institutional, educational, or ‘cultural’) through which a form of knowledge, generally supposed by its advocates to be neutral, was unwittingly inflected with a particular national taint? How do we deal with those Scottish doctors who self-consciously cultivated what they saw as a ‘Continental approach’ to medical knowledge – are they to be taken as distinctly Scottish?

As Colin Kidd has argued, perhaps the problem here is with the meaningfulness of categories we mistakenly hold as self-evident, in particular the salience of the category of the nation as a determinant of identity amongst nineteenth-century actors. On the face of it this seems to be false – the nineteenth century was of course the main period of state formation and the century during which many

---

<sup>33</sup> See Scull, ‘Rethinking the History of Asylums’ in J Melling & B Forsythe (eds.), *Insanity, Institutions, and Society, 1800 – 1914*, London: Routledge, 1999, pp. 295-315 (306). Michael Barfoot has recently asked “what, if anything, was distinctive about the history of Scottish psychiatry” between 1840 and 1860? See, Michael Barfoot, ‘David Skae: Resident Asylum Physician; Scientific General Practitioner of Insanity’, *Medical History*, 2009. **53**, 469-88 (488). The most convincing answers to this question come from scholars who confine their analysis to discreet and easily quantifiable variables such as the distinctive nature of Scotland’s legal system or the ways in which the Poor laws functioned. See on this Harriet Sturdy and William Parry-Jones, ‘Boarding-out insane patients: the significance of the Scottish system 1857 – 1913’, in Peter Bartlett and David Wright (eds.), *Outside the Walls of the Asylum: The History of Care in the Community 1750-2000*. London: The Athlone Press 1999, p.86; Jonathan Andrews, “*They’re in the Trade*”, (p.41) A thoroughly detailed examination of these concerns (though in reference to English psychiatry) is provided in Peter Bartlett, *The Poor Law of Lunacy: The administration of pauper lunatics in mid-nineteenth-century England*, Leicester University Press, 1999

recognisably modern approaches to identity were consolidated. However, Kidd argues, when considering Scottish identity, the “precipitate decline of Unionism” from the 1970s onwards has misled many historians into assuming that Scottish or ‘Celtic’ identity was a given, something “most nineteenth-century Lowland Scots would have vociferously rejected.”<sup>34</sup> By addressing how nineteenth-century Scotland was imagined by its own intelligentsia, Kidd shows that, for many educated Scots living in industrial cities and towns such as Glasgow and Edinburgh, establishing a pan-British Teutonic racial identity was a more pressing intellectual concern than delimiting Anglo-Scottish national boundaries.<sup>35</sup> In particular the 1880s saw a surge of interest in the racial differentiation present within Great Britain, particularly following the publication of Beddoe’s *The Races of Britain: A Contribution to the Anthropological History of Western Europe* (1885). The division of Britain’s ‘ethnic populations’ into a racial hierarchy was particularly important for Scottish commentators who wished to associate with what they perceived as the culturally superior Teutonic race (indeed the pattern Beddoe popularised had already been applied in 1880 by Scots lunacy Commissioner and Secretary for the Society of Antiquities of Scotland, Arthur Mitchell, whose *Past in the Present* (1880) argued that rural areas of Scotland were populated by a technologically and biologically inferior race plagued by degeneration).<sup>36</sup> When W. A. F. Browne ventured to the islands off the coast of Argyllshire in search of anthropological data he submitted to the MPA a report of specimens so enfeebled as to suggest they were suffering “the last stage of some frightful plague, the type of the lower animals, or that they are the last members of a distinct and degenerated race of mankind.” In a poetic turn he went on to describe the lot of “these and similar cases, met with in Scotland” who “from their pit-like home [look] far out among the surges of the Atlantic which they never crossed, gazing eternally into the embers of a fire from which they [cannot] escape, absorbed

---

<sup>34</sup> Colin Kidd, ‘Race, Empire, and the Limits of Nineteenth-Century Scottish Nationhood’, *The Historical Journal*, 46: 4, 2003, 873-892 (874)

<sup>35</sup> While this association of Lowland Scotland and England with a common Teutonic racial group was by no means universal – some Scots associated themselves with the Scandinavian race while some English writers claimed Celtic racial ancestry for their nation – the general consensus amongst the educated classes was one of *racial* homogeneity. C.f. L P Curtis, *Apes and Angels: The Irishman in Victorian Caricature*, Smithsonian Institution Press, 1997. “Certainly”, writes Curtis, “there is no lack of evidence about the ubiquity of racial discourse in Victorian culture and society. Prominent writers and politicians revelled in the language of race or racism”, particularly when justifying the activities of the new ‘Imperial race’ (p.111)

<sup>36</sup> Arthur Mitchell, *Past in the Present: What is Civilisation?*, Edinburgh: D Douglas, 1880

in the contemplation of their monoideism.”<sup>37</sup> Similarly, we have the medical student posted in the Highlands who regarded himself more as an anthropologist set amongst a peculiarly backwards foreign tribe than as a local physician, writing of his experience that:

The Scottish Celts, in common with all primitive peoples, regarded mental disorder as peculiarly due to the action and influence of supernatural, as apart from merely mundane and physical [causes] . . . individuals drawn from such a sombre population when placed under equal conditions amongst the inhabitants of the lowlands and elsewhere do exhibit, in a proverbial degree, those traits of excitability and irritability which have come to be associated with the Celtic, as contrasted with the Saxon and Teutonic character.”<sup>38</sup>

It was reported that Thomas Clouston, the most celebrated of Scottish psychiatrists, always prided himself on his (rather vague) Norse heritage, something that was apparently a greater source of pride than the knighthood conferred upon him in his dotage (a fact noted by his colleagues at the MPA, who presented him with a silver Norse galley upon his retirement).<sup>39</sup> Clouston was particularly keen to insist upon the racial peculiarities of the Celt (and to distinguish the healthy Scotsman from these others), and at a meeting of the MPA in Liverpool he was said to have “created much amusement by declaring that the Celt insane is a much more demonstrative lunatic than the Saxon [and] although he drinks so much whisky, is peculiarly free from general paralysis.”<sup>40</sup> Similarly, when Clouston and an ageing Daniel Hack Tuke attended a Dublin meeting of the MPA they quickly became embroiled in debate over the cause of insanity in Ireland, proposing that it was a result of industrial civilisation moving to areas inhabited by the Celts. Comparing case-notes from the Scottish country of Argyll with the statistics of Ireland, Clouston noted that:

It is known that primitive races [cannot] resist changes in their surrounding such as are introduced by civilisation . . . the more primitive portions of the Irish people have during the last fifty years been subjected to the influence of the ideas of the most advanced political people in the world, namely – the

---

<sup>37</sup> Browne, ‘Endemic Degeneration’ *Journal of Mental Science* (1861) 7: 61-76.

<sup>38</sup> Alexander Cameron Miller, *Insanity and the Neuroses, with special reference to their occurrence in the Highlands of Scotland*, M.D. Thesis, 1888, University of Edinburgh, pp. 3 & 8

<sup>39</sup> ‘Thomas Smith Clouston: Obituary’, *Journal of Nervous & Mental Disease*, 1916, **43**(5):487-488

<sup>40</sup> unmarked Liverpool daily newspaper, in LHB 7/12:5, p.267



Americans, with the result that they have not been able to adapt themselves at once to them, because adaptation would take three or four generations.

Even the Association's Irish President, Connolly Norman, was quick to commend this theory, adding that the primitivism of his rural Celtic patients left them quite incapable of assimilating their brains to technology and industry.<sup>41</sup> It is clear that Scottish psychiatrists generally identified with this Teutonic block rather than the 'inferior' Celtic race.

Methodological problems aside, it must be said that, for purely pragmatic reasons, Scotland is a particularly good place to conduct a study of the messy topics of alcohol and degeneracy within psychiatry and the interrelationship between psychiatric and legal knowledge. As a relatively small country with a modest population, the amount of data available is not prohibitively large, making it possible to deal with key themes in a symphonic yet systematic fashion. Indeed there was contemporary awareness of the convenient nature of Scotland's relatively limited population amongst nineteenth-century commentators; *The Medical Press* noted in 1889 that forensic psychiatrists discussing Scottish material were at an advantage, since they were "able to collect and compare in Scotland more easily than could be done in England, the records and opinions on a variety of crimes implicated with more or less insanity."<sup>42</sup> In particular, Edinburgh housed a distinguished and well respected psychiatric community, whose leading figures were known to those working in the discipline across both Europe and America. Additionally, the relative scarcity of High Court cases where expert witnesses would be called to assist in determining the state of a person's mind, coupled with a small industry in legal journalism, makes Scotland an ideal place to gauge the relationship between psychiatry and the law. It is therefore comparatively easy to amass sufficient data on

---

<sup>41</sup> Reported in *The Dublin Evening Herald*, Jun 14, 1894 (LHB 7/12:5); In the 'Notes and Comments' section the *Herald's* editor protested Clouston's "ridiculous theory that a primitive people like the Celts were not able to stand civilisation", noting that "unless we are now beginning to experience the visible and tangible results of mental degeneration which has been transmitted from generation to generation", becoming progressively more severe, the hypotheses were unfounded. "The Irish", he noted, "are not a 'primitive race' any more than the English or Americans. They experienced the effects of civilisation before most existing races emerged out of barbarism . . . The true cause of the general increase of insanity is, in our opinion, the increased bitterness of the struggle for life."

<sup>42</sup> 'The Legal Aspect of Insanity', in *The Medical Press*, Dec 18, 1889, in LHB Press Cuttings Book Volume IV, 1889 – 93 (p.45)

Scottish medical and legal practice to make claims representative of these practices as a whole.

## 2. Literature Review and Theory

### 2.1 The Rise of Social Pathology

In his seminal work, *Crime, Madness, and Politics in Modern France*, Robert Nye notes at the outset that what had initially been conceived as a dedicated monograph on the criminology of late nineteenth-century France quickly became embroiled in issues of politics, medicine, psychiatry, heredity, alcohol, prostitution, and sporting culture with the scope of his research constantly expanding to accommodate the indistinct nature of the disciplinary boundaries relating to the object of his study. In abandoning his discrete focus on one kind of pathological discourse, Nye argued that the objects whose history he occupied himself with were rarely treated as isolated phenomena encircled by recognisable disciplinary boundaries by contemporary observers. Indeed, Nye writes, the conceptual association between various forms of unrest and pathology was taken for granted by many commentators writing in the late-nineteenth century, and “[t]here can be little doubt that the dominant concepts that related one form of deviance to another, and explained their origin and their nature, were biological ones.”<sup>43</sup>

Nye’s approach was hugely influential for a generation of Anglophone scholars writing during the 1980s who turned their attention to the tendency of nineteenth-century commentators to biologise social problems, particularly in relation to the complex historical strands shaping the science and politics of France.<sup>44</sup> While the family of pathologies that occupied this debate was vast, it was undoubtedly the concept of degeneration that served as its most visible and persistent presence, with Daniel Pick’s *Faces of Degeneration* standing as the most notable account of the theory in its broadest historical context (certainly in Anglophone scholarship). Pick’s study charts the circulation of degenerationist language in France, Italy, and Great

---

<sup>43</sup> Nye, *Crime, Madness, and Politics in Modern France: The Medical concept of National Decline*, Princeton university Press, 1984, p.xi

<sup>44</sup> See, for instance, Ian Dowbiggin, *Inheriting Madness*, University of California Press, 1991; Ruth Harris, *Murderers and Madness: medicine, law, and society in the Fin de Siècle*, Oxford: Clarendon, 1989; Pick, *Faces of Degeneration: A European Disorder, c.1848-c.1918*, Cambridge University Press, 1989.

Britain, showing how the concept was applied in these three nations in response to internal tensions generated by the corresponding themes of Revolution (France), Unification (Italy), and Urbanisation (Great Britain). While the study of degeneration theory's French roots had already been documented by scholars working on various aspects of the social, scientific, and literary history of the notion by the time *Faces of Degeneration* appeared, Pick's account provided an original interpretation of French sources by focusing on the 'accumulated traumatic memory' that served as a powerful metaphor reflecting the nation's sense of historical process. The recurrence of trauma in the social and political order, Pick argues, helped to popularise the notion that an indistinct pathological force served as the motor of history: The Revolution of 1789 – 99, the end of the Napoleonic Wars in 1815, the July Revolution of 1830, the Revolution of 1848, and, after Morel had published his first treatise in 1857, the Prussian War and the events of the Paris Commune of 1870 – 71, right up to the struggle between Dreyfusards and anti-Dreyfusards in the 1890s, a seemingly endless procession of trauma to the French psyche that appeared to suggest a pathological trait was recurring in successive yet mutated waves of social destruction. Indeed, it is in this assumed anti-historicism of the French collective consciousness that Pick locates the work of the nominal father of degeneration theory, Bénédict Augustin Morel (1809 – 1873), in whose work "[t]he theory of *dégénérescence* was bound up with the problematic of the Revolution's repetition . . . Morel's treatise, with its procession of themes – alcoholism, cretinism, crime, pollution, insanity and sterility – spoke to, and displaced, deep concerns about the genealogy of history."<sup>45</sup>

While Nye had already shown that, toward the end of the nineteenth century, French psychiatry's "shift in concern from the welfare and rehabilitation of the individual to the protection of the family and the social order" was shared with "scores of other disciplines and with the French intellectual elite",<sup>46</sup> Pick situates the change of referent of psychiatric thought from the individual to the race in the traumatic memory of a history that seemed itself to be pathological. A key aspect of Pick's account of degenerationist thinking in France then is that a widely held belief

---

<sup>45</sup> Pick, *Faces of Degeneration*, p.59. Similarly, Ian Dowbiggin notes that the 'failed experiment' of the Second Republic (1848 – 1851) led to a widespread disenchantment with progressivism amongst Morel's generation (Dowbiggin, *Inheriting Madness*, p.152)

<sup>46</sup> Nye, *Crime, Madness, and Politics in Modern France*, p.232

in an endlessly malleable though essentially invariable process of decline was able to give voice to the internal problems the nation faced, and while Morel undoubtedly provided the impetus for psychiatric discussions of degeneration, the theme of successive decline was by no means confined to his discussions. In fact, Pick seems to suggest, it was only when a later generation of commentators, such as scientific historian and critic Hippolyte Taine, took up with greater force the theory of degeneration as an historical movement, that its essential tensions were fully revealed. Taine, who shifted the focus of Revolutionary terror away from the acts of a fanatical minority to its germination in the minds of an otherwise passive mass ('the crowd') was to develop the French understanding of degeneration by linking the process of pathological history to "the vexed question of racial memory."<sup>47</sup>

If the French language of degeneration was deployed to account for the country's eternal return of revolution and social pathology, Italian commentators living through a project of national unification sought an "ordered language for the containment of disorder" capable of formulating and defining "a political subject by elaborating ever more closely the criteria for political exclusion."<sup>48</sup> The central figure in this process, it is well known, was Cesare Lombroso (1835 – 1909), whose model of degeneration was, in contrast to Morel's, not plastic. Lombroso's language of degeneration, tied to his project of Criminal Anthropology, did not allow for the endless complexity of degenerate species offered by Morel's discussion, but rather emphasised the "recalcitrance of certain specific anti-social lineages."<sup>49</sup> The lack of

---

<sup>47</sup> Pick, *Faces of Degeneration*, p.70. Pick's account here overlaps with earlier interpretations of French psychological thinking in the late nineteenth century. For instance, Jan Goldstein has argued that, during the 1880s, 'imitative contagion' (Gabriel Tarde) and 'the era of crowds' (Gustave Le Bon) became established principles of discussions of the mind, particularly as the professional elites turned against the principles of democracy and began to see 'the masses' as irrational and uncontrollable forces. [Jan Goldstein, "'Moral Contagion": A Professional Ideology of Medicine and Psychiatry in Eighteenth- and Nineteenth-Century France', in G. L. Geison (ed.), *Professions and the French State, 1700 – 1900*, University of Pennsylvania Press: Philadelphia, 1984, pp. 181 – 222]

<sup>48</sup> Pick, *Faces of Degeneration*, pp.138-39

<sup>49</sup> Pick, *Faces of Degeneration*, p.133. Lombroso was appointed as professor of legal medicine at Turin in 1876, a professional position from which he led the group of "ardent young doctors and lawyers" associated with the positivist school in Italy. This circle published a number of monographs dealing with criminal anthropology and, in 1880, began to issue the journal *Archivio di Psichiatria et Anthropologia Criminale* (Nye, 'Heredity or Milieu', p.336). Lombroso's own major contribution to this literature, *L'uomo delinquente*, was first published in 1876 and subsequently appeared in French as *L'Homme criminel* in 1887. The arrival of Lombroso's key work in English was significantly delayed and it was through this French translation that the work would have reached most British readers. As Mary Gibson and Nicole Hahn Rafter explain in their critical introduction to a recent complete translation of *Criminal Man*, it was not until 1911 that Lombroso's writings appeared in English, with

fluidity in Italian discussions of degeneration was essential to its political utility, since it allowed the revolutionaries, anti-clericalists, and armed unifiers to be absolutely distinguished from the anarchist or anti-social criminal whose behaviour could be projected onto a physiologically and philosophically different essence.<sup>50</sup> While France and Italy differed in the particular formulation of degeneration theory, they were united insofar as the notion was bound up with processes of the state, whether accounting for its perpetual dissolution, as in France, or assisting in its formation, as in Italy.

In Britain, by way of contrast, degeneration theory was less obviously a part of the political establishment or state function than it was on the Continent. Not only was there no “founding text” produced by a British author comparable to the works of Morel or Lombroso, but the very notion of ‘social theory’ remained suspect throughout the late nineteenth century.<sup>51</sup> Undoubtedly there was an increasing

---

two separate editions being issued in that year. The first, bearing the title *Criminal Man*, completed by the author’s daughter, was not in fact a translation of *L’uomo delinquente* at all, but a short compendium of Lombroso’s writings marked by distortion and oversimplification of the original arguments. The second, published as *Crime: Its Causes and Remedies*, offered only a partial translation of the fifth edition of *Criminal Man*, and hence omitted all the material from the earlier editions in which the foundations of Criminal Anthropology were laid. For further details of the composition of this important text, see Gibson and Rafter’s introduction to Lombroso, *Criminal Man*, Duke University Press, 2006. For details on the reception of Lombroso’s theories in Great Britain see N. Davie, *Tracing the Criminal*. British figures to have been ‘significantly’ influenced by Lombroso on Davie’s account include W. D. Morrison, author of *Crime and Its Causes*, S. A. Strahan, a medico-legal expert who worked as a lawyer in addition to serving as a physician at the Northampton County Asylum, the psychiatrists Henry Maudsley and Thomas Clouston, and Havelock Ellis, who was perhaps the most prominent British spokesperson for Criminal Anthropology.

<sup>50</sup> Michel Foucault pursued a similar argument in a lecture series delivered in 1975 (subsequently published as *Abnormal*) in which he argued that the Italian concern with fixed pathology emphasised the political need for a model of social analysis that could legitimately distinguish the ‘good’ rebel or political radical, such as Garibaldi, from the ‘bad’ rebel, such as the anarchist or socialist. In this way Lombroso’s system served to enumerate and catalogue the movements he wished to identify with, be they nationalist, republican, or anti-clerical, and distinguish them on the basis of physiognomy from the movements he opposed. Hence, as Foucault argues, the degenerate physical form of the ‘bad’ revolutionary subject indicated a physiognomic and political identity, an atavism common to under-evolved biology and under-developed political ideology demonstrating that the movement they were representatives of “should be historically and politically discredited.” [Foucault, *Abnormal: Lectures at the Collège de France, 1974-1975*, Picador, 2003, p.154]

<sup>51</sup> Pick, *Faces of Degeneration*, p.176; Jose Harris writes similarly that “British social theorising [in the late nineteenth century] has been disparagingly compared with the powerful new schools of sociological analysis that were being generated on the Continent” and that, set against the work of French and German social theorists, “British attempts to understand the nature of society and the dynamics of social relations were shallow, eclectic, and methodologically naïve.” (*Private Lives, Public Spirit: Britain 1870 – 1914*, Penguin, 1994, p.221). However, she continues, the number of informal friendly societies, including trade unions, temperance organisations, literary and scientific societies, co-operatives, mutual associations, and savings societies that existed in Britain dwarfed the

visibility of degeneration discernible in British writings from the 1880s onward, particularly when it was deployed as a “counter-theory to mass-democracy and socialism.”<sup>52</sup> However the fear of spontaneous social and corporeal change, along with the criminological implications of a marked class of degenerates, were always “diluted in the clash with a recalcitrant liberal conception of the individual” and, on a more general level, the ability of a degenerate substratum to precipitate “the direct destruction, extinction or impotence of the state was on the whole seen to be implausible.”<sup>53</sup> Nonetheless, Pick argues, by focusing on the lack of ‘success’ British discussions of degeneration met with when they entered the official channels, historians have somewhat missed the point. The intriguing aspect of the language of degeneration in its British context was not that it had a palpable effect on legal process or led to the establishment of government funded criminological enquiries (though it did both of these things to a limited extent), but that it enjoyed a peculiar intractability across the spectrum of social discourse, producing what Pick calls a “structure of simultaneous avowal and disavowal” in British discussions.<sup>54</sup>

Hence, Pick shows throughout his discussion of British degenerationist debates that while the existence of the degenerate or the born criminal was widely rejected, the same images of degenerates and born criminals pervaded the entire spectrum of Victorian thought when it came to consider the great industrial cities (though the greatest concern was with the labyrinthine streets of London, which was never heavily industrialised).<sup>55</sup> Indeed “the language of degeneration continually returned” in the writings of British commentators, as for example in the 1904 Inter-Departmental Committee on Physical Deterioration which, though it rejected

---

presence of such institutions elsewhere, making the essence of British social life during this period more difficult to pin down for contemporary observers

<sup>52</sup> Pick, *Faces of Degeneration*, p.184

<sup>53</sup> Pick, *Faces of Degeneration*, p.211 & p.218. C.f. here Charles Pearson, who noted in 1893 that pessimism concerning the nation was a rarer species in Britain than it was on the Continent. However, he continued, while British commentators had been struck by the static level of the French population when compared to Germany and Great Britain, a fact that was commonly attributed to lack of vigour or ‘immorality’, the French journalist Lucien-Anatole Prévost-Paradol had revealed that this lack of fecundity was in fact the product of an increased prosperity, and thus in Great Britain, where “the bulk of the population have adopted the views which Mr. Mill advocated, and prefer to preserve their position or their habit of rough comfort [than fulfilling] the need of the State for soldiers”, there was equal cause for alarm [Charles H Pearson, ‘The Causes of Pessimism’, *Fortnightly Review*, 54:322, 1893, pp.441-53 (451)]

<sup>54</sup> Pick, *Faces of Degeneration*, p.180

<sup>55</sup> Pick’s account here draws substantially upon Gareth Stedman Jones’s *Outcast London: A study in the relationship between classes in Victorian society*, Pantheon, 1984

degeneration (or was cautious in accepting that Britain was degenerating), none the less couched its conclusions in degenerationist assumptions about habitual criminality and Booth's submerged tenth. If degenerationist language was not often voiced within the offices of parliamentary officials, neither was it confined to marginal figures, and while theories of the hereditary criminal or a declining civilisation were never suggested as an answer to social problems, they were "continually disseminated as the question."<sup>56</sup>

We can see then that, in a more abstract sense, the internal tensions that shaped the social and political contexts of degeneration can also be applied to the degenerationist writings themselves, and the theory was always bound up with a sort of textual antagonism, producing a paradoxical situation where degeneration was often used as groundwork for its own critique. That is to say, throughout the late nineteenth century, degenerationist assumptions were involved in a constant process of reformulation in which writers would repudiate the tenets of degeneration in degenerationist terms. Pick's analysis of degeneration (whether in psychiatry, literature, social criticism, or political debate) can therefore be summarised as an enquiry into the concept's peculiar discursive buoyancy. Writers who tried to consciously submerge one of its ends would unwittingly see another emerge elsewhere to disturb the surface of their text. Indeed, the fluidity of degenerationist language meant that it could never be successfully repudiated and, in resisting the grasp of any particular group's interests, became "more than simply an instrument" of the commentators who deployed it; even when a writer set out to consciously suppress the theme of degeneration it would inevitably re-emerge as "the imagined subject, cause and force of history" later in the same account.<sup>57</sup>

Across these three national contexts of degeneration, Pick treats the phenomenon in the broadest possible terms, resisting the temptation to analyse degenerationist thought as, say, the negotiation of a psychiatric theory or a response to rising levels of crime. As Pick observes, while one "could perhaps speak of 'the interest' of the medical and psychiatric profession in heightening the problem of

---

<sup>56</sup> Pick, *Faces of Degeneration*, p.189

<sup>57</sup> Pick, *Faces of Degeneration*, p.199



health and reproduction in order to justify its own status and institutional expansion”, this strategy would only go so far in explaining the recurrence of degenerationist language in so many contexts and forums. Pick therefore places his explanatory emphasis on the “wider discursive context which was not merely ‘controlled’ as part of a project of medical professionalisation.”<sup>58</sup> It is important to emphasise here that while Pick’s account relies on the biographies of prominent figures to situate degeneration theory in its national contexts (Morel, Lombroso, Maudsley), individual interpretations are deployed as mirrors reflecting a more general national consciousness. In this way Morel’s malleable version of degeneration appears as ‘typically French’, Lombroso’s rigid criteria for exclusion as ‘typically Italian’, and Maudsley’s lifelong struggle to situate himself in regard to the great question of degeneration as ‘typically English’. A further consequence of this approach is that sources are not divided according to a vertical hierarchy running from the ‘official’ (parliamentary or penological) to the ‘scientific’ (anthropological or medico-psychiatric) down to the ‘popular’ (journalistic or literary) but rather a variety of documents and authorial positions are allowed to address the question of degeneration thematically throughout his account. Of course Pick acknowledges that there were nuances and differences in form and style of argument across the various professions, media, and interest groups, but there remained “an identifiable shared language of degeneration”, and while his account is tied to the cultural and political specificities of each nation, he emphasises that the same themes were discernible across all contexts in which degeneration was present, with the “recurrent and *shared* discursive tensions” of degeneration “continually inflected, specified, re-formulated in *different* social and political contexts.”<sup>59</sup> Hence, Pick shows how both the unprecedented social change that seemed to be propelling Europe to an inexorable break with the structures of its past encouraged the creation of pathological entities that could palliate internal tensions and how these creations instantly and unwittingly exceeded themselves, blurring the boundaries between the labouring classes and respectable society and creating a pathological continuum that circumscribed the whole social field.

---

<sup>58</sup> Pick, *Faces of Degeneration*, p.200-201.

<sup>59</sup> Pick, *Faces of Degeneration*, p.235 & p.106 (italics in original)

While in this regard the account offered by Pick overlaps to a considerable degree with the work of Nye, there is also a significant difference between the two historians in terms of their stated methodology. While Pick acknowledges that his approach “suggests a certain eclecticism in the presentation of materials”, he excuses the fluidity of his analysis on the grounds that it allows him “to demonstrate the contiguity and convergence of models of degeneration across *distinct* forms of social commentary.” Hence, for Nye, disciplinary fluidity in the documents he examines functioned as an actor’s category, marking the lack of coherent reification of thought into distinct discourses, where as for Pick this same disciplinary fluidity is a tool of the analyst who chooses to ignore “the parameters of such fields of investigation as were drawn in the nineteenth century.”<sup>60</sup> Though my thesis will focus largely on the discussions of alcoholism and degeneration that were produced by the psychiatric and legal professions, I follow Nye’s approach to the selection of documents, arguing that a study of such broad phenomena during this period inevitably calls for investigation of both discourses outside my immediate field of interest and other members of the great family of nineteenth-century social pathologies. This approach to the selection of documents is therefore rooted in a methodology that reflects the assumed reality of the objects of study: Nye’s understanding of the discourses he examines is that they were themselves referring to an object (social pathology) that had no precise lines of demarcation, a phenomenon Michel Foucault labelled ‘the psy-function’, that is, the series of discourses and sub-disciplines that were held together by a series of loose and sliding family resemblances encompassing psychiatry, psychoanalysis, psychopathology, but also certain modes of sociology, criminology, and penology.<sup>61</sup> Indeed, there was contemporary awareness that such disciplinary fluidity was particularly characteristic of discussions of degeneration, a subject which, according to a review appearing in the *Athenaeum* at the end of the nineteenth century, was not the domain of any particular branch of enquiry, but rather of “certain outlying provinces of biology, psychiatry, medicine and anthropology, not to mention criminology and the general theory of evolution.”<sup>62</sup>

---

<sup>60</sup> Pick, *Faces of Degeneration*, p.43, italics added

<sup>61</sup> Foucault, *Psychiatric Power: Lectures at the Collège De France, 1973-1974*, Palgrave, 2006, p.85

<sup>62</sup> Anon, ‘Review of [Eugene S. Talbot’s] Degeneracy: Its Causes, Signs, and Results’, *The Athenaeum*, 3714, December 31, 1898, p.934

## 2.2 Psychiatry without Symptoms

While these broad social histories are central to our understanding of degeneration and its allied phenomena, the breadth of perspective they offer can distract attention away from the micro-history of the concept's application by actors pursuing concrete personal goals, particularly within the field of psychiatry. One of the most recent and substantial contributions to our understanding of hereditarianism and degeneration within French psychiatry, Jean-Christophe Coffin's *La Transmission de la Folie*, offers a counterbalance to these broader approaches by arguing that, while the utilisation of degeneration theory in popular discourse greatly increased its visibility, the "cultural resonance of degeneration" that recent socio-historical scholarship has focused on "somewhat obscures the fact that the notion is also an object within the history of medical science", an imbalance Coffin seeks to redress by returning to the theory's medical origins. This is not to say that Coffin circumscribes medical discourse as "a privileged and autonomous field", simply that his account sets out to dispel the "suspicions" that have come to surround degeneration, particularly by historians of science who have followed the lead of Foucault in focusing too narrowly on the proscriptive dimensions of mental medicine in the nineteenth century, confining degeneration to a mawkish spectacle in the cabinet of cultural curiosities. Thus, Coffin seeks to "enter into the assumptions and concepts" of the historical actors he follows in an effort to appreciate their methods and arguments in their own terms, rather than against the pall of contemporary standards, tracing the "genealogical history" and "semantic shifts" associated with psychiatric discussions of degeneration. Hence, Coffin argues, the historiographically important moment of degeneration is not represented by its transformation into later nineteenth-century discourses concerning national decline or the eugenics movements of the early twentieth-century, but its origins in the 1860s, when the theory presented an expansive canvas for scientific exploration.<sup>63</sup> Far from being the pseudo-scientific

---

<sup>63</sup> Coffin, *La Transmission de la Folie 1850 – 1914*, Paris: L'harmattan, 2003, p.249-250. Elsewhere Coffin has argued that it is 'more interesting' to enter into the history of a concept at a point when its meaning has not yet been fixed by accepted usage and when those employing it are in the process of attempting to formalise a precise and systematic meaning; see Coffin, 'Le Theme de la Degenerescence de la Race Autour de 1860', *History of European Ideas*, **15**, (4-6), 1992 : 727-732 (pp.727-28). Coffin's remarks here can be applied with equal force to the significant complementary literature that has arisen since the 1990s addressing the role of nineteenth-century degenerationist ideas in adumbrating the eugenics movements of the twentieth century. The tendency of this scholarship to read

father of decadence and pessimism, Coffin argues, Morel sought only to “confront the central questions of medical and biological science in the second half of the nineteenth century: hereditary phenomena, the nature of madness, and the impact of living conditions or, more generally, the relationship between man and his environment.” Approached in this way, writes Coffin, the theory appears as “a marvellous discourse on pathological causes and processes” in which the “ancient metaphysical psychology” that had continued to dominate the psychiatry since the early nineteenth century was finally overturned by an account of the causation of mental disease consistent with the explanatory models of general medicine.<sup>64</sup>

While the introduction of degeneration theory in *Tratié des dégénérescences* was instantly recognised as an important (if contentious) new dawn for psychiatry, it was, Coffin suggests, Morel’s second major work, *Tratié des maladies mentales* (1860), that made explicit the ambitious project he wished to build around degeneration theory. Addressed to an audience of general practitioners rather than psychiatric specialists, Morel used his second treatise to attempt to harmonise the diagnostic models of psychiatry with those of general medicine seeking, as Coffin puts it, to “place the doctrine of degeneration at the centre of his general interpretation of pathological mental phenomena”, giving a more radical reinterpretation of the causality of morbid conditions than was present in his original treatise.<sup>65</sup> In this second project Morel sought to capitalise on the growing sense of professional consciousness and unified mission amongst psychiatrists who, under increasingly frequent public criticism for their misapplication of the confinement laws, were

---

degeneration as an all but inevitable precursor of eugenics has been exposed most recently in André Pichot’s *The Pure Society: From Darwin to Hitler* (Verso Books, 2009). Earlier studies of eugenics to have drawn notably upon the concept of degeneration as a forerunner to the eugenics movements of the early twentieth century include Mark Adams (ed.), *The Wellborn Science. Eugenics in Germany, France, Brazil, and Russia*, Oxford UP, 1990; Lyndsay Farrall, *The Origins and Growth of the English Eugenics Movement*, New York: Garland Press, 1985; G. R. Searle, *Eugenics and Politics in Britain: 1900-1914*, Leyden: Noordhoff International, 1976; Daniel Kevles, *In the Name of Eugenics: Genetics and the Uses of Human Heredity*, Berkeley: University of California Press, 1985; Donald MacKenzie, ‘Eugenics in Britain’, *Social Studies of Science*, 6 (3) 1976: 499-532. The most useful single volume account is undoubtedly Richard Soloway, *Demography and Degeneration: Eugenics and the Declining Birthrate in Twentieth-Century Britain*, Chapel Hill: University of North Carolina Press, 1990

<sup>64</sup> Coffin, *La Transmission de la Folie*, p.250

<sup>65</sup> Coffin, *La Transmission de la Folie*, p.65

seeking to reorganise their systems of classification to take into account a growing concern with heredity.<sup>66</sup>

Working with a notion of heredity that was much broader in scope than was typical for psychiatry and general medicine during this period, Morel created an account of mental and physical processes that made pathological inheritance the cause of illness in general rather than the vector along which specific conditions were transmitted. These features of Morel's system "contributed to a new interpretation of the pathological" in general medical description: illness was no longer to be conceptualised as the distance from the normal, but rather the presence of an underlying pathological agent.<sup>67</sup> As Coffin argues, Morel introduced two substantial "innovations" to psychiatry with his *Tratité des maladies mentales*: Firstly, he contended that *all* mental disease was to be understood in reference to the process of degeneration (a far more explicit claim than was to be found in his first treatise); secondly, he introduced a new method of classification emphasising aetiology rather than symptomatology.<sup>68</sup> This latter move represented French psychiatry's first significant break with the methods of classification employed by Pinel and the Esquirol circle, who had relied on systems of taxonomy that could be traced back to

---

<sup>66</sup> Coffin's approach here overlaps with the Anglophone scholarship that has focused on the SMP, particularly the work of Ian Dowbiggin, whose monograph *Inheriting Madness* situates the activities of the Société Médico-psychologique (SMP), France's professional body for alienists, within the context of the "psychiatric move toward hereditarianism" during the second half of the nineteenth century. (Dowbiggin, *Inheriting Madness*, p.76) Dowbiggin's account emphasises that this move was not simply related to the treatment and diagnosis of insanity, but was brought into being by a vast array of competing pressures affecting the French psychiatric profession, in particular the rise of an 'anti-psychiatry' within mid-nineteenth-century France promulgated by the clerical establishment, the national press, the legal profession and certain sections of the State bureaucracy. (pp.93-115) As a means of overcoming these difficulties, Dowbiggin argues, psychiatrists in France turned toward hereditarianism and degeneration theory, both of which remained popular throughout the constantly "shifting cultural climate between 1848 and 1900." (Dowbiggin, *Inheriting Madness*, p.116. More generally see *ibid.*, pp.116-161; c.f. Dowbiggin, 'Degeneration and Hereditarianism in French Mental Medicine 1840-90: Psychiatric Theory as Ideological Adaptation', in W. F. Bynum, R. Porter, & M. Shepherd (eds.) *The Anatomy of Madness: Essays in the History of Psychiatry, Volume 1*, London, Tavistock, 1985, pp.188-232)

<sup>67</sup> Coffin, 'Heredity, Milieu and Sin', p.162

<sup>68</sup> Morel classified insanity in his 1860 work according to: Heredity; Toxic Influence; Transformation from Nervous Disease; Idiopathic Insanity; Sympathetic Insanity (organs other than the brain as a cause of insanity); & Dementia. The standard four-fold symptomatological classification of insanity Pinel had worked with divided its various species into: Mania; Melancholia; Monomania; & Dementia. Variations of this system were employed well into the second half of the nineteenth century. For instance, Bucknill and Tuke's *Manual of Psychological Medicine* (1858), divided insanity into the five slightly different headings of: Mania; Emotional Insanity; Delusional Insanity; Dementia; & Idiocy.

the classifications of eighteenth-century naturalists.<sup>69</sup> Hence, in moving away from the nosological maps that had been drawn and redrawn since the start of the century, Morel favoured a system that reduced all symptoms to their underlying pathological cause, emphasising both the external somatic influence of toxins such as alcohol, and the internal somatic influence of the heredity taint.

Though degeneration theory was a pervasive presence in French psychiatry from the 1860s until around the 1920s, Morel's ideas were subject to critical attention by members of his immediate circle, with the addition of *folie héréditaire* as a distinct category of pathological transmission provoking a lively debate amongst the SMP. While Morel's early success in making psychiatry a respectable science marked him out as a leading figure of the SMP, his immediate contemporaries were generally of the opinion that the attempt to redefine psychiatric classification on the grounds of aetiology and heredity was unrealistic, particularly as the medical understanding of cerebro-anatomy was felt to be nowhere near sufficient to corroborate his assumptions.<sup>70</sup> There was also a feeling among some members of the SMP that, if Morel's line of reasoning were pursued to its logical conclusion, then the distinction between heredity and pathology would disappear (all disease could, according to Morel's system, be recorded as the result of inheritance).<sup>71</sup> Hence, while Morel's new model of heredity became hugely influential from the 1860s onwards, Coffin cautions

---

<sup>69</sup> Coffin, *La Transmission de la Folie*, p.66-67; In *History of Madness* (Routledge, 2006) Michel Foucault argues that the classificatory systems of Pinel and Esquirol can be traced back even further to seventeenth-century figures such as the Papal physician Paulus Zacchias (1584 – 1659) who drew distinctions inside the “ancient category of *fatuitas* (imbecility) . . . that seem to anticipate Esquirol's classification.” (p.127). Esquirol's methods of classification had in fact been explicitly criticised by marginalised psychiatrists working during his period of dominance, particularly by the Parisian student movement that was working to expand the influence of materialist currents in psychiatry in the wake of Georget's 1820 thesis (Georget was, in fact, a pupil of Esquirol's). This movement criticised Pinel and Esquirol for their willingness to accept the surface manifestation of symptoms in their descriptions, rather than relating these to underlying causes. (Dowbiggin, *Inheriting Madness*, p.40). Morel's break with the previous methods of psychiatric diagnosis has also been noted in the Anglophone historiography, for instance, Ruth Harris has written of Morel's methods as a self-conscious attempt to move away from the classificatory systems of Pinel and Esquirol and the “unwieldy monomania diagnosis” that came with them. Ruth Harris, *Murderers and Madness: medicine, law, and society in the Fin de Siècle*, Oxford: Clarendon, 1989, pp. 59 – 60

<sup>70</sup> As Bertrand Dargelos notes, the attempt to replicate the anatomo-pathological methods of general medicine by psychiatrists such as Morel presented the diagnosis of mental illness with an impasse; psychiatrists could not simply “open up a few brains” to supplement their knowledge of the cause of insanity, but were instead reliant upon inferential techniques to describe insanity. Bertrand Dargelos, ‘Une spécialisation impossible: L'émergence et les limites de la médicalisation de la lutte antialcoolique en France (1850 – 1940)’, *Actes de la recherche en sciences sociales*, 156-157, March 200: La spécialisation de la médecine XIXe-XXe siècles, pp. 53- 71, (p.56)

<sup>71</sup> Coffin, ‘Heredity, Milieu and Sin, p.161

historians against drawing the conclusion that the specific notion of inheritance psychiatrists worked with was stable or that such ideas were universally accepted throughout the nineteenth century, arguing that those who resisted hereditarian doctrines, though they were in the minority, have tended to be overlooked by historians of science searching for traces of the concept in the historical record, thereby losing sight of its critics and “accentuating the image of an epoch uniformly subject to fears of hereditary [degeneration].” Furthermore, Coffin argues, there was not, as some scholars have assumed, a single ‘hereditary moment’ in which the notion of pathological transmission of insanity burst into life and swept the whole of the medical profession along with an insurmountable force. Rather, Coffin emphasises the gradual development of knowledge of heredity in a process through which the unseen and the seen were linked one step at a time by doctors seeking to construct a plausible and consistent account of the pathologies they understood and diagnosed.<sup>72</sup>

Following these remarks, we can say that degeneration entered a medical world that was initially divided between those doctors who continued to defend older models of disease transmission and a new generation who recognised in Morel’s proposal a means of overcoming the difficulties imminent to psychiatry’s account of insanity. A good example of this generational transition toward critical acceptance of Morel’s claims, and one which summarises much of what is said above, is provided by the historiographical opening lines of *Études cliniques*, an 1890 work written by Jules Falret, whose own father had, along with Morel, issued a definitive challenge to the Pinel-Esquirol method of classification by focusing on degeneration and heredity.<sup>73</sup> Here Falret begins by noting that the “master doctors” Pinel and Esquirol had, for three generations, influenced psychiatrists content to occupy themselves with “perfecting the details [of their systems] without attempting to shake their foundations.” These foundations had, according to Falret, first been shaken by the “ever more detailed studies conducted on chronic and acute alcoholism since the work

---

<sup>72</sup> Coffin, *La Transmission de la Folie*, pp.255-56

<sup>73</sup> Jules Falret, *Études cliniques*, p.16; Falret’s father was himself more modest when discussing his contribution to the break with Pinel, crediting the younger Morel’s “commendable efforts to find firmer foundations for the classification of mental disease” with the reinvigoration of French psychiatry. According to Falret senior, Morel’s efforts had come to fruition with his *Tratíe des maladies mentales* in which heredity was proposed as the single, unified cause of all insanity. Jean-Pierre Falret, *Des maladies mentales et des asiles d’aliénés: leçons cliniques & considérations générales*, J.B. Baillière et fils: Paris, 1864, p.xxxii

of Magnus Huss” that began to “threaten the reigning classification by showing that a unique cause – the influence of alcohol – could print special characters to the four main forms of this classification: mania, melancholy, monomania, and dementia.”<sup>74</sup> Following the demonstrations of Huss, Morel had taken the ambitious step of breaking entirely with the older methods by proposing a classification containing the “largest and most contested” taxonomical device of the new psychiatric understanding of insanity, *folie héréditaire*, a proposal that had reportedly left the wider psychiatric community:

stunned that we had been able accept such broad foundations. . . Nobody could understand how we managed to collect under one generic name states as different as had been gathered by Morel, including, in fact, all known varieties of insanity, from trivial acts of madness or errors of reasoning (representing the less pronounced forms of mental disorder witnessed in our schools, forms of madness that in fact come closest to the normal state of mind) to imbecility and idiocy, which are those degrees of madness lying furthest from sanity

However, while Falret himself acknowledged that Morel had placed within the category of ‘*folie héréditaire*’ mental states that were so distinct as to render their inclusion under a single heading useless, he none the less believed that anyone who had read Morel’s writings would acknowledge that his ideas marked a new stage in the understanding of the role played by heredity in mental illness.<sup>75</sup> The irony is that while a younger generation of psychiatrists largely embraced Morel’s model of heredity and finally conferred upon him the status of elder statesman of psychiatry, it was this same generation that abandoned the theologically informed model of race that had underwritten Morel’s entire system of degeneration, demonstrating both how tenuous the grasp is between an idea and its original progenitor and how the essential vagueness of degeneration theory in particular promoted its cross-generational stability as a psychiatric concept. It was in the 1860s, around the time of Morel’s engagement with the SMP over his model of heredity, that race became increasingly significant for French and British medicine, appearing, as Coffin puts it, at a time of “redefinition of essential terms in the scientific vocabulary” and “the proposal of new

---

<sup>74</sup> Jules Falret, *Études cliniques sur les maladies mentales et nerveuses*, J.B. Baillière et fils: Paris, 1890, pp.v-vi

<sup>75</sup> J. Falret, *Études cliniques*, p.27



concepts and doctrines” that continue to structure our mode of thinking about biological transmission.<sup>76</sup>

It is important to remember therefore that degeneration did not function as a single idea or unified theory, but rather as a series of interpretations that could shift radically as doctors passed away and were replaced by a new generation educated according to a different tradition. Indeed, degeneration lived to be interpreted by a third generation in the early twentieth century (after which, appropriately enough, it became sterile). This second posthumous reinterpretation of Morel’s system tended to emphasise the nascent traces of organicist psychiatry that could be found within it, a move that became part of the historical record in France after the psychiatrist Georges Genil-Perrin published his eulogy to degeneration in 1913.<sup>77</sup> John Ward has argued that it was in this way that the “idea of a comprehensive, organicist and universally applicable psychiatry emerged from the theory of mental degeneration in the nineteenth century” by adopting a “broad interpretation of heredity” that had “only a distant relationship to Darwinian laws.”<sup>78</sup> However, Ward’s reading seems to assume that Darwinian currents *ought* to have been present in French biological thinking in the late nineteenth century, an assumption that has been challenged by recent work in the history of biology.

For instance, Patrice Pinell has argued that, of the various theories of natural heredity under discussion in Europe during the late nineteenth century, it was not Darwinism but Weismannism – postulating the transmission of an invariable germ-plasm from one generation to the next – that tended to be applied to the

---

<sup>76</sup> Jean-Christophe Coffin, ‘Le Theme de la Degenerescence de la Race Autour de 1860’, *History of European Ideas*, **15**, (4-6), 1992 : 727-732 (pp.727-28). For a discussion of these terms in British anthropology see G. Stocking., *Victorian Anthropology*, The Free Press: New York and London, 1987, pp. 48-53; Stocking, *Race, Culture, and Evolution*, The Free Press: New York, 1968, p.74; Douglas Lorimer, ‘Theoretical Racism in Late-Victorian anthropology’, *Victorian Studies*, **31**, 3, 1988: 405-430

<sup>77</sup> G Genil-Perrin, *Histoire des origines et de l’évolution de l’idée de dégénérescence en médecine mentale*, Paris: Alfred Leclerc, 1913.

<sup>78</sup> J. Ward, ‘Le malade mental étranger durant l’entre-deux-guerres: une double aliénation médico-administrative’. *Actes de l’Histoire de l’Immigration*, 2002 (nov.), 1–14. Against this assumption Coffin argues that Morel’s theory of heredity degeneration did not itself constitute the decisive move to organicist psychiatry that it represented to a later generation of French psychiatrists, but rather was composed in equal and interrelated parts of physical heredity, environmental influence, and a spiritualist “philosophical belief that [humans] live in a world threatened by a series of morbid forces.” Coffin, ‘Heredity, Milieu and Sin’, p. 153

degenerationist cause in France.<sup>79</sup> Approaching this same problem from a North American perspective Ian Dowbiggin argues, perhaps unfairly, that “Darwin’s theory of natural selection made little headway in French science because of the fierce chauvinist allegiance to the transformist ideas [of Lamarck].”<sup>80</sup> In a similar though slightly more charitable fashion Paul Rabinow writes that the causes for this rejection of Darwin were numerous and diverse, “ranging from simple French chauvinism to the more complex barriers provided by the internal structure of biological discourse.” Indeed, he continues, the humiliations that the nation had suffered leading up to the instauration of the Third Empire “hardly put the French in a position to adopt readily Victorian hierarchies or mythological German races as matrices of history.”<sup>81</sup> A more detailed explanation is offered by Yvette Conry, who has argued that the theory of natural selection, along with the chaotic living world it implied, did not sit well with French medical theorists who preferred to emphasise an “ontological conception of natural economy” sustained by “laws of proportions, rules of exchange and principles of justice.”<sup>82</sup>

This alerts us to an important historiographical difference that must be borne in mind when using the French model of degeneration as a putative standard against which to assess British discussions, for it should be noted that the term ‘degeneration’ could not readily take on the same meaning to French and British psychiatrists on account of the generally distinct theories of heredity reigning in the two nations. I will examine the specific sociological reasons for the general hostility toward Weismannism within late nineteenth-century British psychiatry in chapter four of this thesis, arguing in particular that degenerationist assumptions were inflected in a particular way to preserve the Evangelical and Reformist role of the psychiatrist as a public figure (an inflection which seemed to preclude Weismann’s theory of transmission).<sup>83</sup> However, it should be noted that it would be inaccurate to portray

---

<sup>79</sup> P. Pinell, ‘Degeneration Theory and Heredity Patterns between 1850 and 1900’, in Gaudillière & Löwy (eds.) *Heredity and Infection: The History of Disease Transmission*, Routledge (London), 2001, pp. 245-59 (250-51)

<sup>80</sup> Dowbiggin, *Inheriting Madness*, p.148

<sup>81</sup> Paul Rabinow, *French Modern: Norms and Forms of the Social Environment*, MIT Press, 1989, p.126

<sup>82</sup> Yvette Conry, cited in Harris, *Murderers and Madness*, p.66

<sup>83</sup> A wonderful example of this *a priori* sociological rejection of scientific theory was given by Dr Robert Jones, Superintendent of the London County Council Asylum, Claybury, in a speech before the British Society of the Arts in 1904. “There is no proof”, Jones told his audience, “that each cell in the

British theories of inheritance and degeneration as uniformly ‘Darwinian’ since, as historians of biology have indicated, ‘Darwinian theory’ was not a unified body of thought until the early twentieth century, but a variety of interpretations that chose to emphasise or eliminate various elements of the account presented in *Origin of Species*.<sup>84</sup> Indeed it was not until Weismann and Galton had been successful in gathering support for the proposition that acquired characters were non-transmissible that a recognisably ‘non-Lamarckian’ Darwinism took shape in any country.<sup>85</sup> Indeed, as Peter Bowler has argued, the much discussed ‘death of God’ was never really a problem in the mid nineteenth century, since the disappearance of the transcendent order was met with equal force by the emergence of the natural order, the progressive certainty of which assuaged the fears of social commentators in Europe and America. In this context, he continues, “Darwin had never been the undisputed leader of evolution, and his theory of natural selection was [from the 1860s onwards] challenged by a number of alternatives.”<sup>86</sup>

---

germ plasm is predestined unalterably for a particular role on a predetermined plan . . . I believe that we can alter the physical and psychical characters through the influence of the environment – and school teachers acquainted with the family history of a child may be able to guard against the bad effects of a family heredity – *otherwise where does the reformer, the sociologist, and the educationalist come in?*” [R Jones, ‘Physical and Mental Degeneration’, *Journal of the Society of Arts*, March 4<sup>th</sup>, 1904, pp.327-342 (p.336, italics added)]

<sup>84</sup> See Thomas F. Glick (ed.), *The Comparative Reception of Darwinism*, University of Chicago Press, 1988. In her study of the early years of the British Eugenics Society, Joanne Woiak argues that the theories of transmission held by prominent Society members were far more Lamarckian than has previously been acknowledged by historians of eugenics (though it is in fact common for historians of biology to remark that British biologists in the late-nineteenth century were ‘Lamarckian’, being almost as universal in their condemnation of natural selection as they were in their support of evolution). See Joanne Woiak, *Drunkness, Degeneration, and Eugenics in Britain, 1900-1914*, Unpublished Ph.D. Thesis, University of Toronto, 1998

<sup>85</sup> One of Darwin’s younger accomplices, aware that his tutor had been at best ambiguous on the subject of transmission in his writings, claimed in his study of Weismann’s theory that: “As far back as 1874 I had a long conversation with Darwin himself upon the matter [of the transmissibility of acquired characters], and under his guidance performed what I suppose are the only systematic investigations which have ever been undertaken with regard to it . . . the idea of what is now called ‘the continuity of germ-plasm’ was [therefore] present to Darwin’s mind as a logically possible alternative to the one which he adopted in his theory of pangenesis – an alternative, therefore, which he was anxious to exclude by way of experimental disproof.” George Romanes, *An Examination of Weismannism*, London: Longmans, Green, 1893, viii. . Müller-Wille and Rheinberger (‘Heredity – The Formation of an Epistemic Space’, p.7) argue that Francis Galton, in his 1876 essay, ‘A Theory of Heredity’ (*Journal of the Anthropological Institute*) produced one of the “founding documents of modern hereditary thought.” It was here that Galton made heredity depend upon what they describe as an “underlying mechanism or enduring structure”; a “strip” (Galton’s own term) that would collect all the germinal material at the point of fertilisation within the ovum. This, Galton acknowledged, was a necessary inference, for though the microscope could capture some of the effects of this process, suggesting a transfer of hereditary data, it could not detect what that data was or how it served to maintain a constancy of form.

<sup>86</sup> P. Bowler, ‘Holding your head up high: Degeneration and orthogenesis’ in *History, Humanity and Evolution*, J. R. Moor (ed.), Cambridge, 1990, pp.200-239 (p.230)

### 2.3 The Political Dimensions of Heredity

Psychiatrists had, by the middle of the nineteenth century, come to define their practice in reference to two main themes: Heredity and Hygiene. These two notions underwrote much of the degenerationist discourse employed within psychiatry and served as strategies that would allow doctors to define their activities in reference to political concerns. As Jan Goldstein argues, although the role of French doctors and scientists in controlling outbreaks of moral contagion had been an established part of the *Ancien Régime*, it was not until after the Revolution that doctors attempted to become a part of the fabric of the state by pursuing the promotion of ‘hygiene’.<sup>87</sup> Indeed, Goldstein argues, it was psychiatry, the most perilous of all professions, which gradually took on the rhetoric of moral contagion and social order in its bid to underwrite its place within the state apparatus. While these remarks are applied to a very specific social and political milieu (namely that of post-Revolutionary France), I will show in this thesis how Edinburgh’s psychiatric community, working under the direction of Thomas Clouston (1840 – 1915), were drawn to the same justification of psychiatry as a branch of public hygiene in which doctors would function as “priests of the body and the guardians of the physical and mental qualities of the race.”<sup>88</sup>

Similarly Ian Dowbiggin has argued that psychiatrists were “more preoccupied with legitimizing existing psychiatric practices than with carving out new social territories for medical intervention” and, as part of this strategy of legitimisation, “Morel’s theory of degeneracy was useful because it not only explained how therapy in the milieu of the asylum redeemed the moral authority of the alienist but also cast the alienist as the expert in social matters and public mental

---

<sup>87</sup> Jan Goldstein, “‘Moral Contagion’: A Professional Ideology of Medicine and Psychiatry in eighteenth- and Nineteenth-Century France”, in Gerald Geison (ed.) *Professions and the French State, 1700 – 1900* (pp.181-232). For a corresponding general overview of the public health dimensions of Chadwick’s reforms in Great Britain, see Ackroyd et al., *Advancing with the Army: Medicine, the Professions, and Social Mobility in the British Isles, 1790 – 1850*, Oxford University Press, 2006, pp. 1 – 21

<sup>88</sup> T Clouston, ‘Puberty and adolescence medico-psychologically considered’ *Edinburgh Medical Journal*, 1880, **26**, 5-17, (10)

health.”<sup>89</sup> Indeed, he argues, Morel had envisioned the psychiatrist as a type of specialist consultant to the state on issues of public health, one whose work would focus in particular on the hygiene of families. In this way the psychiatric interest in “family mental health was an indication of the alienist alignment with the burgeoning hygiene movement within French medicine”, a movement which paralleled the political dimensions of the ‘discovery’ of a materialised heredity mechanism in post-Revolutionary French medicine.<sup>90</sup>

On a general level, the changing conceptualisations of ‘transmission’ and heredity in the first half of the nineteenth century came to influence debates touching upon the law, anthropology, psychiatry, evolution, horticulture, and politics, transforming the intellectual landscape of modern Europe. Psychiatry was both a causal element of this change and one of the main beneficiaries of its effects, using the new language of heredity to situate its ambitions toward becoming an essential department of the state. For instance, Carlos López-Beltrán has developed a highly detailed account of the formation of the concept of heredity in the early nineteenth century that persuasively situates the development of a fixed mode of transmission in the political milieu of post-Revolutionary France.<sup>91</sup> The political vacuum opened in the wake of the Revolution, López-Beltrán argues, led doctors to pursue heredity and hygiene as strategies that would “give their profession a major role in the reorganization of civil life.” All the leading medical figures of post-Revolutionary France, including the psychiatrist Pinel, took up the theme of heredity in their work, assiduously changing the focus of their pre-Revolutionary investigations to address the new vogues of heredity and hygiene in order to examine a problem that was novel to this new political order, namely, whether “socially damaging diseases, especially mental insanity, were indefinitely preserved within genealogical lines.”<sup>92</sup>

---

<sup>89</sup> Dowbiggin, *Inheriting Madness*, p.143 & p.135. Dowbiggin argues that, in this regard, degeneration theory in France was a political tool identical to the phrenological movement promoted early nineteenth-century English alienists. On this see R. Cooter, *The Cultural Meaning of Popular Science: phrenology and the organization of consent in nineteenth-century Britain*, Cambridge University Press, 1984

<sup>90</sup> Dowbiggin, *Inheriting Madness*, p.140. On the ‘discovery’ of heredity see Müller-Wille and Rheinberger, ‘Heredity – The Formation of an Epistemic Space’, in *Heredity Produced*, pp.3-34.

<sup>91</sup> See López-Beltrán, C. ‘The Medical Origins of Heredity’, in *Heredity Produced*, pp.105-133; ‘Forging Heredity: From Metaphor to Cause, a Reification Story’, *Studies in the History and Philosophy of Science*, **25**, (2) 1994: 211-35; ‘In the Cradle of Heredity; French Physicians and *L’Hérédité Naturelle* in the Early 19<sup>th</sup> Century’, *Journal of the History of Biology*, **37**, 2004:39-72

<sup>92</sup> López-Beltrán, ‘In the Cradle of Heredity’, p.46

The 'reification' of heredity as a technical term, López-Beltrán argues, initially carried pathological connotations which "became increasingly common in wider sectors of society, and began to 'interact' with the worries and ambitions of social thinkers and reformers." General references to a process of 'heredity' encompassing both normal and pathological phenomena became increasingly visible after the 1840s, by which time doctors had realised that "the privileged status [they] were giving to *hérédité* as an explanatory tool" required support from "a fairly well organized collection of 'normal' physiological, zoological and botanical, and embryological facts."<sup>93</sup> This new nominal form of heredity "spread from medical to broader circles through the increasing weight it received as an explanatory resource in the technical, programmatic and propagandistic texts of post-revolutionary French physicians", and was rapidly adopted by "[a]lienists, criminologists, hygienists, and other socially oriented branches of the medical profession [who] found the shift from an adjectival approach ('héréditaire') to a substantive one ('hérédité') a very attractive move."<sup>94</sup>

In Britain, the equivalent term 'heredity' did not enter dictionaries until much later, appearing around 1860. Of course, the relatively late arrival of 'heredity' into the English dictionary cannot necessarily be taken to indicate its absence in popular *usage*, for it was not until 1910 that an English dictionary offered a recognisably modern definition of race, though the language of race was of course a highly visible feature of Victorian social commentary.<sup>95</sup> Galton claimed in his autobiography to have first introduced the term heredity into English (in 1869), though both Darwin and Spencer had already written of 'heredity', having probably taken the term from Prosper Lucas (suggested by the marginal notes in Darwin's copy of *Traité de l'Hérédité*).<sup>96</sup> However, in contrast to its French usage, which was commonly tied to the description of pathological conditions, this English 'heredity' was used only to indicate the idea of biological transmission more generally, and even after its

---

<sup>93</sup> López-Beltrán, 'Forging Heredity', p.233

<sup>94</sup> *Ibid.*, p.213.

<sup>95</sup> N. Hudson, 'From "Nation" to "Race": The Origin of Racial Classification in Eighteenth-Century Thought', *Eighteenth Century Studies*, **29**, (3), 1996, pp.247-64.

<sup>96</sup> López-Beltrán, 'Forging Heredity', p.213

introduction into English, the term was not suggestive of a distinct parlance connected to a political project as it was in France.<sup>97</sup>

In slight contrast to this account of the rise of heredity, Ohad Parnes adds further complexity by arguing that the “establishment of heredity as a universal scientific category was the direct result of a wider epistemological shift” in the first half of the nineteenth century, reaching “far beyond the borders of biology.” Specifically, he contends, the “conceptualization of populations in terms of generations” – a new idea during the early nineteenth century – was responsible for the stability of ‘heredity’ as a referent in both popular and medical discourse.<sup>98</sup> Crucially, in Parnes’ account, degenerationist thinking (broadly defined) provides the impetus for the early nineteenth-century tendency to conceptualise life in terms of generations, coming at a time when a variety of ‘sociological’ writers (a term he uses as an acknowledged anachronism) were “motivated by a kind of intellectual desperation” concerning the turbulence of:

knowledge, wealth, and human conduct – possibly even the living world. Historians, philosophers, and political thinkers were challenged to account for this new apprehension, to try to explain the unremitting transformation of society, the constant modification of commodities, the seemingly infinite growth of knowledge.

In this social and intellectual tumult, Parnes argues, notions of the individual or the family did not appear to be viable explanatory categories. The concept of generations alone could “explain both change and tradition, both revolution and stability.”<sup>99</sup> While

---

<sup>97</sup> However, John Waller has argued that models of disease based upon heredity became “unprecedentedly credible in the mid-Victorian period”, where “concerns over the quality of lineages [were] projected onto the national stage in the form of eugenical thought and fears of biological degeneration.” John C Waller, ‘Ideas of Heredity, Reproduction and Eugenics in Britain, 1800-1875’, *Studies in the History and Philosophy of Biology and the Biomedical Sciences*, 2001, 32, 3, pp.457-489 (p.461). C.f. Waller, ‘The Illusion of an Explanation: The Concept of Hereditary Disease, 1770-1870’, *Journal of the History of Medicine and Allied Sciences*, vol.57, 2002, pp.410-48 (p.410); Waller, ‘Poor Old Ancestors: The Popularity of Medical Hereditarianism, 1770-1870’, in *A Cultural History of Heredity II*

<sup>98</sup> Ohad S. Parnes, ‘On the Shoulders of Generations: The New Epistemology of Heredity in the Nineteenth Century’, in *Heredity Produced*, pp.315-346 (p.316)

<sup>99</sup> Parnes, ‘On the Shoulders of Generations’, p.323. Parnes notes that the question of whether this line of reasoning first appeared in the social sciences and was subsequently imported into medical and biological thought, or whether it appeared in medical writing, and was subsequently popularised as a social metaphor, is both impossibly complex, and ultimately irrelevant to the fact of ‘generations’ appearing as salient category of social and biological analysis

these general explanations for the rise of hereditarian thought are of immense value in situating medical and psychiatric texts within a broader intellectual change, it is clear that, *pace* Parnes' claims, medical writers played a leading role in the process of defining a new model of heredity. In particular, it was psychiatric authorities like Esquirol, foremost amongst Pinel's followers and himself instructor to such figures as Georget, Moreau de Tours, and Morel, who "gave heredity the leading role as an influence for mental disease in his thirteen articles for the *Dictionnaire [des Sciences Médicales]*."<sup>100</sup>

However, it should be noted that, in these varying accounts of the growing importance of 'heredity' during the nineteenth century, scholars are not simply advancing a 'weak' hereditarianist explanation, postulating that, from the early nineteenth century onwards, there was an inexorable tendency for medical commentators to see disease as the product of heredity and nothing more. There was of course significant support during the nineteenth century for accounts of disease that did not rely on models of direct inheritance, particularly from social reformers who saw in hereditarian logic a determinism that violated the principles of self-improvement. Yet it must be said these accounts relied upon the language of inheritance to make their claims plausible and that they nonetheless situated themselves in relation to the new concrete conceptualisation of heredity transmission. In other words, even if throughout the nineteenth century we encounter an equal distribution of statements concerning 'hard' and 'soft' heredity – or direct transmission and environmental influence – these statements all implicitly relied upon a working knowledge of a distinct heredity mechanism to render themselves intelligible.<sup>101</sup> Furthermore, the opposition to 'hard heredity' was itself framed by appealing to an object – 'environment' or 'milieu' – formed by the same process of disentanglement that had led to the creation of the new medical model of fixed heredity. As Georges Canguilhem has shown, the concept of 'milieu' was itself a medical novelty in the nineteenth century, being used as a substantive in the singular

---

<sup>100</sup> López-Beltrán, 'In the Cradle of Heredity', pp.45-47

<sup>101</sup> c.f. Foucault, *Archaeology of Knowledge*, pp.133-142 on the rarity of statements in any given epoch



in the 1830s as part of the same process of re-theorising and re-organising of the living world that had shaped understandings of heredity.<sup>102</sup>

## 2.4 Forensic Psychiatry

Michael Clark and Catherine Crawford have argued that, by the end of the eighteenth century, almost all European nations – with the notable exceptions of England and Scotland – had established traditions of State and legal medicine, disciplines which had long been “regarded not as a speciality but as part of the professional duties of every medical practitioner.”<sup>103</sup> It seems that the ‘British exception’ was therefore that, in the practice of medicine, it had not followed the ‘Absolutist’ states of Western and Central Europe – Bourbon Spain, France, Germany, and Austria – in developing a specialised branch of State medicine concerned with the accumulation of knowledge essential to the administration and perpetuation of governmental functions. It is also undeniable that this branch of study – commonly called ‘medical police’ – would have come to influence medical and psychiatric understandings of the role of the doctor as a public health official in those nations, and that this influence would be lacking in Britain. ‘Medical police’ is therefore a particularly interesting compound of the broader understanding of both ‘medicine’ and ‘policing’ in these nations; indeed, as Donzelot notes, the role of policing in Continental Europe from the mid-eighteenth

---

<sup>102</sup> G. Canguilhem, ‘The Living and its Milieu’, *Grey Room*, 3, 2001: 7 – 31. Canguilhem argues that the term ‘milieu’ (*au mi-lieu*: in the centre of space), initially imported from Galilean and Cartesian mechanics into the biology of the late eighteenth century, was popularised in the life sciences during the early nineteenth century with the work of Lamarck and Comte. In French mechanics the term had served as an equivalent to Newton’s use of ‘fluid’, an etymology preserved by Comte’s biological usage which was intended to cover the “fluid in which a body is immersed”, though more broadly his understanding of milieu would account for the aggregate effect of external influences upon an organism as a distinct explanatory factor (i.e., it was around the 1830s that ‘internal’ and ‘external’ influences such as heredity and environment began to be prised apart as separate causal factors in biological thinking). Prior to this time, the understanding of environmental influence was caught in the same tangled causal web as heredity; as Canguilhem notes, “Even the notion of ‘climate’ in the eighteenth and early nineteenth centuries is a unified notion common to geography, astronomy, and astrology. Climate is the change in appearance of the sky [but] it is also the influence exercised by the sky on the earth.” (p.24) The process of disentangling internal and external causal domains in medicine and biology implicitly de-centred the organism, with *mi-lieu* no longer suggesting that something was at the centre of space, but ‘in the middle’ of two spaces, being caught up in the unfolding of extrinsic forces. Hence, the zoologist Louis Roule (1861 – 1942) was able to write in the late nineteenth century that “Fish don’t lead their lives themselves, it is the river that makes them lead it.” (p.12). This separation of causes and objects in the understanding of life had been completed by the late nineteenth century, where Hippolyte Taine was able to deploy ‘milieu’ alongside ‘race’ (a category including heredity) and ‘event’ as the three principles of historical explanation. (p.3)

<sup>103</sup> Clark and Crawford, ‘Introduction’, in Clark M. & Crawford C (eds.), *Legal Medicine in History*, Cambridge University Press, 1994, p.2

century to the late nineteenth-century was not framed in the narrow and repressive terms which we understand it today, but rather as a series of interventions operating across society which, in the words of an eighteenth-century treatise on the subject, took as their aim the promotion of “the good fortune of the state”, augmenting “its forces and its power.”<sup>104</sup>

In this particular case, it is necessary to separate England and Scotland since, during the early nineteenth century, Scotland (and particularly the administrative bodies located in Edinburgh) began to move toward the Continental tradition of state and legal medicine, distinguishing medical education and culture in the two nations. While doctors in early nineteenth-century England were aware of the lack of interest in the field of forensic medicine amongst their institutional writers, regularly complaining in the medical press that translations of the works produced by French and German doctors (which were of course applied to their native systems of codified laws) surpassed the meagre offerings produced by their compatriots, there remained no formal context for, or institutional interest in the Continental traditions of state medicine.<sup>105</sup> In Scotland, by way of contrast, a tradition of legal and state medicine analogous to that of the Continent, coupled with a more expansive understanding of policing in general, led to a system of ‘medical police’ that broadly paralleled the French and German models. Though the subject of medical jurisprudence had been introduced to the Edinburgh curriculum in 1792, it was initially considered a reactionary, suspect, and broadly useless body of knowledge by the University’s deeply conservative medical faculty, who associated the importation of Continental ideas with politically dangerous Revolutionary sympathies. However, by 1825 medical police had become a recognised and integral part of medical education in Scotland, helping to distinguish the medical schools of Glasgow and Edinburgh from those of England where, exceptionally amongst all the European nations, medical jurisprudence was still absent.<sup>106</sup>

---

<sup>104</sup> Johann von Justi, *Éléments généraux de police* (1768) cited in Donzelot, *Policing of Families*, p.7

<sup>105</sup> C Crawford, ‘A scientific profession: medical reform and forensic medicine in British periodicals of the early nineteenth century’, in R French and A Wear (eds), *British Medicine in the Age of Reform*, Routledge, 1991, pp.203-30 (p.204)

<sup>106</sup> B White, ‘Training medical policemen: forensic medicine and public health in nineteenth-century Scotland’, in M Clark and C Crawford (eds.), *Legal Medicine in History*, Cambridge University Press, 1994. Certain principles of medical jurisprudence were introduced to Edinburgh’s medical curriculum by Andrew Duncan with the publication of his *Heads of Lectures on Medical Jurisprudence* in 1792.

The development of forensic medicine and medical police in Scotland is consistent with the interest the nation's lawyers had shown in European legal thought (discussed in chapter five of this thesis), and in both cases it was historic ties between Scotland and the Low Countries, Germany, and France that provided what White calls "a fertile medium for the spread of Enlightenment thought, and its examination of man's relationship to society and the state."<sup>107</sup> Furthermore, the political and cultural peculiarities of Scotland's administrative capital city meant that certain notions that had taken root in the European states characterised by what George Rosen termed 'administrative absolutism' were able to gain a foot-hold in Scotland but not in England. As John Glaister Junior (who was, like his father before him, Professor of Forensic Medicine at Glasgow University) argued in the mid-twentieth century:

Forensic medicine or medical jurisprudence may be defined as the science concerned with the application of medical knowledge to the purposes of the Law. Since administration of the Law is a principal function of the State, *the close relationship which obtains between forensic medicine on the one hand and the State on the other becomes well established.*

This close relationship between doctors and state administrators, he continued, had begun in Edinburgh, where the medical profession had been granted a unique role in assisting with matters of state.<sup>108</sup> Brenda White had noted that the unification of forensic medicine and public health within a single university course taught to all doctors ('medical police') demonstrated that Scotland, in matters of public health, was in many ways closer to the Continental system of governance than it was to the liberal traditions of England during the nineteenth century.<sup>109</sup> Indeed, the Continental

---

The first Chair (held by Duncan) had been instituted in 1806 by Lord Erskine, a radical Whig then serving as the Lord Advocate, a position that ensured he had an almost unchecked influence over Scottish matters in Westminster. The Faculty of Medicine, dominated by Conservatives, initially refused to allow the Chair to practice within their rooms, and the course was taught from the Law School where the powerful patronage of Erskine ensured its success. It was not until 1825, a year after Robert Christison had succeeded Duncan as the Chair of Medical Jurisprudence, that the subject was recognised by the Edinburgh Medical Faculty and gained acceptance as a formal branch of medicine. (pp. 146-151)

<sup>107</sup> White, 'Training medical policemen', pp.145-45

<sup>108</sup> Glaister, 'Whither Forensic Medicine?', *British Medical Journal*, **245** (8), 1952, p.473 (italics added)

<sup>109</sup> White, 'Training medical policemen', pp.145-49. The Act of Union "left Edinburgh as a capital without a royal court or the trappings of political power", a situation that gradually gave rise to "an influential professional class" sustaining a "dense network of lesser nobility, lawyers, clergymen and doctors bound closely together by intricate familial relationships and political loyalties." It was this

understanding of ‘policing’ more generally was established in Scotland following the Scottish Police Acts and the creation of a unified police force in Edinburgh in 1806. David Barrie has shown that, in Scotland, municipal police forces encompassed a broad range of civic functions including keeping social order, maintaining amenities such as lighting and paving, and ensuring dwellings were kept clean and safe.<sup>110</sup> It was this notion of ‘policing’ in its broadest sense that informed the teaching of medical police to Scotland’s doctors, and the subject was always tied to a “fundamental concern about social order” amongst the ruling elite of Edinburgh, who wished in particular to develop a body of learned knowledge that could be applied to the understanding of crimes against property. As White argues, the figures who established medical police as an integral part of the Scottish curriculum:

grasped the changing nature of society after the political revolutions in America and France and the onset of industrialization. They realized the ultimate value of inserting medical knowledge into the delicate balancing mechanism of the new social order. This explains their agitation for the formalized academic teaching of medical jurisprudence and police to combat the social evils of crime and squalor. The former offered medical expertise to protect the individual and his property, the latter offered medical aid to protect the health of the community.<sup>111</sup>

This marks a significant context to the later nineteenth-century debates I will chart throughout this thesis, where psychiatry struggled to negotiate a place in this system of medical police in reference to discussions of physical and moral degeneration and habitual criminality. In addition, it suggests the importance of examining the debates which were produced at the intersection of psychiatry and the law. Psychiatrists, as members of Edinburgh’s medical community, were exposed to the influence of

---

close proximity of the heads of municipal authority to the centre of power that allowed for the administration of public health programmes in Scotland long before the mid-century Chadwick health reforms in England.

<sup>110</sup> While police forces were also established in the major cities of England around this time, their function was restricted more narrowly to the formation of a constabulary presence. See Barrie, *Police in the Age of Improvement: Police development and the civic tradition in Scotland, 1775-1865*, Willan Publishing, 2008

<sup>111</sup> White, ‘Training medical policemen’, p.149; The collectivist underpinning of medical police were underscored by Andrew Duncan, who wrote in the introduction to his *Heads of lectures on Medical Police* (1801) that the subject was even more important than medical jurisprudence, for while the latter protected the rights of the individual in society, the former was aimed at protecting the well-being of the whole population

medical police, encouraging them to think legalistically as well as medically, analysing the broader social and political ramifications of their doctrines on the mind.

### 3. A Double Tide of Barbarians: Heredity and Degeneration in French Psychiatry

#### 3.1 Introduction

From its first appearance in Morel's *Traité des dégénérescences* (1857) the idea of degeneration attracted wide interest amongst psychiatrists throughout Europe.<sup>112</sup> The essential elements of Morel's system – postulating a progressive degeneration of certain family lines as a result of morbid heredity – are well known and have been covered extensively in the scholarly literature.<sup>113</sup> As many commentators have noted, the unification of science and theology was a central concern for Morel, whose worldview was fervently Catholic, marked as it was by a general pessimism concerning the inevitability of human wickedness. Indeed, Morel opened his treatise with a discussion of Genesis before going on to argue that modern society had placed mankind in an unnatural situation replicating the conditions of the Fall, with exposure to toxins and industrial towns representing the original sin of the nineteenth century.<sup>114</sup> Hence, while his system depicted a living world subject to immense change, it was at the same time kept in equilibrium, since the eventual sterility of a degenerate line served a compensatory mechanism through which natural law could combat human fallibility; as Morel put it, “by nature's law of conservation, the individuals guilty of excess are struck with debility”, a punishment which would return in their offspring with ever greater intensity until the degenerate line was erased from history.<sup>115</sup> Yet his system was at the same time permeated by optimism, emphasising that individuals could escape the cycle of decline through the intervention of psychiatrists.

---

<sup>112</sup> B. A. Morel, *Traité des dégénérescences physiques, intellectuelles et morales de l'espèce humaine : et des causes qui produisent ces variétés maladives*, Paris: J.B. Baillière, 1857.

<sup>113</sup> See in particular Coffin, *La Transmission de la Folie*, pp. 25-45; Coffin, 'Heredity, Milieu and Sin: the works of Bénédicte Augustin Morel (1809-1873)', in *A Cultural History of Heredity II: 18<sup>th</sup> and 19<sup>th</sup> Centuries*, Max Plank-Institut für Wissenschaftsgeschichte, 1993 Conference, Preprint 247: 153-164; Harris, *Murderers and Madness*, pp. 52-55; Dowbiggin, *Inheriting Madness*, pp. 116-120; Pick, *Faces of Degeneration*, pp. 44- 50. An excellent short overview of degeneration theory can be found in Françoise Bing, 'La Théorie de la dégénérescence', in J Postel and C Quétel (eds.), *Nouvelle histoire de la psychiatrie*, Toulouse, 1983, pp. 351.356.

<sup>114</sup> Morel, *Traité des dégénérescences*, p.vi.

<sup>115</sup> *Ibid.*, p.95

In this discussion I draw upon the prominent themes raised by Morel's discussion of degeneration, situating them both within the context of Morel's treatise and the activities of the *Société Médico-psychologique*, France's professional organisation for asylum doctors. I focus on the major ideas that were introduced by Morel's text before turning to look at the role these played in the institutional environment of French psychiatry. I then turn to examine how these ideas were developed by another prominent psychiatrist, Valentin Magnan, outlining the French context for degenerationist debate that was taken up in Great Britain. Finally I consider a brief case-study, examining the restrictions placed on the psychiatric theory of heredity faced when it was advanced as evidence of insanity in courts of law.

### **3.2 Alcohol, Heredity, and Degeneration in Morel's First Treatise**

Of the huge array of topics Morel introduced with his treatise, perhaps the single most important for psychiatry was the distinction between the natural and unnatural (morbid) modifications of the human being to its surrounding. Modification had been a familiar concept in the eighteenth-century French tradition of natural history stretching from Buffon (1707 – 1788) to Bichat (1771 – 1802) and, by the mid-nineteenth century, was commonly used to provide an anthropological account of the elevation of the faculties and the development of moral sense without appealing to divine origins.<sup>116</sup> The general form of this argument typically followed the theory of degeneration Buffon had outlined in his *Histoire naturelle*, the first three volumes of which had got him into a spot of bother with the Jansenists for making “reprehensible statements” on generation that ignored the account provided in Genesis. Keen to avoid censure through placement on the Index of Forbidden Books, Buffon altered his account to bring his theory into line with the ‘kinds’ of Genesis (Genesis, 1: 11-25), maintaining that each species bore an essential property which was attested by the cross-fertility of its formally divergent individual members.<sup>117</sup> Buffon listed climate,

---

<sup>116</sup> A concise yet detailed summary of this tradition can be found in Phillip Sloan, ‘The Idea of Racial Degeneracy in Buffon's *Histoire Naturelle*’, in Harold Pagliaro (ed.) *Studies in Eighteenth Century Culture*, Vol. III., Cleveland, 1973: 293-321.

<sup>117</sup> F. N. Egerton, ‘A History of the Ecological Sciences, Part 24: Buffon and Environmental Influences on Animals’, *Bulletin of the Ecological Society of America*, 88 (2), 2007: 146-159 (146-147). For these reasons the historian Jacques Roger has argued that it is impossible “to see in Buffon a precursor of transformism”, for: “On the biological level, the products of degeneration were for him never, properly speaking, anything more than varieties within a species. One could relate the peccary to the pig and the

nourishment, and domesticity as causes of change in the constitution of animals – a principle that was extended to humans simply by substituting the influence of civilisation (custom, manners, and education) for domesticity – to provide a ‘natural history’ of each species.

Elements of Buffon’s theory of variation remained in Morel’s system as an explanation for ‘normal variation’, and on this level the theory of degeneration continued to account for organic change within the framework of natural modification. For instance, Morel argued that Northern Europeans who had migrated to the tropics came to display certain physiological changes accompanied by a depression of vital functions – a degeneration serving as a sobering lesson for European colonisers – and discussed in his treatise the work of a Dr Yvan, noting that the Portuguese inhabitants of Malacca, descendents of Vasco da Gama living in the jungles around Mount Ophir, had degenerated under the influence of the foreign climate to their current “pitiable condition”.<sup>118</sup> Yet at the same time Morel’s theory of degeneration was recognised by his contemporaries as a significant break with the tradition of natural modification, for he added the concept of a deviation that could introduce “abnormal conditions” into the species itself, producing “races capable of perpetuating themselves with a special typical character”.<sup>119</sup> This was a point Morel’s colleagues in the medical profession were keen to draw attention to. As Philippe Buchez, Christian socialist minister and one of the leading figures of the Société Médico-psychologique put it, where Buffon had detected only the “simple pathological modifications” that were not “considered alterations of human nature”, Morel had gone much further in postulating a modification of the human that departed from the natural order.<sup>120</sup> Thus, while the eighteenth-century tradition of natural variation had emphasised only those variations occurring within the fixed limits of an unchanging species, Morel’s treatise had introduced a new terminology of ‘unnatural’

---

jaguar to the panther, but that was all. . . . On a deeper level, that of the knowledge of nature, Buffon’s science required a permanent and immutable order, without which man could not know the reality of things, for that reality would be perpetually fleeting and temporary.” Hence, within the latitude allowed by genera and species, the fixity of forms was essential to Buffon’s theory since it “brought order to diversity and permanence to the succession of beings”, producing what he saw as a truly scientific (that is, ordered) account of the living world. J Roger, *The Life Sciences in Eighteenth-Century French Thought*, Stanford University press, 1998 (Trans., Orig. 1963), p.468.

<sup>118</sup> Morel, *Traité des dégénérescences* pp. 414-420.

<sup>119</sup> Morel, op. cit., p.4

<sup>120</sup> Cited in Pick, *Faces of Degeneration*, p.60



or 'morbid' modifications along with the notion of an organic form incapable of adapting to its environment. Once present these modifications tended to build an internal pathological momentum propelling the family line or race toward infertility, eventually severing degenerates from the essence of their humanity. As the *British Quarterly Review* noted in 1859 (the first discussion of these ideas in a British journal), Morel's theory of natural and unnatural heredity provided a fresh exposition of the principles of Uniformity and Diversity that had been long held in the natural sciences, though he still maintained that "the dwarf and the giant, the black and the yellow, the philosopher and the imbecile" resembled one another more closely than they did the ape.<sup>121</sup>

While Morel's attempt to dismantle the theory of fixed species was acknowledged as a significant contribution to natural philosophy by his contemporaries, the question presents itself as to why an asylum doctor working in a small institution in the Rouen was concerned with modifying theories of descent and transmission. Equally puzzling is the rapid recognition he received from his peers at the Société Médico-psychologique who deemed him to have rendered a great service to mental medicine. In order to answer this problem we must locate the significance of Morel's concept of morbid modification within the structure of his first treatise, seeking to understand the role of maladaptation in reference to the three principal themes his psychiatry addressed:

1. The delicate nature of the nervous system, poised between mind and body, which rendered it particularly susceptible to mal-adaptations and abnormalities. If the essence of human superiority consisted in a precarious balancing of the physical and the mental, understanding the processes capable of disturbing this balance would be of great advantage to medicine.
2. In Morel's system mental disorder presented itself only in the final stages of the degenerative process, with asylums for the insane collecting together various degenerations of the human race.<sup>122</sup> The theory of degeneration

---

<sup>121</sup> 'Anon', 'Physical and Moral Heritage', *British Quarterly Review*, **29** (57), 1859, pp.3-56. (p.5)

<sup>122</sup> Morel, op. cit., p. xxi

therefore allowed the asylum to serve as a laboratory for research into the causes and consequences of humanity gone wrong.

3. Since the naturalist's model of the species accepted a great variance between types it was necessary to develop a theoretical tool capable of distinguishing the natural adaptations observed in different racial groups from the abnormal adaptations constitutive of degeneracy.

If psychiatrists could establish a link between fragile psycho-somatic balance, the aggregate of degenerate beings in their asylums, and the broader themes of descent, race, and transmission, then they could distinguish their discipline from general medicine. As such it was precisely the elements of Morel's theory that seem speculative to a twenty-first-century observer that made it scientifically interesting to mid-nineteenth-century psychiatrists. Indeed it was the third, anthropological concern that really interested Morel, since it suggested that by *measuring* degrees of difference an essential quality could be determined. Medical writers needed to be sure that they were describing *degenerations* amongst European populations rather than natural adaptations to changing surroundings. To establish the essential difference between degeneration and variation was therefore to postulate a means of separating questions of qualitative difference – the distance between civilised and savage races – from quantitative differences – the distance between normality and degeneracy. While degeneration theory in Morel's treatise rested upon the language of colonialism, it was not intended to pursue colonial ends, and it evoked colonial presences only to amplify the disorder, and danger, of Europe's indigenous degenerates. As Daniel Pick has observed, the development of theoretical tools such as evolutionary anthropology and psychiatry were not only used to “differentiate the colonised overseas from the imperial race, but also to scrutinise portions of the population at home.”<sup>123</sup> Thus, for instance, when Morel described the difference between “the luxurious Eastern and the energetic European” or, pursuing ever more distant anthropological speculations, the “Esquimaux who gorges himself with whale's blubber in his hut of snow” and the “African starveling who pursues the lion under a tropical sun”, he was only seeking to widen the parameters of natural variation against which the European degenerate could be compared. In portraying the natural variations to which humanity was

---

<sup>123</sup> Pick, *Faces of Degeneration*, p.39.

subject in such colourful terms he nonetheless took it for granted that the “intellectual inferiority” found amongst “primitive peoples” did not “necessarily involve the idea of a morbid state, as observed in true degeneration.”<sup>124</sup> It was therefore necessary to distinguish between the “lowest forms of *natural* modification, such as the Hottentots and Bosjesmans” and the “true morbid degenerations” found in the insane asylums of Europe.<sup>125</sup>

By reconfiguring the taxonomical systems of psychiatry Morel sought to draw attention to the relevant distinction between natural and pathological modification, emphasising the degree of difference between normal and abnormal states. This position nonetheless avoided facile racial stereotyping, and Morel was keen to point out that the “lowest Bosjesman” and the “most civilised European” were far more similar in their mental powers than were the normal and degenerate European. Furthermore, while the normal Bosjesman’s child was able to ascend the ladder of complexity under the right conditions, the born degenerate of any race could only hope for an “amelioration” in his condition, becoming temporarily relieved of the symptoms of a degeneracy whose “hereditary influence” would “*always weigh upon his descendents*” causing him to “remain all his life what he is in reality, a specimen of degeneration in the human race, an example of *morbid deviation from the normal type of humanity*.”<sup>126</sup>

We can see that while Morel was not unduly pessimistic about the prospects of the ‘lower races’, the members of which could be elevated through education and civilising projects, his system of classification did not offer similar hopes for those degenerates found within a race or nation, designated with the label of “the dangerous classes” and requiring a different approach in both medicine and jurisprudence. Here Morel contended that degeneration created dangerous beings whose incapability of reform rendered psychiatric intervention in the field of state and legal medicine essential, yet at the same time the situation could not be a hopeless one if the expert’s remedial role was to be preserved. A paradoxical tension between degeneration and regeneration, intractability and therapy was characteristic of most psychiatric writing

---

<sup>124</sup> Morel, *op. cit.*, p.25.

<sup>125</sup> Morel, *Ibid.*, pp. 40-44.

<sup>126</sup> Morel, *Ibid.*, pp. 45.

in the second half of the nineteenth century. These tensions were nowhere more evident than in Morel's discussion of the "deplorable confusion" in the medical treatment of degenerates, for on the one hand he advised psychiatrists that "moral therapeutics ought to be exercised" whenever a degenerate was discovered within their asylums, while on the other he spoke of the "sadly disappointed hopes" of those members of the profession who had directed "all the force of their medical powers towards the cure of unmodifiable beings" who were "not the representatives of any simple and isolated pathological condition, but of the entire degenerative elements of their ancestry."<sup>127</sup>

If the danger posed by such degenerations remained unclear to the public, Morel made his argument all the stronger by appealing to the noxious influence of alcohol upon the race. Morel, it must be noted, also considered the degenerative effects of various alimentary and environmental dangers, such as lead poisoning and inadequate diet, along with the consumption of drugs such as opium and hashish.<sup>128</sup> However, the discussion of these latter was rooted in an Orientalist account of Chinese and Near Eastern habits which served primarily to give his readers a "striking analogy" of foreign practices with European drunkenness (a pattern later writers, particularly Thomas Clouston in Scotland, would follow in their discussion of non-European drug-induced states of mind.) This division of East and West was drawn from Morel's former student, Moreau de Tours, who dealt in particular with the Eastern hashish eater, though the difference in patterns of indulgence was related in the former's treatise to the "predominance of the lymphatic temperament" in the Orient, a temperamental difference which accounted for the "absence of those motives for over-excitement of the functions of the brain found in Europeans."<sup>129</sup>

While alcohol was part of a broader toxicological discussion of 'racial poisons' in Morel's work, it remained the chief vector of European degeneracy, both

---

<sup>127</sup> Morel, *Ibid.*, p.487.

<sup>128</sup> Morel devoted 40 pages of his treatise to both the physiological effects and the hereditary consequences of alcoholism, 7 pages to hashish, 15 to opium, 15 to tobacco, and over a hundred to the various alimentary and environmental toxins and the statistical evidence for their influence on degeneration. Hence, alcohol was the single most prominent cause of degeneration discussed in his work, though his overall discussion was clearly tilted toward issues of 'environmental' degeneration.

<sup>129</sup> Morel, *Ibid.*, p.561 For a discussion of the cultural resonance of these debates within and beyond French medicine in the nineteenth century see Tony James, *Dream, Creativity, and Madness in Nineteenth-Century France*, Oxford University Press, 2005, pp. 98-130.

biologically and socially. Morel acknowledged the contributions of earlier medical writers who had described the toxic effects of alcohol – in particular the Swedish physician Magnus Huss (1807-1890), from whom a large part of his own clinical data was borrowed – though he was quick to point out that the symptoms previous physicians had described were by no means the worst effects of the condition, since they were suggestive of “isolated facts, terminating with the individual” and overlooked the real dangers arising from alcohol’s tendency to infect the race itself. Huss had first described the condition of ‘chronic alcoholism’ in the 1840s by collecting the various physiological and moral complications caused by excessive drunkenness under a single diagnostic heading.<sup>130</sup> While Huss’s descriptions of the pathology of drunken individuals were hugely influential amongst his contemporaries in the world of European medicine (in spite of his decision to publish in Swedish rather than French or German), he demonstrated little interest in aligning his ideas with debates about heredity diathesis or the fate of the European race. Rejecting the suggestion that the propensity to drink could be inherited, he exercised caution against painting an overly bleak picture of the alcohol problem. Such caution was not unusual during this period, indeed in 1849, when Huss received the Monthyon prize for his work on alcoholism, the President of the French Academy noted that “there are perhaps lots of drunkards in France, but fortunately there are no alcoholics.”<sup>131</sup> Similarly, when in the 1840s French doctor and hygienist Louis René Villermé published a series of influential discussions of the living conditions of drunken textile workers under the July Monarchy, he made no suggestion that the poor health and overindulgence of this group was the result of anything other than circumstance (this is not to say that the accounts of Huss or Villermé were not moralistic in tone however).<sup>132</sup>

It was as part of this project of state-science that Morel’s treatise, presented as a work of *physical and moral hygiene*, attempted to render a “service to legal

---

<sup>130</sup> On Huss see J. Sournia, *A History of Alcoholism*, Basil Blackwell, 1990, pp. 44-50.

<sup>131</sup> B. Dargelos, ‘Une spécialisation impossible: L’émergence et les limites de la médicalisation de la lutte antialcoolique en France (1850 – 1940)’, *Actes de la recherche en sciences sociales* (156-157) March 200: La spécialisation de la médecine XIXe-XXe siècles: 53- 71 (54).

<sup>132</sup> For a discussion of these events, see Louis Chevalier, *Labouring Classes and Dangerous Classes in Paris During the First Half of the Nineteenth Century*, New York, 1973.

medicine” by assisting the “personal and hereditary” victims of alcoholism.<sup>133</sup> Once again however, the paradoxical tension between degeneration and regeneration was raised, for while Morel indicated that his theory would serve both law and science in combating alcoholic degeneration, he also drew attention to the “almost utter impossibility of escape from the [degenerate] hereditary type once stamped upon the race”, going on to note of alcoholics that:

When degenerates of this category have spent some time in a house of recovery they are restored to their higher faculties and sentiments and will solemnly promise to mend their ways if it will assist them in gaining health and liberty. In such cases, the intervention of [administrative] authorities or the family may force upon the doctor a decision which, in time, all concerned will come to repent. In my time presiding over such facilities I have never witnessed the recovery of a single alcoholic degenerate whose predisposition to drink was descended from parental vice. Upon leaving my establishment, these types invariably revert to their old habits and must once again be removed from society so that the same cycle can begin anew, each time precipitating the advance of degeneration in the race a little further.<sup>134</sup>

This statement reveals much about the inner workings of degeneration theory in psychiatry: notice, for instance, how many ‘political’ points are concealed within a simple description of the alcoholic degenerate. The concept of heredity had a long and politically engaged history in French medicine, and Morel’s own understanding of this term was clarified in a section of his first treatise discussing the “way of understanding the action of heredity in the production of degenerates”, a section in which he introduced the “law of double fecundation.”<sup>135</sup> With this law Morel made two important clarifications concerning his use of the term. Firstly, he made it clear that when he described degeneration as a condition perpetuated through heredity, he did not mean to imply that it involved the *direct* transmission of a static malady from parent to child. Degeneration was rather the acquisition of an organic *predisposition* to develop similar abnormalities (diathesis). Secondly, he emphasised that imprudent behaviour could instigate this ‘heredity’ trait in an individual not otherwise

---

<sup>133</sup> Morel, *Traité des dégénérescences*, p.xxxiii & p.381 (c.f. also Morel, p.343: “I have been long accustomed not to think of mental alienation as an isolated phenomenon; this is seemingly a simple principle, though its application indicates the great complexity of the evil and the necessity to find a starting point [for our enquiries] which lies outside of the individual.”).

<sup>134</sup> *Ibid.*, p.118 n.1.

<sup>135</sup> *Ibid.*, pp.564 -572.

predisposed.<sup>136</sup> Hence, the double fecundation of hereditary degeneracy meant there was no clear way for the lay observer to disentangle cause from effect; a drunkard may be causing degeneracy within the race, though she may also be merely acting out its consequences (a position with clear medico-legal significance).

In concluding his discussion of the scientific significance of the discovery of double fecundation, Morel argued that alcoholic intoxication served as the most noteworthy example of its effect, since the children of alcoholics were prey to both constitutional abnormality and a moral environment that tended to encourage further vice.<sup>137</sup> The public danger of this dual exposure to heredity and milieu was emphasised by the typical cases of ‘racial’ (familial) degeneration outlined in the treatise, proceeding from the first to the final generation in the following way: Depravity and alcoholic excess; hereditary drunkenness; systematic ideas of persecution and homicidal impulses; stupor, *extinction of the race*.<sup>138</sup> Once again, the political dimensions of this sequence are manifest, particularly in the way that psychiatry’s service to public hygiene was underlined by connecting together petty acts such as alcoholic excess, immediate threats to the public order such as homicidal impulses, and the potential for racial dissolution. The immediate remedy to this situation required placing degenerates in asylums (though of course in a certain sense all of those in asylums were, according to Morel’s system, already degenerates). However, it is likely that the idea was directed more toward the realm of forensic psychiatry, underwriting the expertise of the psychiatric witness in the detection of criminals.<sup>139</sup> Following the sequence Morel had outlined time and again in his treatise, degenerates were shown to be potentially dangerous to society, both directly in the presence of homicidal impulse and indirectly in their ability to transmit degeneracy in still more severe forms to future generations. In short, this was the ultimate expression of a psychiatric strategy that sought traces of danger in the slightest act, creating a

---

<sup>136</sup> Ibid., p.565.

<sup>137</sup> Morel, Op. Cit., p.653.

<sup>138</sup> Ibid., pp.125 – 126: For instance, Morel outlines a family descended from a man killed in a drunken quarrel at the cabaret. His son inherited this moral lesson, which became subject to somatic heredity and was passed on to the grandson. In time the family arrived at the great-grandson of the Adamic drunkard, a sterile imbecile in whom the race terminated.

<sup>139</sup> As Ruth Harris has argued, “most of the medico-legal specialists [in France] placed an immense emphasis on the hygienic aspect of their work”, particularly as it related to the theory of degeneration; *Murderers and Madness: medicine, law, and society in the Fin de Siècle*, Oxford: Clarendon, 1989, p.75.

continuum between the minor offender and the decay of the race. According to this system, far from dealing with petty drunks, psychiatry protected the public from the future production of brutal murderers, and when it dirtied its hands with insane killers, it did so in service of the future of the race itself. Preventing the implicit consequences of this sequence of decline at an early stage suggested the necessity of psychiatry's place within the modern state.

It is clear from the portions of Morel's first treatise discussed above that its author did indeed envision a prominent role for psychiatry within the constitution of the modern state, and that he used degeneration theory to emphasise both the social utility and scientific credibility of psychiatric knowledge. Morel's two strategies for the control of degeneration, the promotion of the moral law and prophylaxis, mapped roughly onto the series of great polarities which structured nineteenth-century thought: Evangelicalism and Benthamism, Punishment and Reform, Heredity and Milieu, Man and Animal, God and Nature. While all of these themes were present to a greater or lesser extent in Morel's work, they would only be drawn out fully by subsequent commentators, who saw in his system the means of restructuring psychiatry as part of a programme of public hygiene. However, as noted above, while Morel emphasised each of the elements in these polarities, his discussion already appeared as balanced toward one extreme. While the promotion of the moral law and prophylaxis seemed to mirror the popular missions that were spreading the idea of personal restraint and civilisation to the masses, Morel suggested that the moral law could only be implemented in those of a sound biological organisation, or that different degrees of abnormality perverted the moral instincts to a different extent. Thus, "the duty of the physician" did not end with the treatment of transitory cases of illness, but called for a perpetual intervention in the life of the masses. This perpetual intervention already suggested the predominant role that would be played by the second strategy of prophylaxis; if the moral regimens of the physician were destined to fail in more severe cases of degeneracy, he would be called upon to dispatch his patients to the prison or asylum, ensuring that society was relieved of danger.

Morel did not see an intractable contradiction in this method of moving hopeless degenerates between freedom to participate in a moral therapy which they lacked the inner will to follow and compulsory detention for the benefit of the race,



but it is not difficult to see why later generations dispensed with his moral method of curing deviance and strengthened the rhetoric surrounding the second, eugenic method. Hence, perhaps the most obvious thing we can say about degeneration is that, in its deliberately vague formulation, it was left open to subsequent reinterpretation and reapplication by a future generation of doctors. The first of these reinterpretations was an almost inevitable development of Morel's system itself, involving a gradual extension of his pathological metaphors to encompass ever wider social and medical phenomena. As Jean-Christophe Coffin has argued, the tendency of degeneration to draw on provocative images and metaphors far removed from neutral description of clinical facts ostensibly employed by psychiatrists made it an appealing framework within which to situate accounts of mental disease; indeed, it was perhaps the power of degeneration to free doctors from the sterility of these descriptions that led to its continuing popularity, particularly in the 1880s. Indeed, he continues, on the one hand it should not surprise us to see degeneration employed so widely by physicians and psychiatrists; doctors of the period were undoubtedly 'moralists', observing the social organism with all the anxieties characteristic of their age and experiencing little motivation to question the assumptions of an underlying general state of pathology. However, writes Coffin, it is surprising to note that the theme of degeneration favoured "an excessive production of fantasmic language and imagery", creating a situation in which later writers, such as Arthur Bordier, could "evoke hospitals in which the entire population consisted of degenerates, scenes said to be described brilliantly by Morel, even though the latter had never said anything of the sort."<sup>140</sup>

Thus, following Morel's proposal of degeneration theory, there was amongst French commentators an increasing tendency to describe threats to the national stability, particularly in the immediate aftermath of the intense period of crisis that shook the political and social order during the early 1870s. The social crisis following the Prussian siege and the Paris Communes of the early 1870s brought the French nation's problems into particularly sharp focus. Military defeat at the hands of an emergent foreign power followed by the insurrection of the masses at home generated

---

<sup>140</sup> Coffin, *La Transmission de la folie*, pp.118-119 Bordier penned the entry on degeneration that appeared in the *Dictionnaire des sciences anthropologiques* of 1884. Though Bordier's article was not strictly psychiatric, his entry being for the most part a study in juvenile delinquency, he nonetheless displayed the extent to which broader anthropological, sociological, and philosophical concerns with degeneration were able to translate across the disciplines.

the widespread perception of a nation sapped of its vitality, a sentiment captured in Proust's narrative recollection that, when the young Marcel had raised the subject of the Art for Art's Sake movement in conversation with a diplomat, he had been rebuked for his preoccupation with insignificant topics at a time when France "may be overwhelmed at any moment by a double tide of barbarians, those from without and those from within our borders."<sup>141</sup> The social disturbances of the early 70s were followed by a significant change of political leadership during the following two decades, as the republicans rose to power and re-oriented the branches of the State, attempting to expunge Catholicism from the French intellectual landscape. While there had been a tradition of intimacy between the State and psychiatry dating back to the confinement laws of 1838, the political and ideological network that linked the concerns of psychiatry to those of the governing bureaucracy was to tighten following the republicans' rise to political dominance, producing an "almost feverish collaboration" between psychiatry and the State.<sup>142</sup> The anti-clericalism of the Third Republic was tied to a number of factors, particularly in its fear of the "clerico-monarchist influence in certain sectors of the social elite, notably the officer corps of the Army", a fact which weakened the ability of the "fledgling Republic" to defend itself from the internal and external threats it faced, though the influence of ideological re-orientation was also palpable in the State's attempt to wrest the control of education from the Catholic institutions which had historically catered to the nation's poor.<sup>143</sup> The fact that huge swathes of the country did not speak French, or spoke it only as a second language without affiliating themselves with any particular 'French identity', only served to strengthen the perceived need for a unified programme of reforms.<sup>144</sup> This then was a process of 'State creation' and nation building under which psychiatry hoped to secure a prominent position.

This process of constructing a national identity was not of course unique to France; as Eric Hobsbawm argues in reference to Britain, the function of primary

---

<sup>141</sup> Proust, *Within a Budding Grove*, p.52.

<sup>142</sup> Goldstein, 'The Hysteria Diagnosis', p.223. On the 1838 confinement law see J Postel and C Quélet (eds.) *Nouvelle histoire de la psychiatrie*, Toulouse, 1983, pp. 176-79; Jan Goldstein, *Console and Classify*, chapter 6 (pp. 276 – 321) ; Castel, *The Regulation of Madness*, p.249; Foucault, *Abnormal*, p.141.

<sup>143</sup> William Keylor, 'Anti-Clericalism and Educational Reform in the French Third Republic: A Retrospective Evaluation', *History of Education Quarterly*, 21 (1), 1981: 95 – 103 (98)

<sup>144</sup> On this see Eugen Weber, *Peasants into Frenchmen: The Modernization of Rural France, 1870 – 1914*, Stanford University Press, 1976.

schools during this same period was, beyond teaching the “rudiments of literacy and arithmetic”, to “impose the values of society (morals, patriotism, etc.), on their inmates.”<sup>145</sup> Yet in France the process expressed itself in almost all facets of institutional life, from education to medical administration the organs of the State were mobilised to denounce the Catholic ideals which had formerly policed the nation. Up to the eve of the Third Republic, psychiatrists had been kept under close surveillance by the clerical wing of the Bonapartist government, which was both sympathetic to the Church and reliant upon it to monitor the ideological purity of its civil servants. These clerical observers felt philosophical materialism to be particularly noxious, and went to great lengths to expunge it from the academy; for instance, a medical degree awarded by the Paris Faculty of Medicine in 1867 discussing the penological implications of the non-existence of free-will was annulled by the University’s academic council when they discovered its materialist content.<sup>146</sup> Suddenly, under a Republic which rallied to Gambetta’s cry “Clericalism, there’s the enemy!” psychiatrists found themselves operating under a new ideological orthodoxy, one which not only struck the shackles from materialism, but actively encouraged them to launch excoriating attacks on the beloved ideals of the clerical establishment.<sup>147</sup>

While Esquirol and his contemporaries had not insisted on somatic classification, the republican generation of psychiatrists began to discover a proliferation of somatic illnesses, gradually displacing moral and psychological explanations from their descriptions of insanity.<sup>148</sup> Hence, psychiatrists and medical jurists were offered a particular incentive to storm the Bastille of Free Will as the Republican backlash worked tirelessly to repudiate the ideas clericalists had so diligently preserved: a fact which goes some way to accounting for the sudden explosion of texts discussing mechanistic legal philosophy during this period. On a more general level, the presence of a codified system of laws in France defined

---

<sup>145</sup> Eric Hobsbawm, *The Age of Capital, 1848 – 1875*, Abacus, 2004, p. 118

<sup>146</sup> Goldstein, ‘The Hysteria Diagnosis’, pp.224-6.

<sup>147</sup> Gambetta Cited in Weber, *Peasants into Frenchmen*, p.359. This new spirit of republicanism was not entirely in favour of the psychiatric profession. While a figure like Gambetta may have fraternised with Charcot and encouraged materialist psychiatric debate, he was a staunch opponent of the 1838 confinement laws and participated in civil liberties actions against them. See Ruth Harris, *Murderers and Madness*, p.74.

<sup>148</sup> Goldstein, ‘The Hysteria Diagnosis’, p.216.

sharply the terms according to which psychiatry would be accorded its role as a legal speciality, producing a well regulated profession which clearly understood the rules of the game being played. While the 1838 law had formalised psychiatric dominance of the asylum network in France, requiring each of the country's administrative districts to maintain a public asylum staffed by a medical superintendent, it simultaneously empowered and impeded psychiatrists. Firstly, and somewhat inevitably, it was never fully enforced.<sup>149</sup> Secondly, and more damagingly, by allowing doctors unrestricted power of certification, it had dispossessed the traditional authorities of their right to oversee asylum confinement, creating a vengeful judiciary that instantly turned against the new institutional role of psychiatry. In the early 1860s, Jules Falret complained at a meeting of the Société Médico-psychologique that; "The law of 1838 and the asylums for the insane are being attacked on all sides. In the press, in books, at scientific congresses . . . It is proposed to overturn everything, destroy everything . . . A veritable crusade has been preached for some years against the present-day organisation of institutions for the insane."<sup>150</sup> Thus, when Morel spoke about the 'fact' of rising insanity, and denounced any attempts to relate this to an increased use of the 1838 laws, he was "merely reiterating a consensus view" shared by members of the Société Médico-psychologique.<sup>151</sup> It was against this context that French psychiatrists sought to change their rhetoric and appeal for clemency from a hostile public. Far from being omnipotent asylum-keepers willing to lock up innocent citizens, they began to send out the message that they were public health officials engaged in a war against the scourges of French society – crime, alcoholism, madness, and above all, racial degeneration.

Furthermore, as Bertrand Dargelos had shown in regard to the French anti-alcohol campaigns, an increasing number of physicians and surgeons working in France around this time argued that widespread alcoholic intoxication was to blame for their occasional professional failures, a move coupled with a growing sense amongst the members of Academy that they possessed no effective means of combating public drunkenness. Indeed, Dargelos notes, it was not within the asylums of France, but at the *Académie de médecine*, "temple" of the elite university hospital

---

<sup>149</sup> Castel, *The Regulation of Madness*, pp. 219-242.

<sup>150</sup> Cited in Castel, *The Regulation of Madness*, p.220.

<sup>151</sup> Harris, *Murderers and Madness*, p.59.

system, that the standard account of the “danger of alcoholism in a process of degeneration of the ‘race’ [was] modified, discussed, and formulated officially.” Thus, a little over a decade after Morel had first proposed degeneration as a theory within the field of psychiatry, it had made the jump to other branches of pathology and social commentary, and in 1870 professor Verneuil, a member of the Academy’s surgical pathology section, was denouncing the alcoholic degenerate as a blight upon the surgical profession who ought to be removed from the statistics, arguing that most instances of surgical failure were not due to medical incompetence, but to the degenerate body’s unsuitability for medical intervention.<sup>152</sup> This popularisation of degeneration was a mixed blessing for psychiatry. Certainly it seemed to provide a wider medical support for psychiatric claims concerning degeneration, alcoholism, and heredity, but at the same time it tended to inflect psychiatric terminology with so many other background assumptions and tacit understandings that the specificity of the psychiatric contribution to this debate became distorted. Hence, a later generation of French psychiatrists, led by Magnan, had to begin a new struggle to reclaim the alcoholic and the degenerate for clinical psychiatry.

### **3.3 Valentin Magnan: The St. Paul of Degeneration Theory**

The evocations of a host of commentators outside the field of clinical psychiatry show that while Morel had founded a new system of thought, its very success took it quickly away from its origins in the world of the asylum. In both the medical discussion of alcoholism and the reshaping of degeneration theory it was the tireless work of Valentin Magnan (1835-1916) that sought to re-establish these fields as an integral element of psychiatric discourse.<sup>153</sup> Coffin has argued that Magnan’s importance to psychiatric history is based primarily on the introduction of two

---

<sup>152</sup> Dargelos, ‘Une spécialisation impossible’, pp.58-59; Valentin Magnan opened his 1874 treatise *On Alcoholism* by noting that: “In the learned discussion which was raised in the Academy by M. Verneuil, on the serious character of traumatic lesions and surgical operations on alcoholised persons, MM. Béhier and Chauffard endeavoured to shew the physical and intellectual demoralization which those who are addicted to alcoholic liquors prepare for themselves . . . Both to surgeons and physicians, the drunkard is an exceptional subject; he feels, suffers, and reacts in a manner different from other patients.” V Magnan, *On Alcoholism, the various forms of alcoholic delirium, and their treatment*, London: H K Lewis, 1876 (trans.), p.1.

<sup>153</sup> For a biography of Magnan and a discussion of his role in French psychiatry see Coffin, *La Transmission de la Folie*, pp.123-141; An earlier, more concise summary of his life was published in the AMP by Magnan’s pupil at Sainte-Anne, Paul Sérieux; ‘V. Magnan (1835 – 1916)’, *Annales médico-psychologiques*, **15**, 93, 1935: 713 – 714.

developments to degeneration theory which, without being completely novel, none the less marked out a distinctive place for him amongst his peers. Firstly, he emphasised that the progressive deterioration of a degenerate could be witnessed within a single patient (whereas, for Morel, it was only the transmission of the condition which caused it to become progressively more severe).<sup>154</sup> Hence, the sequence of degeneration became a condition of perpetual remission and relapse within the affected patient. In 1894 the General Council of the Seine decided to heed Magnan's campaign for special medical facilities to deal with alcoholics and voted to construct France's first special asylum for alcoholics with mental symptoms, the Maison Blanche. The pragmatic solution to classification eventually adopted at this institution relied on assessing the number of times a patient had lapsed back into their old ways following an initial cure. Secondly, Magnan extended the field of application of the concept of degeneration to include 'normal' patients, an extension that was to have medico-legal significance in later years (hence, he made it a truly clinical theory rather than an element of intra-national anthropology as it had previously functioned).

Though Magnan's role in the Société Médico-psychologique has been discussed in many historical accounts of psychiatry, his importance is, as Ian Dowbiggin has argued, often understated.<sup>155</sup> Magnan's role in spreading degeneration theory was entirely different to Morel's: He wrote no grand tomes, but instead published many important articles based on his lecture series which he periodically re-worked for publications in collected volumes. Magnan was regarded as an eminent clinician by British commentators (rather than a philosopher or theorist) and his ideas on both alcoholism and degeneration were significant to the development of British psychiatric thinking on these topics.<sup>156</sup> He was awarded his doctorate in medicine in 1866 and in the following year rose to prominence at the Paris Hôpital de l'enfant Jésus where he treated Louis Napoléon's son, convincing the authorities presiding over the newly constructed Sainte-Anne Asylum to appoint Magnan as chief

---

<sup>154</sup> Coffin, *La transmission de la folie*, p.132.

<sup>155</sup> Dowbiggin, 'Back to the Future: Valentin Magnan, French Psychiatry, and the Classification of Mental Diseases, 1885-1925.' *The Society for the Social History of Medicine*, 1996: 383-408

<sup>156</sup> See for instance Lawson, 'On the Symptomatology of Alcoholic Brain Disorders', *Brain*, 1 (2) 1878, pp.182-94.

administrator of the central office in the following year.<sup>157</sup> This asylum, set in a remote rural location outside of Paris, incorporated teaching facilities in a bid to compete with the more prestigious Parisian asylums, and it was here that Magnan began to deliver lectures on the clinical aspects of mental and nervous diseases. In addition to serving as a leading figure of the Société Médico-psychologique, Magnan published selections of his work in the *Journal of Mental Science* and was elected honorary member of the MPA in 1897 at a meeting held in Edinburgh.

In 1871, along with a colleague at the admissions bureau of Sainte-Anne named Bouchereau, Magnan submitted two articles to the *Annales médico-psychologiques* – by far the most important medico-psychiatric publication in France at the time – providing the authors with their first major exposure to the world of theoretical psychiatry. In these early publications, Magnan and Bouchereau offered a description of the symptoms of chronic alcoholism they had encountered in Sainte-Anne by adhering to a traditional nosological system derived from Esquirol; they distanced themselves from the prevalent notion that political events such as the Paris Commune and the popular revolts were related to a rise in madness and went so far as to advise their elder colleagues against rushing into such speculations.<sup>158</sup> On the basis of these two articles, Magnan presented his candidacy for membership of the Société Médico-psychologique, which was granted in 1872. In the same year his descriptions of the clinical symptoms of alcoholism won him prizes from the Academy of Medicine and the Academy of Sciences, encouraging him to develop his ideas into a treatise on the subject (compiled from previous lectures and papers), which appeared in 1874. It was around this time that we see Magnan develop a particularly strong interest in both degeneration and the role of heredity in the causation of mental illness, an interest that was to span right up to the 1890s, when he was elected president of the Société Médico-psychologique.

---

<sup>157</sup> Dowbiggin, 'Back to the Future', p.386; Coffin, *La Transmission de le Folie*, p.123. St. Anne was approved for construction in 1863 and opened its doors to patients in 1867. In Zola's *L'Assommoir* (1877) the drunken roofer Coupeau is an habitual presence at Sainte-Anne following his descent into alcoholism (a factual slip on Zola's part; the novel is set sometime in the early 1850s).

<sup>158</sup> Coffin, *La Transmission de le Folie*, p.125. These two pieces were discussed in the JMS ('Experimental and clinical investigation of alcoholism', **18**, 82, 1872: 282-89), with the discussant accepting Magnan's theory that absinthism caused epilepsy. A review of Magnan's second volume of lectures, issued in 1893, noted that knowledge of the relationship between alcohol and epilepsy in Britain was based largely on Magnan's occasional papers in French journals (*J.Ment.Sci*, **44**, 185, 1898:341-342).

Valentin Magnan's collection of lectures, *On Alcoholism* (1874), was instantly recognised as a major addition to the medical literature on intemperance both in France and Great Britain.<sup>159</sup> As the London-based physician William Smith Greenfield wrote in his preface to the English translation of 1876, while existing British medical literature discussing alcoholism had been almost exclusively concerned with the physiological effects of alcohol on the body, Magnan had gone further by addressing "the more remote questions of the effects of drinking in the general deterioration of the population, and the association of drunkenness, crime and insanity in the offspring of drunken parents."<sup>160</sup> Though Greenfield followed other British commentators in expressing a degree of scepticism over the centrality of absinthe in Magnan's discussion, he suggested that the prominence of this quintessentially French scourge ought not to disqualify the author's conclusions from the interest of British doctors, particularly as the work had already circulated amongst German, Spanish, and Russian medical communities, suggesting that it contained features of general interest.<sup>161</sup> Furthermore, Magnan's position at Sainte-Anne Asylum, "an institution to which no exact parallel exists in England", gave him the advantage of "seeing the same patient in successive attacks, and of watching the progressive effect of continuous alcohol", a clinical opportunity denied to his British counterparts.<sup>162</sup> Thus, while there were certain contextual differences between French

---

<sup>159</sup> V Magnan, *On Alcoholism, the various forms of alcoholic delirium, and their treatment*, London: H K Lewis, 1876. A generally positive review, though one highly critical of Magnan's theory of general paresis, was published in the JMS (23, 102, 1877: 267-70). It is evident from Bucknill and Clouston's exchange on the relations of drink and insanity in 1876 that both men had read Magnan's book prior to translation. (Bucknill and Clouston, 'On Asylums for Drunkards and the Relations of Drink and Insanity', LHB7/14/2 [orig. JMS, July, 1876]).

<sup>160</sup> W. S. Greenfield in Magnan, *On Alcoholism*, p.v.

<sup>161</sup> A commentator in the *Journal of Mental Science* wrote frankly of the sections of Magnan's work discussing his experiments into the effect of absinthe that "in England we are not so much interested in the account which follows the action of absinthe on man or dogs." (JMS, 23 (102), 1877: 267). In 1869 *The Lancet* had cast doubt on the findings of Magnan and Bouchereau that a guinea-pig sealed for a time in a glass case containing essence of wormwood (a flavouring of absinthe) experienced "epileptiform convulsions" whereas a guinea-pig similarly sealed with a solution of pure alcohol merely became drunk ('Absinthe and Alcohol', *The Lancet*, March 6<sup>th</sup>, 1869, p.334). A second piece, published by Magnan himself in 1874, detailed the follow up experiments he had conducted on dogs in which he similarly discovered that absinthe tended to produce symptoms analogous to the "*petit mal* or 'absence' of the epileptic" while pure alcoholic solutions led only to "illusions and hallucinations" in the animals (Magnan, 'On the Comparative Action of Alcohol and Absinthe', *The Lancet*, September 19<sup>th</sup>, 1874, pp.410-12).

<sup>162</sup> W. S. Greenfield in Magnan, *On Alcoholism*, pp. viii – ix; Greenfield goes on to note the institutional structure of Sainte-Anne, which collected "all the cases of insanity previous to their



and British doctors called to treat chronic inebriety (particularly the lack of abstinence in Britain), Greenfield argued that the heavily distilled nature of absinthe would simply magnify the results of general alcoholism one would expect to see in patients habituated to less extreme forms of the poison, contracting the period of clinical observation necessary to form conclusions without changing their nature.<sup>163</sup>

In contrast to his earlier papers with Bouchereau in which he disputed the link between social upheaval, insanity, and alcoholism, Magnan opened his first solo publication on the subject with an introductory note referring to the communal barricades, arguing that: “Recent events have sufficiently proved that the united efforts of all, physicians, philosophers, and legislators, have not been too great to oppose the urgent danger which threatens health, morality, and society.”<sup>164</sup> While this already suggests a certain change of attitude, the key innovation of this work was the introduction of a threefold classification of inebriety which divided the severity of the condition according to both the clinical symptoms and the suspected cause.<sup>165</sup> In the first class Magnan placed ‘Patients affected with alcoholic delirium, with easy, complete, and rapid convalescence’, a group consisting of occasional or moderate drinkers who had simply gone too far in their indulgence as a result of circumstance. The second class contained ‘Patients affected with alcoholic delirium, of slow convalescence and with ready relapses.’ While this latter group required greater clinical skill to detect, since the delusional ideas induced by alcoholism would only reveal themselves to repeated and skilful questioning, it was similarly composed of ‘simple’ drunkards who, though they had no hereditary tendency to drink, had repeatedly over indulged – a class he had frequently met with during the Prussian siege of Paris, which had forced citizens of the garrisoned city to subsist on a diet of brandy and wine. As Magnan’s stance on degeneration hardened in subsequent years,

---

admission to the various public asylums, and all cases of acute delirium and mania which fall under the care of the police in Paris.”

<sup>163</sup> Magnan himself looked to Britain, and particularly to Scotland, when considering unadulterated alcoholic excess, noting in his 1877 speech on the ‘Influence of Alcoholism on Mental Illnesses’ at the International Congress of Medical Science in Geneva that the cheaper more toxic form of whisky produced from the residues of the distillation process was destroying the drinkers across the channel. Magnan, *Recherches sur les centres nerveux*, Paris: Libraire de l’académie de médecine, 1893 [Collected in *Alcoolisme (Hygiène)* and *Dégénérescence mentale (Médecine Légale)*], p.4

<sup>164</sup> Magnan, *On Alcoholism*, p.1.

<sup>165</sup> Section 1, Article III: ‘Classification of patients affected with alcoholic delirium in three groups, according to the clinical data afforded by the antecedents of the patient and the course and termination of the disease’, Magnan, *Alcoholism*, pp. 45 – 72.

his recollection of the siege changed somewhat, and when in 1890 he came to consider the suggestion of a doctor who had argued that, in a “generally comfortable” country like France, and especially in Paris, alcoholism was to be taken as a sign of the ease of life and not of social misery, Magnan insisted that he had diagnosed many cases of chronic alcoholism during the Franco-German war and the Commune when poverty and misery were rife, indicating that, even when faced with immediate necessities of survival, the degenerated organism could not resist the lure of alcohol.<sup>166</sup> The members of the third and final class, containing ‘Patients specially predisposed’, were affected with the heredity maladies described by Moreau de Tours,<sup>167</sup> Laborde,<sup>168</sup> and Morel.<sup>169</sup> The “cerebral inferiority of these persons”, Magnan noted, “finds its most frequent cause in heredity.” However, repeating Morel’s law of double fecundation, he went on to note that this was a “group of individuals who, thanks to repeated excess, create for themselves, so to speak, a morbid predisposition.”<sup>170</sup> Hence, the fluidity of cause and effect was underlined as an essential part of the nosological system and the patients belonging to this third group displayed a pathological history that was consistent with the effects of degeneration on the family line:

[The degenerate] descends in succession the various degrees of the intellectual scale, and in the third or fourth relapse we very often find weakening of the faculties behind the alcoholic delirium . . . In this class of patients alcoholic drinks act in a manner different from that on other subjects . . . there is not the correlation between the physical and the intellectual symptoms which we find in the generality of cases.<sup>171</sup>

While the ‘normal’ action of alcohol in animals, including humans, was to produce “physical and intellectual phenomena which ordinarily advance together”, in the third class of drunkards, he noted, “the nervous system seems to divide itself” with the correlation between physical and mental functions becoming dissociated.<sup>172</sup> The dissociation of the mental and physical processes of the nervous system in hereditary

---

<sup>166</sup> ‘De l’Alcoolisme, leçon fait à l’asile Sainte-Anne’, 1890, in Magnan, *Recherches sur les entres nerveux*, pp. 39 – 49 (p.45).

<sup>167</sup> *Psychologie morbide dans ses rapports avec la philosophie de l’histoire*, 1859.

<sup>168</sup> *Les homes et les actes de l’insurrection devant la psychologie morbide*, 1872.

<sup>169</sup> *Traité des maladies mentales* 1860.

<sup>170</sup> Magnan, *Alcoholism*, pp. 63 – 64.

<sup>171</sup> *Ibid.*, p. 64.

<sup>172</sup> *Ibid.*, p.64.

alcoholism was not developed in any further detail in this work, though in subsequent years, particularly as the republican demand for somatic and materialistic medicine grew during the 1880s and 1890s, Magnan staked this territory out as his own, publishing a series of highly influential papers and engaging in an ongoing debate with the French psychiatric profession over the boundaries of both alcoholism and the hereditarian psychiatry toward which he was increasingly drawn. From his early rejection of the more speculative elements of degeneration theory, Magnan developed an influential theory of both alcoholism and degeneration which marked him out as one of the leading figures in psychiatry. While during the early phase of Magnan's career heredity formed but one element of the tripartite classification of alcoholism, it gradually developed into a central theme of his work. In a lecture given at Saint-Anne in 1890 (the year of his election to the presidency of the Société Médico-psychologique), he noted that:

The question of alcoholism is more important than ever, imposing itself on the thoughts of all: philosophers, moralists, hygienists, economists, doctors and so on. Indeed no one, especially in our old Europe, can remain indifferent to the presence of this invasive scourge that saps the lifeblood of the populace and which, according to the expression of M. Claude, *has become a social danger*. It takes hold of the individual, transforms him in both body and mind, and strikes his descendants with the deepest stigmata of physical, intellectual, and moral degeneration.<sup>173</sup>

Around this time Magnan fought a seemingly endless battle with the other members of the Société Médico-psychologique to maintain what he saw as both the correct definition of degeneration and the role heredity and alcoholism should play within it. His campaign to stabilise the referent of degeneration was directed in equal measure at the members of his own profession who took a dissenting view and those broader fields of medicine that had attempted to contribute to the debate. Hence, with the popularity of the concept secured, he tried to render degeneration a theory specific to clinical psychiatry. In particular we see a flurry of interest in 'stabilising' degeneration theory at the Société Médico-psychologique meetings from 1886 onward, no doubt a consequence of the First International Congress of Criminal

---

<sup>173</sup> 'De l'Alcoolisme, leçon fait à l'asile Sainte-Anne', 1890, in Magnan, *Recherches sur les entres nerveux*, pp. 39 – 49 (39), italics added.

Anthropology having been held in Rome in the previous year.<sup>174</sup> The picture we get from these lectures and discussions is one of Magnan as a Saint Paul figure, a tireless campaigner for an ‘orthodox’ psychiatric understanding of degeneration theory, seeking to attract converts and correct their interpretive errors. However, the interest he showed in circumscribing the parameters of debate was in evidence before these wider international medico-legal debates had begun. For instance, at a meeting of the Société Médico-psychologique in 1885, during a discussion of the physical, intellectual, and moral signs of hereditary insanity, he reports the heretical position of Jules Falret, who is said to have:

exposed, with his usual clarity, the state of the question concerning hereditary insanity, indicating a diverse range of opinions amongst those assembled. For some, heredity played a big part in aetiology, but only as a predisposing cause. For others, the influence of heredity was felt to cover a variety of mental forms, leaving its imprint by giving them a special appearance. Thus, the general paralytics, the alcoholics, the chronically delusional, the epileptics, the hysterics, and the hypochondriacs displayed peculiar characteristics when they fell within the scope of hereditary influence. Finally, for many doctors today, there exists a form of hereditary insanity which is independent from other mental forms.”<sup>175</sup>

We can see here that the longstanding ambiguities surrounding the term ‘heredity’ were still a notable feature of discussion, and it remained unclear whether ‘heredity insanity’ marked a special form of illness that was directly transmitted, a predisposition to acquiring an illness that could affect those without the taint, or the tendency to develop a general illness in a special way. However, Magnan’s reply was both revealing and ingenious. “It goes without saying”, he told them, “that the patients suffering from the madness we label ‘hereditary’ – an improper expression which we keep only because it has been adopted by several authors – do not have a monopoly on hereditary influence, or an exclusive duty toward their descendants on account of their neuropathological and psychopathological dispositions.” Heredity was, he

---

<sup>174</sup> On these Congresses see M. Kaluszynski, ‘The International Congresses of Criminal Anthropology: Shaping the French and International criminological Movement, 1886-1914’, in Becker P. & Wetzell R. (eds.), *Criminals and Their Scientists: The History of Criminology in international Perspective*, Cambridge University Press, 2006, pp.301-316; R. Nye, ‘Heredity or Milieu: The Foundations of Modern European Criminological Theory’, *Isis*, **67** (3), 1976, pp. 335-55.

<sup>175</sup> Magnan V, ‘Des signes physiques intellectuels et moraux de la folie héréditaire’, *Recherches sur les entres nerveux*, pp. 107 – 17 (orig. *AMP*, **7**, 3, jan. 1886).

assured them, active in all forms of insanity; it was simply a question of degree. Since all insane conditions had, to some extent, been influenced by pathological inheritance, it was necessary to reserve the term 'heredity' for those forms of insanity that were most glaringly and unquestionably a product of the diathetic taint. Fortunately, the physician's task was facilitated by nature, since this group of the hereditary insane displayed, from birth, a mark of their origins: "the *physical stigmata*, the *psychological stigmata*, which allow them to be distinguished from the general class of insane." Of further importance here was that these signs, though ostensibly present at birth, became intensified in childhood, at around the age of four or five, during which time physical deformities would become apparent and peculiar sexual or compulsive character traits would be displayed, a subject Magnan did not believe he needed to elaborate upon, since he assumed those assembled had all had "the opportunity to see young degenerates fall prey to obsessions, to impulses, to psychopathic disorders of a diverse kind."<sup>176</sup> The existence of these infamous stigmata of degeneration was of course a subject of intense dispute amongst medico-psychiatrists and criminal anthropologists of the late nineteenth century, though Magnan reinvigorated the idea somewhat by attempting to claim that the obsessions and 'impulsions' of the degenerate were to be labelled stigmata, a move that allowed him in later years to unite the sexual body of the deviant with the existence of pathological sexual desires.<sup>177</sup>

Hence, in presiding over these meetings, Magnan attempted to 'save' heredity insanity from the problems associated with inaccurate terminology through a strategy of acknowledging dissent while insisting on the propriety of maintaining a specialised vocabulary. This in effect allowed psychiatrists the advantages of malleable technical language in which a term like heredity could retain its non-specific application 'since it was in common use' while preserving its power of specific scientific designation. Maintaining Morel's law of double fecundation, Magnan emphasised that heredity insanity could also be acquired, for instance, "as a result of acute illness in very young subjects", in which case the arrest of intelligence and mental degradation was said to be "analogous to a condition of idiocy, imbecility, mental debility, or even a

---

<sup>176</sup> Magnan , 'Des signes physiques intellectuels et moraux (i)', pp.108-9.

<sup>177</sup> See Magnan, 'Héréditaires dégénérés,' *Recherches sur les entres nerveux*, pp. 135 – 49 (p.135); (orig. *Arch. de neurol.*, **23**, 69, 1892).

hereditary disequilibrium.”<sup>178</sup> Thus, serious illnesses such as typhoid fever, small-pox, and scarlet fever could produce lesions analogous to those acquired during the period of uterine growth, with identical results to the developing brain. The fact that predisposing cause (heredity) and occasioning cause (illness) could produce the same symptoms was in fact fairly common to French psychiatry at this time: As Ian Hacking notes apropos of Charcot’s hysteria diagnosis, while females were generally found to suffer from the condition following a period of nervous or moral shock which had triggered their hereditary disposition, the same disorder could be induced in males suffering from physical trauma to the head.<sup>179</sup> None the less, in Charcot’s work the means of acquiring symptoms were generally kept separate (male hysteria was the production of similar symptoms through different causes), while Magnan insisted upon the identity of the condition irrespective of its mode of acquisition, since in both cases the organism was brought into disharmony or disequilibrium – a notion which was perhaps the central aspect of his reconfiguration of the concept of degeneration.<sup>180</sup>

A few months after this discussion of the heredity mechanism, Magnan addressed the members of the Société Médico-psychologique again on the same subject, noting the “interesting submissions we have received concerning the hereditarily insane and degenerate demonstrate the importance of the issue”, a fact confirming that it was appropriate for the Society to “open the debate” on the subject once more.<sup>181</sup> However, criticisms of the pathological dragnet were again raised, in particular Falret complained that Magnan had extended “the group of hereditary degenerates to its limits; he [Falret] would leave out certain abnormal individuals who possess only a few quirks of character.” In response, Magnan proposed to examine the abnormal subjects placed at the frontiers of madness; if these subjects did in fact “display characteristics analogous to those shown in recognised insane degenerates” he asked them, “then should we not then align ourselves with the [expansionist]

---

<sup>178</sup> Magnan , ‘Des signes physiques intellectuels et moraux (i)’, p.113.

<sup>179</sup> Ian Hacking, *Mad Travellers*, p.33

<sup>180</sup> Magnan was to tirelessly repeat this point – for instance, c.f. his comments in a lecture delivered in 1892: “The hereditary degenerates form a large and clearly defined pathological family with unique characters which allow them to be distinguished from other morbid species . . . Hereditary degenerates are the only insane [patients] amongst whom mental disequilibrium is observed” (Magnan, ‘Héréditaires dégénérés,’ p.135).

<sup>181</sup> Magnan , ‘Des signes physiques intellectuels et moraux (ii)’ pp. 118 - 34 (orig. *AMP*, 7, 4, sept. 1886).

school?” In outlining the broader pathological species existing on the peripheries of degeneration, and appealing to the doctors gathered to include them within the same taxonomical group, Magnan argued that the “main advantage of the synthetic study of hereditary degenerates” was that it united “under the same framework syndromes with different modes of expression.” Hence, the borderline cases of degeneration such as oniomania – the compulsive desire to shop – were not dubious cases or ‘unscientific’ extensions of sound theory, but the very cases which gave scientific meaning to the concept of degeneration in the first place. Once again, Magnan drew attention to the *lack* of novelty in his theoretical approach, hoping to demonstrate the conventionality of his claims by suggesting that the members of the Société Médico-psychologique all recognised a common source of instability, and that this source was “none other than the state of mental heredity already described by Falret, the very same disequilibrium which I myself strove to delineate in my first submission.”<sup>182</sup> Hence, while heredity and degeneration remained central to the taxonomical systems of the members of the Société Médico-psychologique who disagreed with him, Magnan’s bid to ensure professional consistency saw him pursue a combined strategy of repetition, never defecting from the party line, and ecumenism, incorporating as many positions as possible while taking care to rehearse them in synchrony with his own doctrine; as, for example, when he concluded the Society’s discussion of the subject by noting:

In summarising the various opinions on the aetiology of mental degeneration, we can see that the question has been studied in all its aspects. For Dr Falret, it is the hereditary influence of ancestors which must be taken into account. Dr Christian insists in particular that the state of the parents at the moment of conception be considered, Dr Bouchereau stops at the affinities developed during foetal life, while Dr Cotard blames the illnesses of youth. I, for my part, recognise the existence of all these causes, but on considering the facts, I cannot help but attribute a significant role to the hereditary influence. In any case, this discussion shows clearly that, if we differ as to the limits which may be assigned to the aetiological conditions, on the clinical side, that is to say, when we come to consider who should be included within the group of hereditary degenerates, most of us are in accord; If I may speak personally, I am thankful that in these new discussions the Société medico-psychologique has taken a step forwards in a study as important as that of mental degeneration.<sup>183</sup>

---

<sup>182</sup> *Ibid.*, pp.119-20.

<sup>183</sup> *Ibid.*, p.134.

Finally, it must be clarified that, for all his insistence on the centrality of heredity and degeneration in psychiatry, in many ways Magnan remained cautious in his use of these ideas, particularly as they related to notions of criminality and responsibility. For instance, he was highly sceptical of the existence of ‘born criminals’ and, like his compatriot Charles Féré, did not attribute an “ancestral origin” to crime.<sup>184</sup> While it was in the context of the Paris Congress of Criminal Anthropology (1888) that Magnan first voiced his suspicions of this typically Italian position in criminal anthropology, there was something in Magnan’s scepticism which moved beyond simply aligning himself with the national consensus.<sup>185</sup> It is clear that Magnan’s rejection of the idea that primordial or germinal forms of crime were “natural attributes” was rooted in medico-psychiatric theory and did not follow the logical and methodological challenges coming from the legal delegation who had disputed the practicality of applying such theories in court. However, in a slightly nuanced way, Magnan’s argument against the cruder methods of criminal anthropology was legalistic, since it relied on placing ‘perverted’ instincts at the centre of the psychiatric examination. For Magnan, instinct and will were tied to ontogenesis that ran from the vegetative state, to external awareness (the opening of “increasingly clear sensations covering the periphery of the body which allow for more complete and intimate relations with the external environment”), and finally on to the ability to manipulate this environment volitionally toward certain goals. This progressive evolution of mental function, Magnan argued, leads to the ability to distinguish good and bad actions as a natural property of development, hence, the “normal individual is not naturally predisposed to crime: if he becomes a criminal, whether occasional or habitual, he does so under the influence of vicious passions or a wanton education.” Additionally, criminals “bring into the world themselves, through nervous heredity, or the insanity or alcoholism of their ancestors, not a natural predisposition toward criminal acts, but a pathological defect, a degeneration causing disorder in the cerebral functions.”<sup>186</sup> Degenerates, the study of which was “the exclusive responsibility of the clinic”, could be subject to greater temptation, but were not born

---

<sup>184</sup> Magnan, ‘De l’enfance des criminels considéré dans ses rapports avec la predisposition naturelle au crime’, *Recherches sur les entres nerveux.*, pp. 243 – 60, (orig., delivered at the Congress on Criminal Anthropology, Paris, 1888) ; Charles Féré, *Dégénérescence et Criminalité: Essai Physiologique*, (4<sup>th</sup> ed.), Paris: Félix Alcan, 1907.

<sup>185</sup> For a discussion of this Congress in relation to French and Italian positions see Robert Nye, ‘Heredity or Milieu’.

<sup>186</sup> Magnan, ‘De l’enfance des criminels’, pp.245-46.



criminals. Thus, while he acknowledged that physical stigmata were “well known” to psychiatrists, he added that they “need not insist upon them; they are, in any case, symptoms of secondary importance” and that “a more useful study is that of the anomalies of cerebral development.” The point then was to preserve the skill-set of the psychiatrist against the reductive theories of criminal anthropology that tried to conduct a new pathology for each type of act:

the crime itself is not important: the physician’s considerations remain the same, going beyond the criminal acts: the enquiry covers all aspects of the subject’s life, his ancestors, his physical defects and the intellectual, moral, and emotional changes which resulted. Such detailed analysis, such careful attention to the past illuminates the present and almost always provides the best way to appreciate his judgement.<sup>187</sup>

### 3.4 Conclusion

The development of degeneration theory in French psychiatry has been examined in this chapter in order to highlight the major themes that coalesced around it as a part of psychiatric discourse. While Morel’s initial project was caught between politico-theological conservatism and State-based hygienism, his theory of degeneration brought together a range of formerly free-floating ideas within a single rhetorical field. In particular Morel’s idea united three prominent themes and allowed them to address one another in the name of a common psychiatric project. Firstly, the term ‘degeneration’ identified the gradual changes which the notion of heredity and predisposition had undergone in pathological description and gave doctors a technical idiom to describe these processes. In fact, this move had been instigated by contemporaries Jacques-Joseph Moreau (de Tours) and Jean-Pierre Falret, though Morel’s terminology was strikingly more popular.<sup>188</sup> In particular, Falret advanced the notion of ‘the condition’ (*état*), a state that was not in itself an illness, but led to the genesis of syndromes or deliriums; an idea that was differentiated from the older medical model of predisposition since it was not tied to any specific illness and rendered the bearer ‘abnormal’ (formerly, one was said to be predisposed to a specific condition yet could be perfectly normal). The condition, as Falret formulated it, was a

---

<sup>187</sup> Ibid., p.247.

<sup>188</sup> See Patrice Pinell, ‘Dégénérescence at génétique’, *Psychiatrie française*, **31**, 2000: 41 - 49

different matter insofar as it possessed “an absolute, total etiological value” and could produce any illness at any time.<sup>189</sup> Hence, by drawing upon this trend within French psychiatry and general medicine, Morel was able to capture a new way of describing disease. Secondly, the language of degeneration was able to tie this understanding of pathology to the dangers of alcoholism, describing both the social threat and the threat to the individual this presented. Thirdly, the notion of the ‘dangerous classes’ more generally was brought within this field, suggesting a new model of governance that would rationalise the social response (particularly in the relations of these dangerous classes to the existing systems of law). As I will show in the next chapter, this was not simply a development taking place within France. Indeed, when Morel’s ideas were first discussed in Great Britain, there seemed to be an instant recognition that a theory capable of unifying heredity, alcoholism, and the need for legal reform was of great social value.

---

<sup>189</sup> Foucault, *Abnormal*, p.311-12.

## 4. From Peculiar Insanity to Insane Peculiarity

### 4.1 Pathological Consolidation

We have seen that while Morel's work on degeneration came to occupy a hugely important (though by no means uncontested) place in French psychiatry, he was not the first figure to draw attention to the significance of heredity in the classification of illness, nor to associate the range of social pathologies with this heredity mechanism. For instance, the relationship between criminal conduct and heredity was already widely accepted by scientists and natural philosophers and, by the middle of the nineteenth century, the germinal traces of criminal anthropology, biologically determinist thought, and ideas concerning hereditary drunkenness were already present in British periodical discussions. However, these discussions seem at the same time to have been tied to an older multi-causal theory of heredity, with degeneration representing an "unfavourable omen" that progeny were likely to suffer from the same constellation of pathological causes rather than a direct transmission, let alone transmutation, of drunkenness and crime.<sup>190</sup> Thus, if Morel's general ideas were not exactly novel – the criminal classes, the born drunkards and the significance of heredity had all been discussed with increasing frequency since at least the early nineteenth century – the pathological discourse that predated his work lacked a convenient means of communicating with one another, and while the discussion of heredity drunkenness or criminality was not unique to Morel's work, the theory of degeneration nonetheless provided a convenient way of conceptualising their interrelation, ensuring that from the publication of his treatise onwards these would be recognised as *degenerationist* discourses.

The first major review of Morel's ideas to appear in the British press was contained in the *British Quarterly Review* which, in 1859, set out at length to consider the significance of *hérédité* ('heritage') in a broad ranging article focusing on the philosophical implications of degeneration theory.<sup>191</sup> One gets the sense instantly in

---

<sup>190</sup> See Anon, 'Oinomania', *J. Psych. Med.* **8**, 1855: 175-207 (p.187).

<sup>191</sup> 'Anon', 'Physical and Moral Heritage', *British Quarterly Review*, **29** (57), 1859, pp.3-56. (p.5)

this journalistic commentary that Morel's early impact consisted in clarifying and systematising various strands of thought that had, up to the publication of his treatise, been only loosely connected. Furthermore, as the *British Quarterly Review* noted, Morel had gone beyond these earlier studies to offer a "frightful additional testimony to the ineradicable nature of an inherited tendency to drink", linking the heredity mechanism, alcoholism, crime, and insanity together in far more systematic terms than had previously been attempted to demonstrate that "without special attention to the rules of hygiene", these various species of social pathology would inexorably "increase in gravity and intensity from generation to generation."<sup>192</sup> The most important problem presented by this new approach to the hygiene of the masses was Morel's recognition that the essence of degeneracy was contained in those whose condition did not amount to "insanity in the eye of the law." Hence, the article continued, while heredity criminality and drunkenness had been recognised as social pathologies by a range of nineteenth-century commentators, these same ideas had been just as near unanimously ignored by the "moralists and legislators" who had either dismissed the significance of heredity outright or insisted on "*ex post facto* considerations" surrounding the practical difficulties of implementing such knowledge.<sup>193</sup> Given that the degenerate's threat to the social order was not contained by the legal tests of capacity, the journal noted that social commentators and radical publicists should "not hesitate to [oppose judges and] say that these constitutional defects may be (and daily are) so combined as to produce *almost* complete irresponsibility", ascribing to the process of degeneration:

that strange insoluble problem of our race – the existence of what are called the 'DANGEROUS CLASSES'; a people who seem set apart to fill our gaols, our penitentiaries, our houses of correction, our penal settlements; a people at war with their kind – natural enemies of their brethren; a leaven leavening, and infecting, and drawing into the vortex of its own corruption even the comparatively sound elements of society; the pariahs of humanity, the despair of philanthropists, the opprobrium of legislation.

Here the rationale of the law was not only portrayed as an archaism, but as a danger in itself, since the punishment it awarded to degenerates "far from curing, chiefly

---

<sup>192</sup> Anon', 'Physical and Moral Heritage', pp.37-38

<sup>193</sup> Anon', 'Physical and Moral Heritage', p.22, & .40.

exacerbates.”<sup>194</sup> Five years later, when the journal returned to this same question, it again noted that the degenerates and the dangerous classes had, for decades, served as the “stumbling-block, in the way of all effective legislation” and that if “the theory of their production” advanced by Morel was correct, these people should no longer be considered “individually criminal” as the law maintained, but helpless victims of a diseased collective.<sup>195</sup>

#### 4.2 The Rusting Lancet: From Disease to Constitution

During the nineteenth century medical theory underwent a gradual shift in emphasis from disease to population. While Edinburgh physicians of first quarter of the century such as Thomas Trotter (1760 – 1832) and William Pulteney Alison (1790 – 1859) had argued that a general change from sthenic to asthenic illness could be observed and that nervous ailment had replaced fever as the dominant illness, in 1892 *The Scotsman* was predicting “from known physiological and psychological facts, that we are entering a period of ‘low vitality’ in the *population* generally”, a period that “would be marked by excessive drinking, and a fresh reinforcement through this means of the ranks of the insane”<sup>196</sup> The language of constitutional change that had characterised the ‘golden age’ of Edinburgh medicine found its way into practically all the English-language treatises on the physiology and pathology of drunkenness issued around the middle of the nineteenth century (many of which were produced by Edinburgh-trained physicians). Major works like William Carpenter’s *The Physiology of Temperance and Total Abstinence* (1853) and Charles Wilson’s *The Pathology of Drunkenness* (1855) relied on the theory of asthenic illness to situate their toxicological and clinical data in a broader theoretical context. Here the heredity

---

<sup>194</sup> Ibid., p.39

<sup>195</sup> Anon, ‘*Traité des Dégénérescences* by Dr Morel’, *British Quarterly Review*, **78**, 1864: 425-459 (458)

<sup>196</sup> *The Scotsman*, Mar. 2, 1892, in LHB 7/12:5 (p.199). See also Rosenberg, ‘Pathologies of Progress: The Idea of Civilization as Risk’, *Bulletin of the History of Medicine*, **72** (4), 1998, p.717; John Harley Warner, ‘Therapeutic Explanation and the Edinburgh Bloodletting Controversy: Two perspectives on the medical meaning of science in the mid-nineteenth century’, *Medical History*, 1980, **24**, 241 – 258 (245); W P Alison, *Cases illustrating the asthenic form of internal inflammations now common in this country*, Edinburgh: Sutherland & Knox, 1852. For evidence of this same transition in France see Dechambre, ‘Asthenia’ (1865), *History of Psychiatry*, **19**, 2008: 496 – 98 (497). G J M. de Klerk (‘Mechanism and Vitalism: A History of the Controversy’, *Acta Biotheoretica*, **28**, (1), 1979: 1 – 10) argues that this change in emphasis corresponded to the decline of vitalism and the rise of mechanism in the biological sciences during the second half of the nineteenth century.

nature of the alcohol craving, the damage wrought by alcohol to the offspring, the racial consequences of drunkenness, and the connection between alcohol and suicide were all taken up as apparently well accepted dangers of intemperance, indicating that the major themes of degeneration were already well established in British medicine by the mid-nineteenth century. However, as with the discussion of habitual criminality and the dangerous classes, these themes were held together by a vague theory of general decline that struggled to align the various warnings behind a single cause without extensive caveats or arcane and irreducible levels of technical detail.<sup>197</sup>

In response to the theoretical complexity generated by these works, the Scottish Temperance League issued a call for a “homely exposition” of the medical case for the Total Abstinence Movement, seeking to address the failings of the existing medical literature on intemperance that was, they felt, marked by the type of excessive detail that placed it beyond the reach of a general audience. This call had been answered by James Miller, President of the Medico-Chirurgical Society and Professor of Surgery at the University of Edinburgh, who in 1858 published *Alcohol: Its Place and Power*, a low-cost general readership work on the subject of intemperance.<sup>198</sup> Given that it was Miller’s explicit intention to avoid theoretical complications in this book, it is not surprising that we find little evidence in it of the debates referenced above. However, when *The Scottish Review* (a temperance publication aimed at a well-educated readership) discussed Miller’s work they explored the historical and scientific context of his assumptions by noting that “for about the last twenty-five years there [had] prevailed an unusual tendency to those forms of disease which are designated as ‘adynamic’ or ‘asthenic’”. Some medical commentators, they continued, were suggesting that there had arisen a new *asthenic constitution* causing the European body to resist all pain, a suggestion that certainly explained why ‘lowering’ treatments such as bleeding had become intolerable. Others had “even gone so far as to affirm that [the increase in asthenia] indicates a gradual

---

<sup>197</sup> William Carpenter, *The Physiology of Temperance and Total Abstinence*, London: Henry Bohn, 1853; Charles Wilson, *The Pathology of Drunkenness*, Adam & Charles Black, Edinburgh, 1855. On the transmissibility of the alcohol craving see Carpenter, *Physiology of Temperance*, pp. 47 – 52; Wilson, *Pathology of Drunkenness*, p.69; 101; 140; 245, on suicide see Wilson, *Pathology of Drunkenness*, pp. 136 – 49

<sup>198</sup> James Miller, *Alcohol: Its Place and Power*, Scottish Temperance League: Glasgow, 1858, p.37

*degeneration* of our race, and to predict that it will increase until we have all been swept from the face of the earth, unless we make radical changes in our mode of life.”

The journal, acting as a vehicle for the Scottish Temperance movement, did not support this new school of thought, and instead reinforced the older notion that “there are *waves of time* through which the sthenic and asthenic characters of disease prevail in succession, and that we are at present living in one of its adynamic phases.” Crucially, they insisted that these waves of time undulated through *disease* and not the body, cutting short the nascent degeneration panic and ensuring an eventual return of the therapies of the golden age. Doctors, the journal surmised, could happily anticipate a future in which “lancets now rusting in their cases” would once again spring into use.<sup>199</sup> However, it was the theory of degeneration along with the assumed transformation of European bodies that gradually came to dominate medical theory from the late 1850s onwards, with degenerationist language able to link disparate though well defined themes of decline to the established discourse on sthenic and asthenic disease, a fact which, however tentatively, suggests why its deployment in Scottish medical literature was so prevalent.

As an example of this process I will consider here the first volume of William Aitken’s *Science and Practice of Medicine* (1868). According to the *British Medical Journal* this compendious and hugely important work was “for a long time the favourite textbook of students, and in its day the work most consulted by general practitioners throughout the kingdom and in every colony where English is the language of the people.”<sup>200</sup> Aitken (1825 – 1892), who submitted his M.D. thesis to the University of Edinburgh in 1848 and subsequently took up membership at the city’s Royal College of Surgeons, had trained during the bloodletting controversy and was aware that the acceptance of sthenia’s transition to asthenia, whether located in disease or the body, preserved the unbroken line between the medical cultures of the first and second halves of the century. Hence, in this work he set out to dismiss the suggestions of his more sceptical contemporaries (such as William Orlando Markham and John Hughes Bennett) who had argued that the fashion for describing

---

<sup>199</sup> Anon., ‘Review of ‘Alcohol: Its Place and Power’, by James Miller’, *The Scottish Review*, April, 1858, 97-114 (104 & 112)

<sup>200</sup> ‘Obituary of William Aitken’, *Brit. Med. J.*, 2 (1644) 1892, p.54

constitutional or pathological change was merely a ruse doctors had advanced to account for changes in medical practice. Positioning himself against this scepticism Aitken wrote his manual in defence of the generation of students who saw themselves as torch bearers for both the golden age of Edinburgh medicine and the new age of heredity transformation by declaring that not only asthenic disease, but “the degeneracy of the human race, as a whole, is in some respects advancing.”<sup>201</sup>

Hence, Aitken noted, while the continuationists were right to trace their lineage back to the early nineteenth century, they were wrong to follow the interpretation provided by their mentors, for it was not disease but “the *human body* [that was] capable, from causes known as well as unknown to us, of undergoing various alterations as regards not only to its *physical*, but also to what has been termed its *medical* constitution.” There were, he continued, “certainly good grounds for believing that elements of constitutional degeneration exist in such abundance, especially in the communities of large towns.”<sup>202</sup> For Aitken then, “the insidious mode in which many of those truly CONSTITUTIONAL diseases and DEGENERATIONS make their appearance” could be “regarded as constituting a peculiar characteristic of the diseases of our times.”<sup>203</sup> Aitken’s contemporaries on the Continent had gone even further still, with Dr Pollitzer of the Children’s Hospital of Vienna arguing that the diseases of the times were not merely the result of a mysterious and uncaused constitutional shift, but the unforeseen product of medicine itself. In particular, Pollitzer contended, the extension of the hospital system in ‘civilised nations’ had stemmed mortality without encouraging a proportionate increase in vitality, perpetuating a weak and enfeebled breed in whose forms he saw inscribed the first lines of a “sad memorial to modern civilization.”<sup>204</sup> Pollitzer’s charge that allopathic medicine held the power to facilitate the extinction of the human race was in all likelihood not novel; certainly it would be repeated by various figures for at least a hundred years (right up to Ivan Illich’s *Medical Nemesis*), though

---

<sup>201</sup> Aitken, *Science and Practice of Medicine*, p.142

<sup>202</sup> *Ibid.*, pp.146-148

<sup>203</sup> *Ibid.*, p.136.

<sup>204</sup> Cited in *Ibid.*, p.136



it was reduced by Aitken to the less dramatic claim that “the boundaries between health and illness [were] becoming less and less marked.”<sup>205</sup>

While this blurring of boundaries did not exactly entail the obliteration of the race, Aitken nonetheless believed that it complicated the task of the physician by creating conditions in which the body deviated from the “healthy standard” without deviating from the frame of “relative health” (that is, individual health relative to that of the populace at large). The act of diagnosis had therefore to contend with the appearance of a general form of sickness spreading throughout the populations of Europe and producing a pervasive ‘technical’ illness that did not equate to a comparative illness. Aitken’s argument, situated between the rise of asthenic disease and constitutional degeneration, therefore made explicit another of the great transformations that had taken place at the heart of medicine during the nineteenth century – the transition from health to normality. As Foucault notes in *Birth of the Clinic*, up to the end of the eighteenth century doctors tended to refer in their descriptions to the qualities that had been lost in the presence of an illness (qualities such as “vigour, suppleness, and fluidity”). In the re-organisation of medical knowledge that took place in the late eighteenth and early nineteenth centuries however, the notion of standard structure and function became paramount, bringing formerly marginal and abstract studies such as physiology to the centre of medical knowledge while placing ‘life’ in a series of oppositions between health and morbidity (or normality and abnormality). As such, the range of objects medicine concerned itself with – national groups, races, individual organisms, or mental balances – were no longer conceptualised (at least primarily) as internally organised entities, but as entities that could be situated in reference to “*the medical bipolarity of the normal and the pathological.*”<sup>206</sup>

The point then is that, under the system of medicine in which illness was always relative to some norm rather than a disinherited quality, the implication that the degeneration of the European race rendered a whole population deficient were that illness that could no longer be reached by differential diagnosis. Thus, Aitken

---

<sup>205</sup> Ibid., p.142. Illich, *Medical Nemesis: the Expropriation of Health*, Pantheon Books, New York, 1976

<sup>206</sup> Foucault, *Birth of the Clinic*, p.41

suggested, doctors who had formerly concerned themselves with studying the typical course of a disease in the individual were obliged to consider disease as something that affected masses, with different forms of disease being peculiar to each race (to the limited extent that British doctors of the late eighteenth and early nineteenth centuries had attributed change to the organism, their discussions were confined to family lines rather than the race or nation, as for instance in Sir James Clark's *Treatise on Pulmonary Consumption*, which had remarked on the tendency of disease to become progressively worse as it descended the generations of a single family).<sup>207</sup> For Aitken then, it was quite explicitly the overall decline of health had led to the increased medical attention to the diseases of nations and the proliferation of works investigating the problems of race. Chief amongst these was of course Morel's own contribution, drawing doctors' attention to the "abnormal states of existence which have special relations with the occurrence and existence of physical and moral degeneracy in the world . . . consistent with the *asthenic* phase of present existence."<sup>208</sup>

For Aitken, these new racial diseases highlighted a process of general decline that would be particularly threatening to the younger generation who fell prey to physical and mental disease as the average standard of health sank with the trough of asthenic time while simultaneously liable to inherit diseases from parental germs that had been damaged by exposure to environmental toxins. Of the list of causes that could promote degeneracy by far the most prominent was of course the effect of alcohol on the blood and brain. Morel, as we have seen, had arranged alcoholic degenerates into two categories: those who were physically and mentally crippled by the effects of the poison, and those who, though they had suffered grave physical degeneration, were able to pass on their reduced physical vitality to a future generation. Alcohol therefore produced states akin to insanity in the individual, and the condition of degeneration transversally in the race, and Aitken was keen to emphasise to British readers the role of heredity in modifying both the *form* and *prognosis* of disease, noting that when the "tendency toward alcoholic excess is of hereditary origin, the cure of the dipsomaniac is generally impossible."<sup>209</sup>

---

<sup>207</sup> Aitken, *Science and Practice of Medicine*, p.138

<sup>208</sup> *Ibid.*, p.142

<sup>209</sup> *Ibid.*, p.145

Thus, Aitken argued, the growing recognition of this change was not so much a concern for the general physicians as it was for the custodian of public health, and it fell upon “all civilized governments anxiously to enquire” whether physical and mental degeneration was leading to a “continued increase of suicide . . . increase of crimes against law and order . . . the monstrous precocity of young criminals . . . abnormal conformations of the skull, and the tendency to the union of the cranial structures, which prevail among criminals” along with a “general diminution of the intellectual powers [and] the increase in inmates of asylums and prisons.”

Once again we must be cautious not to conclude from the high visibility of degeneration theory within these debates that it served as a *cause* of the discussion of racial pathology in the second half of the nineteenth century. Parallel (though less explicit) transformations in the relationship between heredity, race, and alcohol were hugely prevalent during the same period, with manuals like James Whitehead’s *On the Transmission from Parent to Offspring of some Forms of Disease* (1857) – one of the first systematic discussions of heredity in the English language – noting the racial dangers of alcoholism in very similar terms to Morel.<sup>210</sup> Throughout Europe there was an increased discussion of heredity diseases and the problem alcoholism presented to the race, though we can nonetheless accept that, following Morel’s work, these concerns were gradually displaced from the realm of general medicine to become the exclusive concern of doctors and psychiatrists working on the problems of public health as a distinct speciality.

Indeed Aitken’s own distinguished career in public service placed him firmly within this school of medical theory. He had been appointed as Assistant Pathologist to the military for despatch to the Crimea by Lord Panmure in 1855, a position that subsequently landed him the job of Professor of Pathology at the newly opened Army Medical School in Chatham where, in 1862, he wrote *On the Growth of the Recruit and Young Soldier*, a manual that unified his concerns over military and juvenile health as collective goods that could be threatened by degeneration.<sup>211</sup> Thus, in

---

<sup>210</sup> Whitehead, *On the Transmission from Parent to Offspring of some Forms of Disease*, London: John Churchill, 1857 (2<sup>nd</sup> ed.), p.42

<sup>211</sup> Aitken, *On the Growth of the Recruit and Young Soldier*, London: Griffin, Bohn, & co., 1862.

addition to the diagnostic problems raised by degeneration, he was particularly concerned with the bearing of these issues on the health of children and soldiers, especially as the “degeneracy of the human race” had already produced localities in which, he complained, “the inhabitants can no longer fulfil the conditions required for military service.”<sup>212</sup> Aitken is in fact precisely the type of public figure who Jacques Donzelot appears to have had in mind when he wrote that “the emergence of the psychiatrist from his institutional preserve was ordered by an imperious summons issuing from two social apparatuses in full expansion: the army and the schools.”<sup>213</sup> This is not of course to claim that Aitken can strictly speaking be placed amongst the psychiatrists (though as we have seen, this label is a hugely problematic one unless analysis is confined to institutional writings), but that he was part of the same broad and ill defined strand of medical writing that occupied itself with documenting illness in relation to the growing discourse on public hygiene.

### **4.3 Pathological Continuity**

It is clear then that the discussion of asthenia offered an important foothold for degeneration theory in British medicine by producing an understanding of disease as constitutional change. We have also seen that while the initial response of British asylum doctors was to focus on the elements of Morel’s system that were closest to their own concerns and debates – principally the credibility that should be invested in different systems for classification of insanity – the wider medical community saw in his ideas a means of unifying the various currents of thought that had been developing since the first quarter of the century. However, it was not long before these same broader themes of degeneration theory entered into Scottish psychiatry. In the following chapter I will examine in great detail how Morel’s ideas were adopted and shaped by Scotland’s most prominent psychiatrist, Thomas Clouston, here I will merely introduce this discussion by looking at a short paper published in the 1870s by the Senior Assistant Physician at the Royal Edinburgh Asylum, Strehill H. Wright, who followed Aitken in sewing together the stands of asthenia and degeneration to

---

<sup>212</sup> Aitken, *Science and Practice of Medicine*, p.143

<sup>213</sup> Donzelot, *Policing of Families*, p.128

produce an account of insanity that was entirely novel when compared with the traditional approach of alienistic medicine.<sup>214</sup>

In this paper Wright set out to explain that the growing significance of hereditarian thought had radically transformed the discussion of insanity by dividing predisposing from occasioning causes, particularly in “irremediable cases [where] the asthenic condition of the constitution generally, but especially of the nervous system, is *congenital*.” This congenital form of constitutional disease – “a true evolution of individual organisms of deficient vital vigour” – possessed “an entirely different significance, as regards many important questions, from those cases in which the asthenic constitutional condition which leads to mental disorder induced by influences extrinsic to the organism.” It is perhaps redundant to observe that Wright’s discussion appeared at a time when psychiatrists in Britain were beginning to draw out the developmentalist themes that had been implicit since the middle of the nineteenth century by distinguishing between normal and abnormal evolutionary development, though it is significant to note how the notion of ‘relative health’ that had appeared in Aitken’s work was used in Wright’s discussion to place illness and abnormality within the context of evolution. This was a hugely problematic move insofar as the ‘individual’ was already evolutionarily peculiar (representing a member of a species that invariably contained a variance of traits). This was in fact one of the most intractable problems degenerationist psychiatry faced, and by 1900 the U.S. army doctor and pioneer of trans-cultural psychiatry Chas Woodruff could still be found arguing that because the laws of organic evolution proceed by variation, there could be no such thing as a ‘normal type’ in living organisms, and psychiatry could not construct the ‘average man’ as a composite of his race when attempting to define the degenerate. Following these caveats, Woodruff argued that psychiatrists could none the less “separate the normal from the abnormal” by simply defining the degenerate as “an abnormal man whose variations or stigmata are developmental and due to an unstable nervous system” (a solution that was not too far from the one adopted by Scottish psychiatrists).<sup>215</sup>

---

<sup>214</sup> Strethill H. Wright, ‘Some Remarks on Insanity’, [LHB 7/14/2] orig. *Ed. Med. J.*, Mar., 1873

<sup>215</sup> C. Woodruff, ‘Some Thoughts Relative to the Etiology of Degeneration’, *American Journal of Insanity*, Oct. 1900, pp.203-214

For Wright, the problem of reconciling a theory of random distribution of peculiarities with the desire to define pathology on the basis of abnormality (in effect a return of the problem of differential diagnosis in psychiatry) was to be solved by arranging what he termed the “individual evolution” of peculiarities as a hierarchy ordered on the basis of their intensity. As an example of this arrangement Wright drew attention to the then recent anti-revival protests in Galashiels in which a riotous mob was caught “doing much mischief in attempting to preach a gospel, the bearing of whose teachings they [were] by education rendered unable to appreciate, and as preachers of which, they [were] most of them constitutionally entirely unfitted to act.” These rioters were, Wright argued, characteristic of all mobs (be they anti-revivalist, socialist, or Chartist), since they were formed of “men of small capacity in every respect: their only motive power being the monomaniacal impression that they were bound to teach others”, a preaching mania that “acted as an exciting cause of the uncontrolled animal propensities of these inferiorly developed intelligences, the roughs.” This crowd of roughs offered a chilling demonstration of the danger presented to society by “a class of *sanely peculiar* individuals, which approaches very closely what must be looked upon as *insanely peculiar* individuality; and which, with very slight disturbing case, afford manifestations of insanity.”<sup>216</sup>

Here we see the fundamental break introduced by degeneration framed not in terms of its impact on systems of classification, but in terms of psychiatry’s access to the essence of insanity: no longer was insanity to be presented as the presence of an insane peculiarity, but as the extension of a sane peculiarity distributed beyond an average. The message here was clear: the asthenic and precariously balanced constitution of modern society, coupled with a lack of civilisation and organisation could, under the influence of an inciting social or political doctrine, trigger the animal propensities of the crowd toward mob violence. The fact that such discussions were so frequent during the second half of the nineteenth century, returning with an ever greater force until the wave of degeneration finally broke in the first decades of the twentieth century, only serves to highlight the hypothesis that psychiatrists of this period wrote with three fundamental ambitions in mind: firstly, they sought to legitimise their profession by alloying their account of insanity with the medical

---

<sup>216</sup> Wright, ‘Some Remarks on Insanity’, pp.5-6

theories of heredity; secondly, they sought to underline the social utility of their knowledge by drawing reference continuously to the dangers it was able to uncover; and thirdly, they sought to present this hybrid of medicine and public service as a necessary adjuvant to the State whose foundations were being constantly undermined by a retrograde and unscientific legal system.

Returning to Wright's paper, we see all these elements mobilised within the space of a few short pages, with further cases of sanely and insanelly peculiar individuals introduced to emphasise a hidden pathological process endlessly generating citizens "not fit to play a part in the common-wealth" and representing a "herd of mortals more or less ignorant" who were liable to fall prey to complex doctrines that would only mislead them into a destructive rage. Writing of a case that came to his attention at the Royal Edinburgh Asylum he describes "the *brutality* of [a] woman who savagely attacked her husband. Doubtless, the woman had often done the like, and many of her sisterhood were in the habit of occasionally doing the like under the influence of drink, or any other exciting cause of their uncontrollable appetites – emotions we cannot call them."<sup>217</sup> Similarly there was the case of 'M'L', whose blunt yet pregnant medical history merely records: "His mother was a dipsomaniac, etc." This patient, Wright continues:

is the most sane man who is able most clearly to recognise, and most thoroughly to fulfil, his obligations – obligations which vary in nature according to a man's lot in life; in extent and magnitude, according to the amount of intelligence with which he may be gifted for their recognition. There is no sharp boundary line between 'sane' and 'insane.' The measure of sanity is a question of individual evolution. Although it is easy to recognise the wide gulf between the abnormality of a markedly *insane* individuality and the normality of an ordinary sane individuality, still, there are numerous individuals of a peculiarity gradually increasing.<sup>218</sup>

It is worth dwelling on this statement, which begins by noting that an asylum patient is "the most sane man", continues to argue that there is in any case no "sharp boundary line" separating sanity and insanity, and concludes by warning of the gradual increase of peculiarity in individuals who are not technically insane. In this transition from peculiar insanity to sane peculiarity we see the traditional categories of

---

<sup>217</sup> Ibid., pp.7-9

<sup>218</sup> Ibid., pp.10-11

psychiatry abandoned once and for all, with mental responsibility placed on a continuum that would allow for a range of pathologies, from drunkenness to mob violence, to be explained in reference to degeneration.

In considering how British asylum doctors, journalists, and general physicians looking to France responded to the initial impact of Morel's ideas, it is important to note that the gaze was returned from the other side of the channel, with Liverpool, London, and Wolverhampton all discussed in Morel's treatise as centres of urban degeneration. Indeed, shortly after Morel's treatise was published, the Scottish psychiatrist James Crichton-Browne (who was then coming to his final year as Superintendent at the Crichton Royal Asylum in Dumfries) compiled an overview of the theory for a British audience in which he was led to conclude that the "very hearts and foci of [Britain's] wealth and enlightenment" were known on the Continent "chiefly as the hotbeds of fever, pestilence, and general degradation."<sup>219</sup> Hence, while British authors typically looked to the Continent when discussing degeneration, the French would look to Britain when discussing urban decay. As with Monet's Houses of Parliament series depicting a view from the Thames rendered opaque by sulphur and fog, the French fixation with British ways of living was revealed in the interest the country's medical writers showed in the degeneration they suspected was taking place there, and just as the allure of bordellos and anonymity drew the English mind to Paris, a fascination with gas-lights and crowded streets drew the French mind to London and the industrial cities beyond. A work dealing with the 'English' fight against degeneration, produced by Boulenger and Enschedé, two visiting French doctors who had come to assess the situation in Britain following the 1904 Interdepartmental Committee on Physical Deterioration, bears out the phantasmal elements of this vision of British degeneration:

The mind of the traveller disembarking in one of the major manufacturing cities of England or Scotland: – Birmingham, Liverpool, Glasgow – is struck by the dull and dreary atmosphere, which is uniformly grey in these centres of industry. The mists, as we know, are nigh perpetual in the British Isles, but the excessive industrialism of the late nineteenth century came to add, in the large conurbations, a legion of belching factories, spewing from their mouths an acrid and thick smoke covering whole towns with a uniform layer of soot and making the air, if not quite unbreathable, at the

---

<sup>219</sup> Crichton-Browne, 'On the Degeneracy of the Human-Race', p.203



very least deadly . . . the sun is a near myth in these towns, the discovery of which necessitates taking flight to the distant suburbs.<sup>220</sup>

From this vignette of the urban centres of Britain and its “swarm of miserable and stunted” inhabitants, the authors move on to the question as to whether:

Industrial life, the great urban centres, and the city factories, are fatal to the human being; whether they sap and gradually erode the physiological means of resistance, and whether, from generation to generation, they sew and cultivate disease, hereditary degeneration, and death for each and every class. The alarm raised by the hygienist who contends that; ‘The Anglo-Saxon race is degenerating’ would not be in vain if one considers that three quarters of the population is consigned to these devouring cities.<sup>221</sup>

Thus, they hoped, the results of their trip to Britain would be of use “not only for doctors, but all those who are care for social waste, coming into contact with the backwards, the abnormal, the degenerate.”<sup>222</sup> In particular, foreign observers were drawn toward the work of the town planning movement, with figures like Edinburgh’s Patrick Geddes leading the fight against urban degeneracy. Geddes, who remains well-known for redesigning large swathes of Edinburgh, was chiefly interested in combating the “dirt and disorder the ruder industrial age [had] carried with it”, leading “not only to disease, but alcoholism with all its consequences of insanity, crime, and vice.” Geddes hoped that “the degeneration which the bio-pessimist has shown as well-nigh overspreading Nature” could be combated not only by redesigning cities, but by redesigning bodies, with the psychiatric theories of heredity and hygiene capable of leading mankind out of despair. Thus, he continued, the “incipient development of hygiene” and the psychiatric hygienist – “an unfamiliar figure, a professional type not yet classified or understood” – brought him hope that the modern citizen could break the cycle of alcoholism, insanity, degeneration, and misery.<sup>223</sup>

---

<sup>220</sup> Boulenger M & Enschedé N, *Hygiène Scolaire: La Lutte contre la Dégénérescence en Angleterre*, Paris: V. Giard & E. Brière, 1905, pp. 1-2

<sup>221</sup> *Ibid.*, pp. 2-3

<sup>222</sup> *Ibid.*, p.6

<sup>223</sup> Geddes, ‘In an Old Scots City’, *Contemporary Review*, 83, 1903, pp.559-68 (562)

## 5. Priests of the Body: Heredity, Hygiene, and Degeneration in the Psychiatry of Thomas Clouston

### 5.1 Introduction

In his opening remarks of the Lectureship on Mental Diseases instituted at the University of Edinburgh in 1879, the first British psychiatric lectures of their kind, Thomas Clouston told the assembled students that in pursuing a career in psychiatry they were undertaking a duty to ensure “brains that by inheritance [have] a tendency to . . . disease” were “subjected during their development and education to the right sort of hygienic and preventative influences.”<sup>224</sup> These two themes, heredity and hygiene, would structure Clouston’s work throughout his long and distinguished career, exerting an influence on everything he said and wrote between this inaugural lecture and his final book, *The Unsoundness of Mind*, published in 1911, a year in which he was knighted for his services to medicine.<sup>225</sup> Repeating tirelessly that the public health foundations of psychiatry were central to its place in society and that the scientific study of heredity would justify psychiatric intervention in the social order, Clouston drew his influence, perhaps more than any other British psychiatrist, from the degenerationist writings of France, mobilising heredity and hygiene as legitimising elements in psychiatric knowledge and practice. Indeed, in his *Clinical Lectures* of 1884, his most widely cited publication, Clouston wrote that the “two

---

<sup>224</sup> Clouston, ‘The Study of Mental Disease: Being the introductory lecture delivered in the University of Edinburgh, on the Institution of the Lectureship on Mental Diseases, May 1879’, LHB7/14/2 [orig. *Ed. Med. J.*, July, 1879] (p.9). Clouston’s lectures were the first university course delivered on Mental Diseases in Great Britain, though as James Crichton Browne argued at the International Medical Congress (Edinburgh) in 1881, these lectures were not far removed from those delivered at Edinburgh thirty years earlier by Thomas Laycock, “the greatest teacher of medical psychology he had known”, while David Skae, Clouston’s other great mentor, had offered lectures at the Morningside Asylum from 1853 (indeed Crichton Browne’s father, W. A. F. Browne, had delivered an even earlier course in 1851, this being a series of thirty lectures on mental diseases and mental hygiene, though it was attended by an audience of just two) [‘The International Medical Congress’, *JMS*, 1881, pp. 447-76 (pp. 452-53)]. Sir Alexander Morison had sought to create a Chair in Mental Disease at the University of Edinburgh in 1823, though his proposal was rejected and the course was eventually delivered extramurally.

<sup>225</sup> For a general overview of Clouston’s career see A. Beveridge, ‘Thomas Clouston and the Edinburgh School of Psychiatry’, in G. E. Berrios and H. Freeman (eds.), *150 Years of British Psychiatry 1841-1991*, London: Gaskell, 1991, pp. 359-88. A more detailed (though occasionally inaccurate) account is presented in M. Thompson, *The Mad, the Bad, and the Sad: Psychiatric Care in the Royal Edinburgh Asylum (Morningside), 1819- 1894*, Unpublished Ph.D. Thesis, Boston University, 1984.

great French alienists, Morel and Moreau de Tours have told us nearly all we need to know about the subject”, and that their work had laid the foundations for a science that would base itself on a defence of public health, directing its sanitising mission against the “unfavourable conditions of life [promoting] human degeneration [such as] the excessive use of alcohol.” Developing the ideas of his inaugural lecture, he anticipated the impending incorporation of psychiatric knowledge into the fabric of modern life, noting that:

When our profession becomes, as it should be, and as I have no doubt it will in time become, *the guardian – by prophylaxis – of the physical and mental well-being of the people*, and the great source of authority for the regulation of the conditions of life, such questions will come far more to the front than they do at present, and they must then form an important part of medical study.<sup>226</sup>

Situating his own anti-alcohol campaign in relation to the degenerationist themes of heredity and hygiene, Clouston spoke frequently against the racially destructive effects of intemperance in a wide variety of lay and scientific forums (though he was not himself a temperance man). At a meeting of the Edinburgh University Total Abstinence Society in 1882, he estimated that 17,500 people in the British Empire had been rendered insane as a direct consequence of drinking, and that these were just the extreme cases meriting committal to an asylum. For every person committed due to alcoholic insanity there were, he explained, several more at large who ought to be committed, a fact which, when combined with “the power of alcohol in producing race degeneration”, indicated the need for doctors to take a more active role in leading the temperance cause in the interests of public hygiene.<sup>227</sup> Returning to this same theme at the close of the century, he told the British Medical Association’s Temperance League that at Morningside he had witnessed the devastating effects of alcohol on patients who offered evidence of “a great deal of that sort of degeneration of mind, body, and race which alcohol undoubtedly caused in the world.” These patients, “handicapped . . . by neurotic and insane heredity”, were “especially liable to be taken hold of by alcohol, and have their control diminished”, producing in their turn yet more heredity degenerates to add to the asylum populations of Scotland. This fact alone, quite apart from the social problems surrounding alcoholism, demonstrated

---

<sup>226</sup> Clouston, *Clinical Lectures*, Philadelphia: Henry C. Lea & Sons, 1884, p.312, Italics added

<sup>227</sup> ‘Dr Clouston on the Effect of the Excessive Use of Alcohol on the Mental Functions of the Brain’, *The Scotsman*, Dec 20, 1883, p.4.

the most “terrible instance of the effects of alcohol on the individual and the race.”<sup>228</sup>

Writing in a temperance publication aimed at university students, *The Young Abstainer*, Clouston outlined once again the heritability of degenerate conditions, drawing particular attention to Kraepelin’s experiments with alcohol, experiments which had demonstrated that:

it is an important fact that the taste for alcohol is transmitted from generation to generation, no thoughtful man or woman can pass over this aspect of the question. An alcoholic race tends to be a degenerate race. Take the modern French, for instance. In the large towns – in Paris – the working people have taken of late years to the stronger forms of alcohol, and all the French physicians say there is now taking place in the working classes a manifest degeneration . . . crime is more common, and race-degeneration is setting in.

Thus, he told his young readers: “The whole medical profession is dead in earnest, and is at one in demanding certain changes in our laws in regard to the use of alcohol from the medical and social point of view, and especially from the bodily and stability-of-race aspect of the future of humanity.”<sup>229</sup>

As we have seen, Clouston was keen to show that his research programme was following developments in French psychiatry, and the similarities were not confined to selecting alcoholic degenerates as a worthy object of study. On the theoretical level there were a remarkable series of parallels between Clouston’s concerns and those of French degenerationists, while even his classification of alcoholism resembled the system Magnan had set out in *On Alcoholism* (see chapter three). Clouston’s classification, most clearly outlined in a lecture given at the University of Edinburgh in 1883, loosely followed Magnan’s in enumerating the five main stages of alcoholic degeneration as: 1) *mental degeneration of a slight type*; 2) *weakening of the power of self-control* frequently associated with the commission of crimes “caused in persons not of the criminal class”; 3) *Alcoholism*, marked by more severe mental symptoms and “brain storms”; 4) *absolute insanity*, a *de facto* insanity accounting for between

---

<sup>228</sup> ‘British Medical Temperance Association’, *The Scotsman*, Jul 28, 1898, p. 11; c.f. *British Medical Journal*, Aug 6, 1898, p.370. The British Medical Association had started its own Temperance branch in 1879 (See Sir Benjamin Ward Richardson, *British Medical Temperance Association: inaugural address delivered at the annual meeting in the Medical Society of London's rooms*, London: Association Press, 1879).

<sup>229</sup> *The Young Abstainer: Edinburgh Supplement*, No.1, April, 1901 (p.5) [LHB 7/12:5].

fifteen and twenty per cent of all cases in the British Empire, and; 5) *family and race degeneration*. This final stage had of course been first described by Morel, a “great French physician . . . of a philosophical turn of mind” who had entered “into an extremely elaborate scientific investigation into what he called ‘human degeneracy’ [listing] the degenerations that are constantly taking place in families, in nations, and in races, through the lowering of the body and of the mind, and the tendency to fall into various diseases”, in short, “the sinking-down process” that was also taking place in Britain’s cities “to a huge extent.”

Alcohol – “the greatest single factor in human degeneracy that is yet known” – was, Clouston told his audience, producing in Britain a mass of degenerate beings that filled “the asylums, goals, and poorhouses, as well as the slums of our large cities” and creating “people who cannot help themselves – those weak, nerveless, evil-disposed, characterless beings, with no power of action, no power of keeping themselves right, no desire to be better or higher, the sort of people of which we are hearing so much now.” In particular, he suggested, the Scottish race ought to abstain from alcohol altogether, since while it was possessed of a great many qualities, a sober ancestry was not one of them, and there “may be something in the blood or brain that only needs a little alcohol to light it up into a disease or a demon.” Alcohol, with its power to lower the race physically and morally across successive generations was therefore:

opposed to all the qualities that constitute a great and enduring people. This is especially the case in large cities if combined with other unfavourable conditions, an actual race degeneration being then rapidly produced. This is, as all publicists and socialists know, one of the great questions of our civilisation: How can we raise the race, prevent it from being lowered, make every man a better man, make his sons and daughters better men and women, not in a religious or moral sense merely, but in an extendedly human point of view, looking at man as a whole, body and mind, making him bigger, stronger, better thinking, better feeling, longer lived?<sup>230</sup>

---

<sup>230</sup> T. S. Clouston, ‘The Effects of the Excessive Use of Alcohol on the Mental Functions of the Brain: A Lecture Delivered to Students of the University of Edinburgh 19th December 1883, Under the Auspices of The Edinburgh University Total Abstinence Society’ [LHB7/14/13, Paper 12, pp.10-18 (19-22)].

The suggestion that alcohol played a decisive role in producing a range of social pathologies was not novel. This line of thinking spanned from the second half of the nineteenth century to at least the 1920s, producing a string of works from Benjamin Richardson's *Diseases of Modern Life* (1876) to Héricourt's *Social Diseases* (1920), bookends to a genre of medical literature addressing public hygiene and the need for the State to restrict individual liberty.<sup>231</sup> More broadly we find evidence that the proselytising campaigns against alcohol were seen as central to the endeavours of the medical profession as a whole, with even student theses calling upon doctors to wage “energetic and sustained warfare” on alcoholism in an effort to uphold “the honour and dignity of all civilised nations” from the victims of intemperance who “crowd the prisons, hospitals, and asylums [encouraging] the progress of pauperism to keep pace with the physical and moral deterioration of the people”. In short, the medical profession were seen by Clouston and his contemporaries as “advocates of hygiene” and “the natural custodians of public health.”<sup>232</sup> However, even against this profuse body of literature Clouston's name stands out as a notable one, and his tireless quest to combat degeneration was revered outside both his own nation and his own science. As the *Medical Press and Circular* noted in 1893, in spite of the vociferous campaigns against alcoholism and degeneration, Clouston was “one of the few public medical officials who has the ear of the profession and that of the public also.”<sup>233</sup>

Clouston's writings therefore present us with a fascinating window into the ways in which degenerationist assumptions were taken onboard and reworked in British psychiatry. In addition to his frequent references to Morel and Magnan Clouston's work serves as an intriguing case-study in the reception of degeneration theory for four main reasons. Firstly, his theory of insanity was, as we shall see, bound up with the formation of ‘insane peculiarity’ and vitiated self-control, a principle that was generally derived from degeneration theory. Secondly, the mobilisation of heredity within this model of insanity offers us an interesting insight into the contributions made by psychiatry to wider life sciences in the late nineteenth

---

<sup>231</sup> B Richardson, *Diseases of Modern Life*, London: Macmillan, 1876. See also, B Richardson, *On Alcohol* (a course of six Cantor Lectures delivered before the Society of Arts, London, 1876); J Héricourt, *Social Diseases: Tuberculosis, Alcoholism, Syphilis, Sterility*, London: G Routledge & Sons, 1920.

<sup>232</sup> John Maxwell Dawson, *Alcoholism*, C.M. Thesis, University of Edinburgh, 1908, p.5

<sup>233</sup> *The Medical Press and Circular*, Mar, 1893 in LHB 7/12:5 (p.263).

century, demonstrating in particular that the British ‘empiricist’ rejection of Continental *a priori* methods was largely rhetorical. Thirdly, Clouston’s discussions of prophylaxis, hygiene, and the effects of alcohol indicate that he conceptualised psychiatry not as a narrow medical specialism, but as a form of social policing in the broadest sense, substantiating the claim that degeneration was central to late nineteenth-century psychiatric theory, even in contexts where it has generally been supposed to have exerted little influence. Finally, we will see that, like so many of his colleagues, Clouston did not wish to remodel psychiatric notions of insanity for taxonomical reasons alone, particularly as such systems of classification were seen as somewhat arbitrary and having little impact on practice. Rather, his wish to modify the criteria according which psychiatry divided between sane and insane was directed toward the law, and his discussions of heredity and alcoholism reveal a constant preoccupation with questions of juridical reform that had very little to do with the psychiatric practice.

This study of Clouston’s writings is therefore intended to supplement the overall portrait of degeneration theory within Scottish psychiatry, to demonstrate the implicitly legal nature of much nineteenth-century psychiatric discourse, and to indicate more broadly that psychiatrists such as Clouston were part of a proto-modernist project to define the subject of the future, a concern with the coming man that, while not quite as finalised as the vision of *homo sovieticus*, was suggested by a letter submitted to Clouston from an American named Wallace Wood, soliciting contributions for a series on the “Herald’s Symposium of a select number of authorities in all parts of the world on the anthropological and ethical subject of the ‘Coming Man’”, with copies of the letter “sent to men of eminence in every civilized country.” A follow up letter begging Clouston’s contribution demonstrates just how eminent a circle he was placed within: the Symposium had already received the contributions of Max Müller, Cesare Lombroso, Oliver Wendell Holmes, William James, John Addington Symonds, Henry Maudsley, Lord Randolph Churchill, and Walt Whitman.<sup>234</sup>

---

<sup>234</sup> Enclosed with this letter was a list of questions Wood wanted his correspondents to answer for the Symposium, suggesting it may have been a ruse for a meeting of an entirely different kind: “What are the attributes of perfect manhood? What is your ideal? What are the best types? What is your ideal nationality?” &c. [in LHB 7/12:5, p.150 & p.156].

## 5.2 Manias Old and New

Clouston's first substantial psychiatric publication, a textbook of *Clinical Lectures* (1883) based upon the major elements of his course at the University of Edinburgh, contained within it a lengthy theoretical section on 'the insane diathesis' in which he outlined the degenerationist notion that insanity was nothing more than an abnormally weakened power of control.<sup>235</sup> Here Clouston set out to examine the various manifestations of deficient and paralysed control in response to the post-Darwinian question that had troubled psychiatrists of the period – namely the relationship between normal and abnormal states (or the question as to whether 'normal' was a mere statistical average or an inherent condition of the organism) – by arguing that perfect or absolute control was a norm derived not from the average (since it was rarely present) but from an impossible ideal toward which civilised humanity must nonetheless strive. The species of insanity resulting from deficient control (rather than the influence of an occasioning cause) were therefore marked out as the special class of 'Inhibitory Insanities' of evolution or development, a classification that was further subdivided into those forms of defective inhibition that were recognised by the law and those that were not, a fact suggesting the principal motivation here was not purely psychiatric.

The first class of (legally recognised) Inhibitory Insanity consisted of automatic acts whose insane nature was inferred from the lack of "conscious desire to attain the object". In these acts the presumed paralysis of self-control accompanied bestial desires to pursue worthless goals that could not have served as an aspect of the rational consciousness, cases, Clouston notes, where there had been something like a compulsive desire to steal articles of negligible value to the thief or the desire to

---

<sup>235</sup> Clouston, *Clinical Lectures*, Philadelphia: Henry C. Lea & Sons, 1884 ('The Insane Diathesis', pp .231-259). Clouston was here following the definition of diathesis offered by his former professor, Thomas Laycock, who had used the term to indicate "such an innate hereditary constitution of the body that, in the course of the vital actions, there will arise at various periods of life, under varying circumstances, local or general diseases, having a common resemblance, either as to etiology, symptomatology, or pathological anatomy" (Laycock, *Lectures on the Principles and Methods of Observation and Research*, Edinburgh: Adam & Charles Black, 1856, p.88).



masturbate in married men.<sup>236</sup> The presumption here is plainly formulated in medico-legal terms: if the “conscious desire” of the thief is to “attain the object” of his crime, then it must be presupposed that the object has a value to him. Similarly, if the natural object of male lust is the female body, a married man who discharges his lust toward an imagined object could not logically have *intended* his actions, a formula which effectively states ‘where there is no desire, there is no question of insufficient resistance or will, and where there is no question of will, there can be no presumption on an evil will’ (the target of the judge). Hence, the first class of legally recognised impulsive acts were the numerous inexplicable tendencies that had been “distinguished by distinct names” – the desire to “dig up and eat dead bodies (necrophilia)”, to “wander from home and throw off the restraints of society (planomania)”, or to “act like a wild beast (lycanthopia)” – in short, all the instinctive monomanias (homicidal, suicidal, epileptiform, destructive, and so on) that had found a place within the legal system solely by virtue of their unintelligibility. This then was the established form of impulsive insanity corresponding to both the logic of legal irresponsibility and to a generally accepted psychiatric account of animal and organic retrogression that encompassed the “perverted instincts, appetites, and feelings shown in urine drinking, eating stones, rags, clay, nails etc” along with “masturbation, sodomy, rape on children, bestiality” – conditions that seemed to indicate the ‘improperly evolved’ monomaniac was at the mercy of bestial atavisms.<sup>237</sup>

While this type of insanity had become more or less established in courts of law (though it was on occasion still denounced by High Court Judges), it was the second class of generally unrecognised and legally punishable impulsive insanities to which Clouston wanted to draw attention. In contrast to the automatism of inexplicable monomania, this second form of impulsive insanity operated on a conscious level, appearing in potential and real criminals who were aware of their desire to commit insane acts. Patients belonging to this class would frequently suffer from Rat-Manesque neuroses, making declarations such as “My God! If I could get

---

<sup>236</sup> Clouston, *ibid.*, p.236.

<sup>237</sup> *ibid.*, p.244. The (Chicago) *Journal of Nervous and Mental Diseases* noted in its review of these lectures that Clouston’s “monomanias are usually amplifications of the old French ideas about monomania . . . The author has not a philosophical mind, and as a result his observations are of value chiefly as detached facts.” ‘Review of Clinical Lectures’, *Journal of Nervous & Mental Disease*. 1885, **12**(1):84-89.

these thoughts out of my head, what would I not give? . . . [the brutal desire] comes on me in one instance, and some day I will not be able to resist it.”<sup>238</sup> To define such desires as ‘insane’, or as part of the notorious and ever-expanding ‘borderland’ between normal and abnormal states of mind, had been “called in question by *a priori* sociologists [and] ridiculed by journalists” with “the dangers of admitting its existence painted in dark colors by lawyers.”<sup>239</sup> Clouston accepted that the degrees of control rendering responsibility a continuum rather than a discreet state could not be readily applied by the “medico-legal witness or adviser” who must take into account the “social and legal aspect and effect of his opinions.” Legal authorities were therefore likely to demand “other evidence of disorder of the mental function, in the shape of insane delusion or incoherent speech, before they [were] willing to put forward the plea of diseased want of self-control in mitigation of punishment.”<sup>240</sup> However, Clouston argued, anyone who had “actually seen the terror and agony of a mother conscious of an impulse to destroy her child, and striving against it with vehement resolution” could not dispute the existence of this class of insanity so readily. To corroborate this contention he cited a letter from a former patient of his, a fellow doctor who was conscious of certain overpowering morbid temptations. When on a train he was overcome with an urge to jump out of the windows, when in a station he was overcome with the urge to jump under the train, and when at his practice he would feel compelled to use scalpels and forceps for purposes that would see him struck off the medical register. His confession was startling:

When I sat down at my table I used to have horrible impulses to cut my children’s throats with the carving knife . . . I took opium several times from no deliberate intention but by a sudden impulse that I could not resist when I was working with it in the surgery, but I vomited it. My brain feels quite dead, with no feeling in the scalp; my eyes seem as if something were dragging at the optic nerve continually.

As Clouston concludes, this frantic and desperate account of morbid desire “is either a tissue of lies, or the thing ‘homicidal impulse’ exists.”<sup>241</sup> We can see here that while Clouston explicitly defines insanity in reference to powers of control, his implicit target is the legal equation of knowledge with conduct (since the patient’s knowledge

---

<sup>238</sup> Clouston, *Clinical Lectures*, p.246 & p.237.

<sup>239</sup> Clouston, *ibid.*, p.236.

<sup>240</sup> Clouston, *ibid.*, p.233.

<sup>241</sup> Clouston, *ibid.*, p.245.

did not necessarily translate into a capacity to resist). In later sections of this thesis I will consider in greater detail how this second class of consciously insane impulse fared in Edinburgh's legal circles, though we get a sense of the strength of resistance to the type of claims made by Clouston from the fact that 30 years after he had published these lectures a student of medical jurisprudence submitted a thesis to the University of Edinburgh outlining the legal case for their rejection. Here the student drew upon the very examples discussed above, arguing that Clouston's case studies did not amount to a proof of *irresistible* impulse, since a person may feel impelled toward homicide and yet commit no crime (as with Clouston's medical correspondent). Hence, he noted:

the value of this letter [to Clouston] would have been very greatly increased if it had contained a statement of the feelings or considerations that had such an influence with the writer as to keep him from performing the acts which he know, intellectually, would be legally wrong for him to do but which he had such abnormally strong impulses to do. Such a statement might have thrown a flood of light on the subjects of threats and punishments and responsibility.<sup>242</sup>

However, the terms in which this author's opposition to the theory of irresistible impulse was formulated suggested at the same time that such notions had met with some success in court, for he noted that "in many instances the only possible defence to save a man's neck is the plea of irresistible impulse", a plea in which an expert medical witness would be called so that the criminal's family history could be "ransacked to the third and fourth remove, directly and laterally, in order to find out whether there was not some 'hereditary tendency,' whatever that may mean, since care is taken not to define it."<sup>243</sup>

While it is clear then that these aspects of Clouston's theory of insanity were framed as a part of legal medicine rather than as an attempt to re-order psychiatric descriptions on purely aetiological or nosological grounds, a question still remains: What function did this apparent desire for modified relations with the law serve and what did it have to do with the theory of degeneration that Clouston was so drawn to around this time? There is in fact a ready-made answer to this question when we

---

<sup>242</sup> W. Ramsay Smith, *Medical Jurisprudence from the Judicial Standpoint*, Unpublished M.D. Thesis, University of Edinburgh, 1913, p.271.

<sup>243</sup> *Ibid.*, p.272.

consider the entry on ‘degeneration’ that appeared in Tuke’s *Dictionary* – the standard work of reference amongst British psychiatrists at the end of the nineteenth century – three years after the *Clinical Lectures* had been published. This entry, written by Tuke himself, argued that an acceptance of degeneration theory would necessitate a modification of the existing legal relations of psychiatry, particularly as the *syndromata* defined by Legrain (a prominent member of the SMP and author of the entry on ‘Alcoholism’ in Tuke’s *Dictionary*) tended to:

displace the old conception of monomania as so many morbid entities. They are signs, or, as Magnan terms them, *stigmates psychiques*, of mental degeneration. On analysis he finds that each may be reduced to one of two phenomena – obsession or impulse – that is to say, they are at the bottom of every monomania.<sup>244</sup>

We can see then that psychiatrists in both France and Great Britain were acutely aware that approaching insanity from a degenerationist perspective entailed removing the either/or notion of responsibility that had defined the work of earlier generations of medico-legal commentators. In displacing the singular definition of monomania (exceptionality) into a continuous study of the impulses covering all criminal and insane acts, psychiatry attempted to move away the model of cognition toward a definition of insanity that, as Tuke reported, considered the “three factors – instability of the intellect, that of feeling, and more or less paralysis of the will – which go to constitute the mental state of the degenerated.”<sup>245</sup>

---

<sup>244</sup> D H Tuke, ‘Degeneration’ in D H Tuke (ed.) *A Dictionary of Psychological Medicine &c.*, London: J . A. Churchill, 1892, pp. 331-332. Tuke’s *Dictionary* was a development of the earlier *Manual of Psychological Medicine* (1858) Tuke had co-authored with Bucknill. While this earlier work “ran to four editions and dominated British psychiatry for nearly a quarter of a century”, the *Dictionary* was, if anything, more ambitious, containing contributions from 128 authors (though there was a high degree of theoretical continuity between its contents and those of the *Manual*). On this see A Beveridge, ‘The Odd Couple: The Partnership of J. C. Bucknill and D. H. Tuke’, *History of Psychiatry*, 22, 1998: 52 – 56 (52). On Tuke’s *Dictionary* see W. Bynum, ‘Tuke’s Dictionary and psychiatry at the turn of the century’, in G. E. Berrios & H. Freeman (eds.) *150 Years of British Psychiatry 1841 – 1991*, London: Gaskell, 1991, pp. 163-179.

<sup>245</sup> Tuke, ‘Degeneration’, p.331. Tuke himself was cautious of the French approach to defining degeneration, both because he saw a danger of deploying the term in “so comprehensive a sense as to comprise forms of mental disorder under one head which differ widely in their form, their prognosis, and their treatment” and because its overall connotations offended his optimism by conveying “the impression that the condition of the patient is necessarily downwards, for this is by no means the case, recovery frequently taking place in some divisions of the group.” (p.332).

Tuke's *Dictionary* offers further evidence of Clouston's degenerationist project in its article on homicidal monomania, written by Paul Garnier and Henri Colin.<sup>246</sup> The French authors of this article noted that it was "almost superfluous to remark that the doctrine of *monomania* has had its day", particularly as the idea of a "distinct clinical entity" characterised by a single criminal impulse was no longer accepted by psychiatrists. The work of Morel, along with that of the Falrets *père et fils*, had demonstrated that "mental states, until they are regarded as distinct maladies, are in reality only symptoms" (explaining the emphasis placed on the break with symptomatological classification in the work of these authors). Once patients "degenerated through heredity" had been recognised and catalogued by psychiatrists, "the reign of monomania [had] come to an end", with Magnan's grouping of "episodic syndromes" as epiphenomena of the underlying condition (heredity degeneration) putting the final nail in the coffin of the formerly ubiquitous monomania diagnosis. However, they continued, the general idea of a diagnosis in which homicidal impulse was only the most prominent *symptom* of the underlying condition was still useful, since the 'monomania' could be re-defined as "*a syndrome directly connected with hereditary moral degeneration*" and characterised by the desire to commit certain deeds "*without any intellectual disorder or passion*".

According to this new definition a satisfactory diagnosis of homicidal monomania would require the "*persistence of consciousness*" and "*anxious struggle against the besetting impulse*": exactly the concomitants Clouston had introduced in his discussion of the subject. Garnier and Colin therefore elevated it to a "duty of the medico-legal expert to prove [that] the persistence of consciousness and lucidity does not exclude morbid mental conditions." The forensic applications of this theory were clear: if "the homicidal fixed idea always connotes a subjacent morbid condition of

---

<sup>246</sup> Garnier & Colin, 'Homicidal Monomania', in *Dictionary of Psychological Medicine*, pp. 593-599. Garnier (1845 – 1905) was employed at the Infirmerie Spéciale of the Paris Dépôt de Police and was, according to the *Journal of Mental Science*, one of the best known amongst French psychiatrists to its British readers. Garnier's reception room at the Infirmary was, the journal noted, "most instructive for those studying Parisian methods". Here all criminals displaying signs of mental peculiarity were inspected and, if necessary, transferred to associated institutions such as Magnan's wards at Sainte Anne. Colin (1860 – 1930), who was made an honorary member of the MPA in 1920, had worked first under Garnier at the Infirmerie Spéciale and later under Bouchereau and Magnan at Sainte Anne where he eventually became Chief Physician. ['Garnier: Obituary', *JMS*, 1905, **51**, 449; Henri Colin', *JMS*, 1930, **77** (316):1-3].

mental degeneration, of which it is only a symptom”, then any “patient labouring under homicidal impulse is as unable to free himself from this fixed idea as a lunatic is to get rid of his imaginary conceptions or hallucinations”. Given these conditions, they concluded, psychiatrists should not “hesitate to declare a man, who thus makes an attempt on the life of another, to be irresponsible before the law.” Evidently the doctrine of monomania had not ‘had its day’ and neither in Garnier’s and Colin’s article nor in Clouston’s *Clinical Lectures* was the essential idea of monomania abandoned. Indeed the only major change between the old and new definition of monomania appeared to consist in the role a criminal’s biography would play in expert examination; in contradistinction to the classical monomanias, which were essentially inconsistent with the criminal’s former character, the episodic syndromes of degeneration would ostensibly have been betrayed by numerous portents. Garnier and Colin therefore advised that the examining psychiatrist should “look at the antecedents of the patient for abnormalities, which are mostly found in great numbers” while the presiding magistrate should continue to follow the older logic of monomania in calling for “the examination by a medico-legal expert of every criminal whose attempt does not seem based on the ordinary motives of most crimes.”

We can see how this article, intended no doubt as a condensed and canonical formulation of the problem of monomania in the age of degeneracy, covers much of the same ground Clouston had passed in his discussion of the condition. Here the medico-legal balance is clarified in the bluntest possible terms: the magistrate must call in the psychiatrist when he can impute no motive and the psychiatrist must seek the heralds of danger in the criminal’s former conduct by working with the assumption that “in every insanity there may be a direct or indirect danger.”<sup>247</sup> Aside from the social defence model of law this formula psychiatry was implicated in this formula – the patient’s dangerousness being invoked to legitimise the need for psychiatrists in court – we also get a sense as to why the disorders of adolescence were becoming so interesting to psychiatrists (and particularly Clouston) during this period. If, as degenerationists alleged in court, their expertise consisted in the ability to detect the portents of homicidal rage in the peculiarities of the criminal’s biography, then surely they ought to be able to apply this retrospective diagnosis in

---

<sup>247</sup> Garnier & Colin, ‘Homicidal Monomania’, pp.593-5 & p.598

the present, deciphering the clues of future homicidal monomania in the syndromata of the young. According to Clouston, both degeneration and the insane diathesis arose mutually from “complex and different combinations of unusual developments”, producing a field of abnormality that was impossible to pin down within a medical work yet was ubiquitous in society. Here Clouston could rely on the picture of insanity and degeneration that increasingly belonged to popular culture, one had “merely to read the works of the modern psychological novelist” to study the abnormal types that could result from bad heredity.<sup>248</sup> However, in Clouston’s theory of insanity the search for signs of danger operated in two ways. Firstly, though he continued to cite the ‘convenient’ monomanias that would only ever be invoked in serious or highly peculiar cases (species like necrophilia, planomania, and lycanthropia), his justification for accepting the existence of this type of insanity was given in reference to fairly trivial offences or non-criminal acts (petty theft and masturbation). Hence, the exceptionality of monomania, or the ‘convenience’ of the condition that had fallen on the side of the law rather than on the side of medicine, was removed, bringing trivial unconscious acts into its orbit. Secondly, he wished to imply that the unconscious monomanias the court had been accepting all along were no different from conscious impulsive crime, since it was the obsessive or impulsive nature of a particular crime that defined it as a monomania. Clouston’s discussion of morbid control and the insane diathesis therefore follows quite precisely the degenerationist strategy of eroding the two main distinctions the law had drawn with regard to insanity: the distinction between extravagant (pardonable) and petty (punishable) crimes, and that between conscious (punishable) and unconscious (pardonable) acts.

### **5.3 Manias Interesting and Banal**

As we have seen, in the last third of the nineteenth century new forms of mental illness were proposed at the crossroads of psychiatry and the law. Clouston’s interest in alcohol as a cause and effect of degeneration was very much a part of this concern with the legal implications of psychiatric knowledge. Indeed, the notion of a specific ‘mania’ for alcohol was developed in synchrony with a model of stable biological

---

<sup>248</sup> Clouston, *Clinical Lectures*, pp. 257-58.

craving that was increasingly deployed in medical, psychiatric, and legal writings against the classical notion of volition.<sup>249</sup> One of the earliest uses of this model appeared in Johann Ludwig Casper's *Handbook of the Practice of Forensic Medicine* (1861), a hugely important work of medical jurisprudence that was frequently discussed by British psychiatrists and lawyers. Casper argued that, for all the good work of Temperance Societies, a diminution in alcohol consumption was generally met with an increase in the consumption of other 'stimulants' (such as tea and opium), a fact tending to suggest that the underlying craving was not removed but merely redirected in persons predisposed. While Casper acknowledged that to regard opium-eating as a displaced form of dipsomania would not satisfy temperance advocates – after all, one could label this a vice to be added to that of alcohol consumption – their appeal to volition could not, he argued, explain the documented dependence regular opium users had developed. As corroboration he cited a “recent and remarkable case” of unintended dependency on chloroform that had developed in a patient after the substance had been administered as a sedative, affording “an unequivocal proof of the truth of the existence of a morbid impulse to intoxication from purely physical causes without the slightest trace of ‘vice.’” Furthermore, Casper claimed, Temperance Societies could not logically demonstrate that any individual capable of resisting alcohol purely by his own volition was at the same time suffering from this morbid impulse (i.e. addiction), and while he did not wish to join “that class of authors who . . . always elevate what is corporeal and deny the power of mental energy to control the immoral passions and desires”, he doubted the worth of social movements in

---

<sup>249</sup> Mariana Valverde has argued that the continued commitment to a voluntaristic language of the will on the part of doctors tended to undercut their disease definition of alcoholism. See Valverde, “‘Slavery from within’: The invention of alcoholism and the question of free will”, *Social History*, **22**, 3, 1997: 251 – 268 (259); For a fuller account see Valverde, *Diseases of the Will: Alcohol and the Dilemmas of Freedom*, Cambridge University Press, 1998. See also Terry M. Parssinen and Karen Kerner, ‘Development of the Disease Model of Drug Addiction in Britain, 1870 – 1926’, *Medical History*, 1980, **24**: 275 – 296 (276). More broadly Roy MacLeod has examined the “developing relationship between medicine and the State” during the second half of the nineteenth century in reference to the medicalisation of alcoholism in ‘The Edge of Hope: Social Policy and Chronic Alcoholism 1870-1900’, *J. Hist. Med.*, July, 1967: 215-45; On the temperance movement more generally see Brian H Harrison, *Drink and the Victorians: The Temperance Question in England, 1815- 1872*, London: Faber, 1971; For a more detailed discussion of this movement in Scotland see Daniel Paton, *Drink and the Temperance Movement in Nineteenth-Century Scotland*, Ph.D. Thesis, University of Edinburgh, 1977. On the history of addiction in reference to opium see V. Berridge, ‘Opium and the doctors: disease theory and policy’, *Lectures on the History of Psychiatry*, London: Gaskell, 1990, 101-14 (108) and c.f. Louise Foxcroft, *The Making of Addiction: The ‘Use and Abuse’ of Opium in Nineteenth-Century Britain*, Ashgate, 2007. Foxcroft’s work, almost exclusively devoted to opium addiction, persuasively argues that there was no sharp divide between medical and broader cultural understandings of addiction.



controlling dipsomaniacs who became intoxicated “only from the compulsion of an internal necessity, and never for any other reason”, a fact which rendered their responsibility a question for medical witnesses rather than lawyers.<sup>250</sup>

This recognition of dipsomania by medical jurists, in addition to the established links between alcohol and violent crime – which, as we have seen, was noted by lawyers and social commentators as a particularly pressing problem for Scottish society – meant that a stable notion of dipsomania was important for psychiatry’s relations with the law. Yet it was at the same time a difficult condition to define, for not only was it necessary to distinguish its nosology from both simple drunkenness and alcoholic insanity, but it was, somewhat strangely, rejected by many members of the psychiatric profession as neologistic fraud. Given the potential importance a demonstrable alcoholic mania had for psychiatry some preliminary remarks are necessary on its general absence in theoretical texts. The problems surrounding the term ‘dipsomania’ – “the most difficult [subject] to discuss of all branches of insanity” – had been noted in the early 1870s by Henry Hayes Newington, then Senior Assistant Physician at Morningside Asylum. Writing in the same year Magnan had published his compiled lectures on alcoholism (sections of which had already appeared in translation, but would have in any case been known to British psychiatrists through their publication in the AMP), Hayes Newington noted that there were generally two “relations between drink and insanity”: hereditary alcoholism or degeneration, in which the tendency to take alcohol was “more a symptom of alienation than a cause”, and delirium tremens, a condition which “rarely [found] its way into asylums in [Scotland]”, though it remained “a form of mental disease just as much as acute mania or any other variety.”<sup>251</sup>

Delirium tremens was in fact almost universally recognised as a form of insanity at this time (see chapter six) and did not find its way into asylums simply because general hospitals were set up to receive patients suffering from the physical symptoms of acute alcoholism. This was made clear in a thesis submitted in 1890 by

---

<sup>250</sup> J. L. Casper, *Handbook of the Practice of Forensic Medicine*, The New Sydenham Society: London, 1865 (orig. 1861), pp. 268-69.

<sup>251</sup> H. Hayes Newington, ‘Observations on Mania A Potu’, reprinted from Ed. M. J., Dec. 1874 [LHB7/14/13, Paper 38].

the Hour Physician at Ward 6 of the Edinburgh Royal Infirmary, a ward that was, as in Chekhov's story, reserved for the consignment of hopeless cases, "mainly however for those brought on by alcoholism." In this largely clinical thesis describing the effects of prolonged drinking the author suggested that, in order to ensure there could be no confusion between self-inflicted drunkenness and uncontrollable somatic response, lawyers seeking a medical certificate of irresponsibility would typically demand evidence that the symptoms of delirium tremens had supervened three days after the patient had stopped drinking.<sup>252</sup> It was in this legal recognition of delirium tremens, but not of other species of alcoholic mania, that figures such as Clouston saw a fatal ambiguity in the law, since, as he argued in an Edinburgh legal journal, an "alcoholic murder [may] send a man to the gallows or the hospital according to whether the murderer took the whisky the day he did the deed, or the week before."<sup>253</sup>

Hence, while delirium tremens offered demonstrable evidence of the psychiatric claim that alcohol was a frequent cause of insanity, it was never really a concern for psychiatry, firstly because it tended to appear in the wards of the general hospital and had a well understood aetiology in clinical medicine (the effects of alcohol on the structure and function of organs, including the brain, were not disputed), and secondly because it presented a type of what Hayes Newington described as "overt insanity" in which the disturbance wrought by alcohol was so clear that it was not necessary to "pause to enquire into other causes such as hereditary predisposition, for that is not at all necessary, though it is often present." Psychiatrically more interesting cases were therefore found in patients amongst whom the compulsion to drink was "both a cause and an effect or symptom of insanity", striking only the class of habitual drunkards that had "attracted considerable attention, especially on the part of Continental writers" such as Magnan.<sup>254</sup> During the early 1870s this type of alcoholic insanity had been described by British psychiatrists as 'dipsomania', a problematic usage since the term had, for a long time, been employed in psychiatric descriptions to indicate only "the craving for drink" itself.<sup>255</sup> Hoping to

---

<sup>252</sup> Dawson F. Duckworth Turner, *Observations upon Alcoholism*, Unpublished M.D. Thesis, University of Edinburgh, 1890 (p.1 & pp. 76-77).

<sup>253</sup> Clouston, 'Responsibility in Drunkenness', *Juridical Review*, (6), 1894 p.154.

<sup>254</sup> Hayes Newington, *op. cit.*, p.2.

<sup>255</sup> 'Dipsomania' had first been described by a Muscovite doctor named Erdmann, who noted a form of periodic drunkenness he termed *sapoi* in the late eighteenth century. The French physician François-

clarify the description of alcoholic insanity, Hayes Newington suggested that the MPA adopt the term '*Mania a potu*' to refer to any condition that was both a cause and effect of degeneration and in which the symptoms were "the *manifestation* of the effects of drink, which rapidly pass away as a rule".<sup>256</sup> According to this new understanding alcohol could produce "violent mania in two shapes": delirium tremens, marked by the presence of overt accompanying bodily and mental symptoms, and *mania a potu*, marked exclusively by the manifestation of immoral or criminal conduct. It is clear that the species of insanity Hayes Newington labelled *mania a potu* was devised in the realm of forensic psychiatry: its explanatory power was useless in non-criminal cases, it had no diagnostic value beyond the retrospective understanding of crime, and, by Hayes Newington's own admission, it would rarely be encountered in asylum practice until the symptoms (i.e. the violent outburst) had passed. Once again, it was the medico-legal dimensions of the condition that provided a framework for its existence, with the symptoms and portents raising questions in the field of criminal law that were even more sharply defined than those accompanying dipsomania: Could the person be detained once the attack of mania had passed? Should they be sent to an asylum or a prison if they committed a crime as the result of an attack? Could they receive legal pardon for crimes committed under the mania given the lack of concomitant bodily symptoms? *Mania a potu* therefore re-introduced what Michel Foucault has described as the 'untenable paradox of monomania'<sup>257</sup> to psychiatry, describing an insanity only evinced in the crime or violent outburst, while its symptoms, following the logic of degeneration, could be correlated with the underlying heredity condition.

Furthermore, this new diagnosis was to be reserved for special, psychiatrically interesting cases and would be confined to certain individuals, particularly "persons with brains ripened for an explosion by various causes [that] do explode after taking a quantity of alcohol that is utterly inadequate to produce either the so-called

---

Joseph-Victor Broussais (1772 – 1838) re-named his descriptions as 'oinomania' in the early nineteenth century while Christoph Wilhelm Hufeland (1762 – 1836), director general of the Charité in Berlin, proposed the term 'dipsomania' in 1819 [Anon, 'Oinomania', *J. Psych. Med.* **8**, 1855: 175-207 (p.193)].

<sup>256</sup> Hayes Newington, op. cit., p.3.

<sup>257</sup> Foucault M, 'About the concept of the 'Dangerous Individual' in Nineteenth-Century Legal Psychiatry', in Foucault M/Faubion J (ed), *Power*, The New Press, 2000, 176 – 200 (p.190).

dipsomania, or delirium tremens.” This move was central to psychiatry in the last third of the nineteenth century insofar as it allowed doctors to profile the offender, creating a differential diagnosis between simple and complex forms of alcoholic insanity that would allow mania to be reclaimed from the law. Hence, while the brains of this class of maniac provided the pathological locus of the condition, the degenerate drunkard also conformed to a marked character type: “wanderers of the earth” separated from their families and unable to furnish a reliable record of their heredity, young men and women of a generally opaque character who displayed no marked symptoms of insanity, rootless itinerants known only to the police officers or asylum doctors of the town they pitched up in (parallels with the ‘wandering Jew’ here only served to reinforce the implied ‘racial’ dimensions of the diagnosis). Examples of this profile, drawn from Hayes Newington’s own case-books, demonstrated the typical features on the condition. A young woman who had “been in prison many times for violence and theft. Very little is known of her family history, and no trace of heredity. She is a woman of the very lowest character when outside”, though when detained in the asylum she would become calm and show concern for the other patients. “A male; former soldier; well known to the police; little known family history; calm when sober, a maniac when drunk.” Or, from a case submitted to Hayes Newington by a surgeon based on a prison transport vessel bound for Australia, a man who was generally calm and temperate, though prone to sudden bursts of violence when drinking: “immediately before an explosion there would be some twitching about the mouth, and an excited eagerness of countenance” demonstrating that the mania was “not the result of prolonged indulgence, as is often sought to be proved when a case comes before a court of law.”<sup>258</sup>

This proposal of a new form of alcoholic mania therefore provides an important insight into the broader significance of the changing relations between psychiatry and the law in the second half of the nineteenth century even though, as with so many proposals for reform during this period, Hayes Newington was ultimately unsuccessful in garnering support for his new species of mania and the term ‘dipsomania’ continued to be used, and abused, by psychiatrists in Great Britain. Indeed, just two years after this proposal was made, John Charles Bucknill (1817 –

---

<sup>258</sup> Ibid., pp .4-7.

1897), founder of the *Journal of Mental Science* and co-founder of *Brain*, was disputing the value of the term ‘dipsomania’ with Thomas Clouston at the Rugby Temperance Association.<sup>259</sup> While both doctors were settled on the need to combat alcoholism in order to ensure the future of the race and the progress of the nation, they were not agreed on the role of speculative alcoholic manias in psychiatric descriptions of insanity, and although both had been impressed with “Magnan’s chapter on Dipsomania in his remarkable work on Alcoholism”, they differed in their understanding of its significance in medico-legal theory. While Clouston had emulated his French contemporary in distinguishing between simple (that is, theoretically uninteresting) alcoholism and the fascinating cases of hereditary monomania of drunkenness presented by *monomanie ebrieuse* or dipsomania, Bucknill could not follow “the eminent author” Magnan in accepting “the prevailing theory that dipsomania is a particular form of instinctive monomania, arising, most frequently, from heredity, while alcoholism is a simple state of poisoning, manifesting itself in the same manner in all, even in the brute as in man.”

Bucknill, who had a longstanding interest in law and was less inclined to attack the legal regulations placed on asylum doctors than many of his peers, was clearly not prepared to accept a form of psychiatric logic postulating a “class of lunatics affected with the instinctive monomania of drunkenness, with complete absence of other signs or indications of unsoundness of mind.” He followed a judicial approach to the framing of insanity by arguing that “Dipsomania is either a vice leading to disease in the ordinary pathological sequence, or it is an actual and recognisable form of disease of the brain, with evidence of its existence more cogent than the mere desire for drink.” Furthermore, he argued, the evidence Magnan himself had provided for this type of distinct mania could simply be re-interpreted, with patients suffering from the special “monomania of drunkenness” divided into either “common periodic drunkards” who had concealed the extent of their indulgence to the physician or patients not merely “in a state of *monomanie ebrieuse*, or the moral insanity of drink, but [suffering from] real aberration of mind”. In this way he

---

<sup>259</sup> Bucknill and Clouston, ‘On Asylums for Drunkards and the Relations of Drink and Insanity’, LHB7/14/2 [orig. JMS, July, 1876]; On Bucknill’s career see A. Scull, *Masters of Bedlam: The Transformation of the Mad-doctoring Trade*, Princeton University Press, 1996 (‘From Disciple to Critic: Sir John Charles Bucknill’, pp.187-226).

contended that even within Magnan's descriptions and cases this 'real aberration of mind' betrayed itself by evidence beyond the compulsion to drink, as for example in Magnan's discussion of a female dipsomaniac who, aware of her insane craving toward drink, had defecated into her glass, a measure that was still not sufficient to overcome the allure of its contents. Here at least it is difficult not to sympathise with Bucknill's response to this case: if she "had actually mixed excrement in her drink she was probably quite insane already."<sup>260</sup>

This was precisely the kind of medico-legal species Clouston wished to advance however, with the various forms of impulsive insanity redefined as conscious or unconscious monomania in which special clinical signs were capable of determining the boundary between responsibility and irresponsibility. For instance, in his *Clinical Lectures* dipsomania appeared as a morbid and uncontrollable craving for any form of stimulant, with "the confirmed opium eater, the inveterate haschisch chewer, [and] the abandoned tobacco smoker . . . all in the same category."<sup>261</sup> These manias were therefore the 'interesting' cases for psychiatry, and while simple 'Alcoholic Insanity' continued to be described as a form of mental disturbance sharing common characteristics with other marked and legally accepted insanities, this was a 'normal' insanity representing only the terminal stage of a well understood interaction between alcohol and nerve tissue. Dipsomania, on the other hand, was reserved for those with "brains predisposed by heredity" as an underlying condition that itself caused the symptom of insufficient resistive power toward stimulants (resembling the *syndromata* of Magnan).<sup>262</sup>

In this way, psychiatrically uninteresting common insanities distinguished only by the cause of their onset were separated from the symptomatically similar but causally more complex and contentious species of mania. Furthermore, these manias were often restricted to certain character types that would allow psychiatry, at least in principle, to pursue a strategy of prophylaxis. For instance, there was the "typical dipsomaniac", generally a person of neurotic and insane heredity, an habitual flesh-

---

<sup>260</sup> Ibid. pp. 20-23 .

<sup>261</sup> Clouston, *Clinical Lectures*, p.250.

<sup>262</sup> The distinctions between common alcoholism and dipsomania are discussed in reference to Belgian medicine and social history in A. Vleugel, *Drinkers, Drunkards and Dipsomaniacs: Alcohol, Doctors and Class in Belgium 1850-1914*, Unpublished PhD Thesis, University College London, 2005.

eater who displayed lubricious habits in childhood that quickly gave way to a wanton and uncontrollable desire for alcoholic or narcotic stimulants in adolescence, a disposition that was rarely improved by the therapies aimed at drunkards – “long sea voyages, a colony, isolation in a doctor’s family” – none of these would alter the dipsomaniac’s condition, and a gradual descent into mild dementia or some other recognisably insane state was all but inevitable. Such people, Clouston noted, were offered no protection by or from the law, and “the sooner they drink themselves to death, the better. They are a curse to all who have to do with them, a nuisance and a danger to society, and propagators of a bad breed.” It is clear then that, at least if we follow Clouston’s text here, the role of alcohol in these theoretical descriptions of insanity was not merely to claim a new object for psychiatry (the dipsomaniac), particularly as this type of patient was generally unwelcome in the asylum. Indeed, while Clouston argued that psychiatry ought to accept the definition of dipsomania he had offered, he quite explicitly removed the dipsomaniac from its field of concern, arguing that: “Lunatic asylums are certainly not proper places for them, and when sent there they cannot be kept long enough. What we want is an island where whisky is unknown; guardianship combining authority, firmness, attractiveness, and a high bracing moral tone.”<sup>263</sup>

In the years that followed the *Clinical Lectures*, Clouston developed his theory of dipsomania and of alcohol’s relation to insanity more generally, continuing to draw both implicitly upon the degenerationist notion of disordered control and explicitly upon the works of French degenerationists. In 1889 he set out at length in his Annual Report from the Morningside Asylum to explain how unregulated control in relation to alcohol and the other stimulants (as they were considered at the time) would produce insanity.<sup>264</sup> The contents of these Reports were frequently covered by both local and national press with *The Scotsman* in particular often repeating their claims verbatim, publishing lengthy extracts for the yearly Reports with Cloustonesque warnings that while “nothing is more common than the boast that ‘our family at least is quite free from insanity’” such mistaken assumptions would be ultimately

---

<sup>263</sup> Clouston, *Clinical Lectures*, pp. 252-53.

<sup>264</sup> T. Clouston, ‘Physician-Superintendent’s Annual Report for the year 1889’ [LHB7/7/9: Edinburgh Asylum Reports: 1883 – 92].

prejudicial to the race.<sup>265</sup> As such, Clouston's Annual Reports cannot be read as factual descriptions of the year's events, but should be seen as a means of transmitting the prophylactic and pastoral role of psychiatry to a wider audience. For *The Scotsman* these Reports offered a "register of the mental and physical health of the community. The patients are the sick and wounded in the struggle for existence, and the admissions are in some sense a measure of the severity of the battle."<sup>266</sup> *The Courant*, an Edinburgh daily, noted of Clouston's Annual Asylum Report that "the general public seem to enjoy it as an authoritative expression of the progress which is being made in the treatment of the insane", adding that "the medical profession can do little these days without bringing the lever of their opinions to bear on the public mind, and there can be no doubt that morally they are bound to educate the public on all matters relating to the prevention of disease, mental or otherwise."<sup>267</sup> Similarly, the *Evening Dispatch* wrote that the Annual Reports were the product of "a sound investigator and an able administrator" and contained an important source of information concerning insanity for non-specialists, with "perhaps no set of statistics annually submitted to the public" being as eagerly anticipated (though they were critical of Clouston's growing alliance with the "pseudo-statistical pessimists, who have recently been making the most reckless and unreasoned assertions about the moral degeneration of the Scottish people.")<sup>268</sup> These pessimistic assertions about national degeneration had come to a head in the 1889 Report which, wrote the *Evening Dispatch*, contained "a mass of information with regard to the effects of intemperance" that was "sure to attract considerable attention, since the drink question is so much to the front at present."<sup>269</sup>

The sombre tone the drink question had cast on Clouston's 1889 Report united his old concerns over heredity with the issue of national deterioration. Here alcoholic excess was described as not only the "most frequent single exciting cause of mental disease" in a direct aetiological sense, but one that was "closely connected hereditarily in many cases. The children of drunkards sometimes become insane, and the children of insane people still more frequently become drunkards." Part of the

---

<sup>265</sup> 'Annual Report for 1893', *The Scotsman*, 27 Feb, 1894, in LHB 7/12:5.

<sup>266</sup> *The Scotsman*, Mar. 2, 1892, in LHB 7/12:5 (p.199).

<sup>267</sup> *The Courant*, Mar. 5, 1890, in LHB 7/12:5 (p.80).

<sup>268</sup> *Evening Dispatch*, 23 Feb, 1897, in LHB 7/12:5.

<sup>269</sup> *The Evening Dispatch*, Feb 25, 1890 in LHB 7/12:5 (p.73).



reason for Clouston's concern with alcoholism was undoubtedly a rise in the admission of chronic alcoholics at his asylum; aside from 1876, no other single year had seen more cases admitted to the RAE as a result of alcohol (with 81 cases, representing 25% of the intake, related to drunkenness). Yet this fact alone would hardly explain the longstanding interest Clouston had shown in the problems of drunkenness and degeneration, and while he attempted to offer a local explanation for the rise in alcoholic patients by suggesting that an increase in wages amongst the labouring classes had provided them with a "temptation to break with the laws of their being, which they are unable to resist", the Report itself had little to do with these labourers and focused for the most part on the Habitual Drunkards Act (1879) which had been made permanent by a parliamentary bill passed in the previous year.

The terms of this Act, Clouston argued, had left ambiguous its relation to the existing confinement laws, raising a series of pressing questions for the psychiatric profession: "[Would] habitual drunkenness be considered and treated legislatively as if it were a form of insanity?"; Would the Act cover only habitual drunkards or could it be used to detain "predisposed subjects" who had succumbed to repeated bouts of drinking (that is, could it be used in line with *psychiatric* rather than *legal* definitions of insanity); Would existing asylums be used for this purpose and would subjects be detained according to "the machinery provided by the Lunacy Acts?" Clouston questioned further if this new legislation would force asylums to accept dipsomaniacs, a measure which would render asylum management impossible since "the insane and the Dipsomaniac do not consort well together". This of course brings us back to the paradoxical nature of the psychiatric discussion of alcoholism in the late nineteenth century. While many doctors supported increased legislation in light of the anarchic dangers posed by alcoholism, and while they typically insisted on what Clouston labelled the "real connection between the two conditions [of drunkenness and insanity]", when the government came to legislate in their favour they fell back into emphasising the need to keep apart drunkards and the insane. Indeed, the lack of interest psychiatry had with the alcoholic or dipsomaniac (which contrasted with the great interest it had with the symbolic importance of the dipsomaniac's condition) is demonstrated by the two lines of legislation suggested by Clouston: either legislate for dipsomaniacs by excusing all impulsive crimes as acts of temporary insanity, or legislate against all "incurable drunkenness" and create special extra-asylum

facilities for the purpose. It is clear then this was not a bid to ‘gain control’ of the alcoholic: after all, these two lines of legislation would either see dipsomaniacs released as innocent or placed in special facilities outside of the asylum. Why then were psychiatrists like Clouston so insistent on the problem of dipsomania?

So far we have seen two main themes protrude from Clouston’s discussion of dipsomania, themes that have little to do with the discussion of the condition itself and much to do with justifying the theoretical assumptions of his broader system. Firstly, the consequences of this mania were addressed almost exclusively toward the law while, secondly, dipsomania was used to entrench claims concerning insanity within an array of evolutionary, anthropological, physiological, and neurological assumptions. In this way, the theory of self-control formed two parallel continuums within psychiatry: the power of control present in the members of the race allowed for the distinction between healthy and sick individuals on the basis of their arrangement in a comparative sequence, with a further comparative sequence formed along the racial and evolutionary hierarchy itself. While the first continuum allowed psychiatry to discuss insanity in the absence of ‘disease’ (legally recognised conditions such as delusion), the second continuum emphasised the social importance of psychiatry by contrasting the degree of control present in an “animal or a simple barbarian” with the intense yet subtle cravings of civilisation, which promoted desires in a thousand directions and bombarded the brain with constant demands for gratification (“as man rises in the scale of mind and civilization . . . his brain [becomes] an organ of a hundredfold more delicacy and complication, as compared with that of the savage”). The modern citizen therefore required new techniques for maintaining a power of restraint, calling upon the hygienic mission of psychiatry to prevent the civilised nations from extinguishing themselves. As public guardians, psychiatrists were placed within this process of development on both the individual and racial level to preserve the mental hygiene and heredity qualities of the public and prevent the exponential stimuli of industrial life from precipitating “death and social anarchy in a generation.”<sup>270</sup>

---

<sup>270</sup> Clouston, ‘Annual Report for the year 1889’, pp. 18-20 & pp. 22-24.

In this same year (1889) Clouston published the first part of a lengthy article on ‘Diseased Cravings’ in the *Edinburgh Medical Journal* in which the anthropological aspects of his theory of insanity were drawn out in great detail.<sup>271</sup> Once again dipsomania – “the non-existence of the power of control” expressed as a craving for alcohol – was theorised not as the presence of any peculiarity within the brain, but as the lack of an impossible ideal, with morphinomania, cocainism, chloralism and so on similarly representing manias of deficient control expressed toward other stimulants. However, while the European craving for alcohol was formed “out of ordinary habits and needs of mankind” (particularly the need to foster bonds between warring factions), the taste for morphine or cocaine was placed in the range of artificial cravings. Anthropological puzzles such as the Chinese love of opium could not therefore be explained solely on the grounds of deficient control over a natural craving, but would require a further, sociological explanation. Clouston’s solution to a problem of his own making was to suggest that the taste for opium was born of the search for release from the uniformity of thought and action in that “stagnant, overcrowded country” (the Boxer rebellion and the British imposition of the opium trade were, of course, not considered). The “political heredity of a Chinaman”, he conjectured, must have prohibited mirth and free thought to such an extent that opium alone could induce “an artificial and purely subjective state of mind” taking “the Chinaman out of China, where no man has any choice to speak of, into a paradise where there are no mandarins, no struggles for existence under the most unfavourable conditions, and where there is unlimited scope to live.”<sup>272</sup>

This was not merely a piece of abstract anthropological theorising however, for it allowed Clouston’s position to be distinguished from that of Henry Maudsley, who had suggested in *Body and Will* that the thirst for intoxication, whether in savage or civilised man, resulted from the intensely human longing for the elation attained in freedom from consciousness.<sup>273</sup> The idealistic longing for freedom, Clouston contended, could only operate on individuals who had been exposed to such ideals:

---

<sup>271</sup> T. Clouston, ‘Diseased Cravings and Paralysed Control: Dipsomania; Morphinomania; Chloralism; Cocainism’ (in four parts), reprinted from *the Ed. M. J.*, 1889 – 90 [LHB7/14/4 Morningside Papers 1887 – 94; Dr Clouston and Staff: pp. 507 – 22; 689 – 706; 787 – 810; 985 – 96].

<sup>272</sup> (T. Clouston, ‘Diseased Cravings and Paralysed Control’, Part III, 793 – 94).

<sup>273</sup> Maudsley had argued that the “eager use [of stimulants] running headlong into abuse is evidence of the longing that there is in human nature for the ideal; for an elation of feeling, an expansion of

The savage and many of the congenital dipsomaniacs and habitual drunkards among our labourers and our criminals cannot by any use or abuse of alcohol have any ideal opened to them. We must seek a lower motive than this for the craving and the inability to resist it. Maudsley's description exactly applies to De Quincey's motive for giving himself up to opium. It does not apply to the Red Indian or to the Whitechapel victims of 'Jack the Ripper.' In them the motive is more analogous to that which prompts the stallion to seek sexual congress with the mare – it is a simple organic craving of great intensity.

Hence, while more refined European inebriates were placed alongside the culturally rich though politically stagnant Chinese opium smoker in chasing a lofty ideal and seeking to escape the banality of the real, the degenerates were impulse-machines resembling the savage in their incapability of attaining self-mastery.<sup>274</sup> In all manias, whether natural or artificial, civilised or savage, it was the role of heredity in storing the organic memory of desire that allowed the condition to be described as an insane or irresponsible one, a fact demonstrated repeatedly in the cases psychiatrists encountered.

These anthropological speculations served to reinforce the division of interesting and banal manias in psychiatry, with heredity and development allowing doctors to distinguish dipsomania from “true alcoholic insanity and alcoholism generally.” Again, it is on the face of it puzzling that Clouston continued to describe dipsomania at all: the condition had “never satisfactorily been defined”, was used “in the loosest way both in the [medical] profession and out of it”, and had a tangled nosology and aetiology, since the compulsion to drink, even if it was the most prominent symptom in a patient, was not necessarily the underlying condition itself. Furthermore, a number of diseases frequently met with in clinical psychiatry could be confused with dipsomania through their tendency to produce a morbid craving for alcohol: *folie circulaire*; simple melancholia, dementia, delusional insanity, general

---

sympathy, a freedom of mental power, an exaltation of the whole nature, mental and bodily, are obtained thereby which are denied to it by the real. The low savage does not care for the taste of rum, but once he has had the ideal opened to him by feeling the exhilarating effects of it he will sacrifice everything he possesses, even his last blanket, to procure it, and abandon himself unrestrainedly to its effects whenever he has the opportunity.” H Maudsley, *Body and Will: An Essay Concerning Will in its Metaphysical, Physiological, and Pathological Aspects*, New York: D. Appleton & co., 1884 (2<sup>nd</sup> ed.), p.274.

<sup>274</sup> Clouston, 'Diseased Cravings and Paralysed Control', Part I, p.516.

paralysis, brain syphilis, and a range of “brain softenings” or organic lesions that encouraged the morbid craving for alcohol were all complicating factors in the diagnosis. Even when psychiatrists encountered cases with every hallmark of dipsomania, Clouston advised, they should not diagnose them if there was “clear evidence that a morbid brain elevation preceded the tendency to drink; and that [the patient] had lost control in many directions besides drinking”. Undiagnosed epilepsy was particularly troublesome here, since it tended to produce morbid cravings similar to dipsomania and Clouston noted that he had “many epileptics in the Asylum that I cannot let into town on pass simply because they cannot resist the craving for drink”, though they were not to be defined as dipsomaniacs on this basis.<sup>275</sup> Indeed, a medical thesis examining the relations between alcohol, epilepsy, dipsomania and transitory mania was submitted to Clouston in 1889, its author arguing that while alcohol could serve as a useful aid in the diagnosis of epilepsy it was first expedient to develop an adequate theory and means of identifying dipsomania, since this condition, if present, could complicate the diagnosis with its tendency to produce “a loss of self-control or mental inhibition [in the presence of alcohol], which in ordinary individuals is still retained to a greater or lesser extent.”<sup>276</sup>

In order to overcome these problems while addressing the anthropological dimensions of degeneracy, Clouston proposed a fresh means of dividing up the various insanities caused by alcohol into four main classes: 1) Developmental or regressive dipsomania; 2) the dipsomania of neurotic diathesis; 3) somatic dipsomania; 4) the dipsomania of excess. The first two classes, by far the most interesting theoretically, resulted from developmental failure and encompassed those “whose higher inhibition had never been developed as a brain faculty.” While the other classes were similarly marked by “characteristics of the neurotic diathesis” (heredity taint was suspected but not proved), they did not conform to any special “psychological or physical type that would lead one to predict this likelihood of dipsomania.” Once again we see that the speculative and legally dubious cases of ‘insanity’ were the ones that attracted attention, with the developmental failure of childhood, a failure rendering the European individual the mental analogue of the

---

<sup>275</sup> Clouston, ‘Diseased Cravings and Paralyse Control’, Part II, pp. 691-93.

<sup>276</sup> James Matthew Caw, *Alcohol and Epilepsy: Their Interaction and Share in the Production of Dipsomania and Mania Transitoria*, Unpublished M.D. Thesis, University of Edinburgh, 1889 (p.1).

savage, allowing psychiatry to distinguish dipsomania from other insanities in which a craving for alcohol would be present. This failure to develop was tied to both an absence of the standard legal proof of insanity (lack of understanding) and to the general popularity of the theory of phylogenic succession, since these patients:

knew quite well intellectually that the excessive indulgence in drink meant social disgrace, and that such excess was morally wrong [but] after disease of the brain had broken down the power of inhibition, the lower animal liking for drink overcame the higher motives. It is now pretty generally recognised that as the ‘moral faculties’ were the last to be evolved, they are commonly the first in brain disease to disappear.<sup>277</sup>

The European dipsomaniac had therefore regressed down the evolutionary scale to the level of the savage who similarly lacked powers of restraint, a regression offering an “instructive analogy between the dipsomania of the unevolved Indian and the dipsomania of ‘reversion’ in the civilized man” that, for Clouston, had “not been sufficiently dwelt on.”<sup>278</sup>

The analogy between the ‘unevolved’ and the ‘degenerate’ that Clouston drew was in fact part of a wide discourse already taking place in the life sciences and psychiatry during the late nineteenth century. As Stephen Jay Gould notes, the law of reversion or recapitulation was ‘discovered’ several times during the second half of the nineteenth century, but is most commonly attributed to Ernst Haeckel, professor of zoology and comparative anatomy at Jena, who set out its most detailed account in his *Generelle Morphologie der Organismen* of 1866 (though two American neo-Lamarckian paleontologists, Edward Drinker Cope and Alpheus Hyatt, independently published a strikingly similar account in the same year, with the then recent work of Darwin and the natural philosopher Louis Agassiz providing the impetus). The theory of ancestral recapitulation, which had been popularised in the English-speaking medical world by Edwin Ray Lankester (1847 – 1929), “one of England’s staunchest supporters of the biogenetic law” of recapitulation, served as a prominent and popular way of uniting psychiatric claims with a growing awareness of, and belief in, the

---

<sup>277</sup> Clouston, ‘Diseased Cravings and Paralysed Control’, Part II, p.693 & pp. 697-98.

<sup>278</sup> Clouston, ‘Diseased Cravings and Paralysed Control’, Part II, pp. 695-96.

theory of evolution amongst the educated classes.<sup>279</sup> Within psychiatry, a variant of this notion of reversion was promulgated in John Hughlings Jackson's theory of 'dissolution', according to which the last evolved and therefore 'highest' powers of any organism were susceptible to disruption. As one of his followers, James Sully, put it, Hughlings Jackson had emphasised that "psycho-physical degeneration is the reverse process to that of nervous evolution. The highest and latest-evolved nervous arrangements, being the most unstable, are the first to be thrown *hors de combat* by the inroads of general cerebral disease; the successive changes of dissolution retrace the path followed by evolution."<sup>280</sup>

Indeed Clouston's own Assistant Physician at Morningside, George Wilson, had also written on the subject of recapitulation in relation to alcohol in his 1883 study *Drunkenness*.<sup>281</sup> In his discussion of 'Alcoholic Dissolution' Wilson noted that drunkenness was frequently associated with "a retrogressive pathological process" standing as "the reverse of evolution", a process that could divide the insanities of alcohol into two distinct pathological branches: the "effects produced by the direct action of alcohol on nerve-tissue" in the individual, and the racial "degeneration initiated by the habitual abeyance of the organic basis of altruism." This 'altruism' was Wilson's own attempt to sermonise based on an entirely familiar argument; since the moral faculties are the highest, they must necessarily have been the last to evolve, rendering them most fragile aspect of the organism. Anyone who drank to excess betrayed a lack of moral sense, which in turn suggested that:

their altruism was abnormally defective from the first . . . Whether the particular outcome of the morbid stain shall be vice, or madness, or crime, will depend much on the circumstances of life; but there is no doubt in my mind that one way in which insanity is generated *de novo* is through the deterioration of nature, which is shown in the absence of moral sense. It was the last acquisition in the process of *humanisation*, and its decay is the first sign of human *degeneration*. And as an absence of

---

<sup>279</sup> Stephen Jay Gould, *Ontogeny and Phylogeny*, Belknap/Harvard University Press, 2003. On Haeckel see especially pp. 76 – 85, on Lankester see pp.182 – 85); on Cope and Hyatt see P. Bowler, 'Holding your head up high', pp. 334-46.

<sup>280</sup> J Sully, *The Human Mind: A text-book of psychology*, London: Longmans, 1892 (p.321), See also G. E. Berrios's partial translation of Piñero's monograph on Hughlings Jackson, which appeared as: 'The work of John Hughlings Jackson: Part 1 by J. M. López Piñero' *History of Psychiatry*, **21**, 2010: 85-95 and 'Classic Text No. 82: The work of John Hughlings Jackson: Part 2', *ibid.*, pp.224-236.

<sup>281</sup> G Wilson, *Drunkenness*, London: Swann Sonnenschein & Co, 1893. This book, based on Wilson's lecture series at the Edinburgh Free Church College, attempted to "present the student of Social Science with a study of drunkenness regarded as a nervous disease" (vii).

moral sense in one generation may be followed by insanity in the next, so I have observed that, conversely, insanity in one generation sometimes leaves the evil legacy of a defective sense to the next. Any course of life, then, which persistently ignores the altruistic relations of an individual as a social unit, which is in truth a systematic negation of the moral law of human progress, deteriorates his higher nature, and so initiates a degeneracy which may issue in mental derangement in his posterity.<sup>282</sup>

More broadly still, psychiatry had been working with a notion of insanity as a failure to develop since the 1820s, when it began to describe the mentally subnormal or idiotic child with the work of Esquirol (1772 – 1840) and Belhomme (1800 – 1880), in which idiocy was dislodged from the summit of madness to become its starting point or most fundamental form. For example, Belhomme’s doctoral dissertation, *Essai sur l’idiotie* of 1824 (which, following the French convention at this time, was published and would have been accessible to an audience beyond his immediate circle) “followed Esquirol’s definition of idiocy” as a starting point of undeveloped insanity, emphasising the importance of the notion for a new generation of psychiatrists who took up the theme with greater force in Morel’s generation.<sup>283</sup> Hence, with the work of Esquirol, Belhomme and others a notion of idiocy was adopted that did not appeal to the language of disease at all, but to the principle of development. In placing idiocy on a developmental line, French psychiatrists had sought to emphasise the importance they had come to attach to diseases of stagnation, heredity, and development. The process of development, common to all organisms, could therefore serve as a type of norm, allowing the idiot, whose development was halted from an early age, to be distinguished from the ‘retarded child’, whose development was merely slowed down, marking the emergence of an approach to psychiatry in which the patient was not only ill, but *abnormally* ill.<sup>284</sup>

We can see in Clouston’s continued interest in dipsomania a coming together of the two themes of reversion and development (which was to become the central tenet of his theory of insanity in later years). This interest in the abnormalities of children can be attributed, at least in part, to this process, particularly as the first class of dipsomaniac – the regressive or developmental failure – was simply a sub-species

---

<sup>282</sup> Ibid., pp. 25-28.

<sup>283</sup> Sofie Lachapelle, ‘Educating Idiots: Utopian Ideals and Practical Organization Regarding Idiocy inside Nineteenth-Century French Asylums’, *Science in Context*, **20** (4), 2007: 627-648 (632)

<sup>284</sup> Foucault, *Psychiatric Power*, pp. 208-210.



of idiot who had failed to acquire the ‘normal’ powers of self-restraint. The patient’s childhood would therefore present clues indicating the presence of dipsomania (rather than one of the many conditions capable of producing similar symptoms), revealing that they were “usually of a neurotic parentage or from a drunken family, and are in fact one variety of the class of ‘moral idiots’ or imbeciles.” The portents of this condition were descent from “a drunken family”, a childhood in which the patient was “slightly peculiar, impulsive, and often difficult to manage from a baby”, someone who, though they had been “taught the ordinary branches at school . . . was backwards somewhat”, incapable of concentration and “a good deal of an automaton mentally”. These signs, as in the case of homicidal mania, would allow for a retrospective separation of the abnormal, ill and irresponsible subject from those merely inclined toward vice.<sup>285</sup>

Once again, the psychiatrist’s ability to uncover these germinal traces of madness and abnormality in the past provided them with a place in the present as experts in “preventative mental medicine”, reading “the signs of nervous and mental constitution along with the heredity” in order to determine the responsibility of the subject.<sup>286</sup> In this way the pastoral role of psychiatry was placed directly between the individual and social bodies, and Clouston argued that the laws of the State were merely social representations of the laws of natural desire, with their mutual function being to promote the strength and vitality of the organism. Aspiring to establish a medical cosmology as the dominant ideology of modern states, Clouston prophesied that it would become “the highest duty of the physician of the future to interpret cravings and repulsions, and to satisfy them safely by his treatment”, a duty that would, by extension, “apply to the politician and priest.”<sup>287</sup> As *The Hospital* reported in reference to one of Clouston’s Annual Reports, his work sought to demonstrate that a greater knowledge of heredity was needed “on the part of statesmen, lawyers, and common people . . . the civilisation of the future must be scientific, or if it be not there will be no future at all for the races that now lead.”<sup>288</sup>

---

<sup>285</sup> Clouston, ‘Diseased Cravings and Paralysed Control’, Part II, pp. 698-99.

<sup>286</sup> *Ibid.*, p.705.

<sup>287</sup> Clouston, ‘Diseased Cravings and Paralysed Control’, Part I, p.512.

<sup>288</sup> *The Hospital: An Institutional Journal of the Medical Sciences and Hospital Administration*, Mar 10, 1894, in LHB 7/12:5.

## 5.4 The Neuroses of Development

The evolutionary dimensions of psychiatry in relation to alcohol and degeneration were outlined once again in Clouston's Morison Lectures on the Neuroses of Development, delivered at the Royal College of Surgeons of Edinburgh in 1890.<sup>289</sup> Here Clouston began by noting that while the surgeons and pathological anatomists in his audience would no doubt be aware of "pathological-tissue degenerations" such as "the fatty, the cirrhotic changes that take place in the vascular, the renal, the hepatic, the glandular, the fibrous, and the nervous tissue", representing the degenerations of "the individual tissues and single organ damages", they may not be aware that these same degenerations also existed on a more general level of pathology, mirroring localised and specific incidents in the race at large. There had apparently been much discussion of "degeneracy and degenerations of tissues and organs" in the years preceding Clouston's Morison lecture, though these terms were used only to describe "the retrogressive changes that are met with in tissues and other organs once normal, but that through alcoholic, malarial, or other poisons, disease, or other cause, have undergone nutritional changes away from the normal."

Clouston therefore wished to contrast the clinical specificity of the term 'degeneration' then popular in medical circles with the more general usage that had entered into psychiatry, laying "the foundation of our modern knowledge of certain human physical degenerations and their causes." Clouston was quite explicit that his own model of mental disease, a model in which illness appeared as a developmental disorder, was able to bridge the gap between the specific (anatomo-pathological) and the general (psychiatric) understanding of degeneration, supplementing and completing the theories of French psychiatry. In short, he believed he had discovered that the various degenerations could "be put down to trophic neuroses of a hereditary

---

<sup>289</sup> *The Scotsman* reported on these lectures positively, noting that "The question of mental and bodily 'degeneracy' is one of enormous importance to society. Diseases, incapacity, poverty, and crime result from it beyond a doubt." *The Medical Press* hailed the lectures as a remarkable success, and the *Boston Medical and Surgical Journal* also gave them a favourable review when they appeared in print. *The Lancet*, in contrast, felt that while the lectures were "well attended" and "full of interest", the "views expressed [were] hardly likely to be accepted by [medical] practitioners in general." (*The Scotsman*, 8<sup>th</sup> Nov. 1890 & 15<sup>th</sup> Nov, 1890, in LHB 7/12:5 (pp.108-09); 'Abstract of the Morison Lectures on the Neuroses of Development', *The Lancet*, Nov. 29, 1890, in LHB 7/12:5, p.113; *The Medical Press*, Dec 24, 1890 in LHB 7/12:5, p.116; *Boston Medical and Surgical Journal* [Nov 26, 1891] in *ibid.*, p.195).

character; and they first appear during early growth and development, a point which Morel and Moreau de Tours both missed.”<sup>290</sup>

The interplay of specificity and generality at work in the history of the term degeneration can be traced from Lucretius, through Medieval notions of *Mundus senescit*, to the eighteenth century, where figures like Sylvanus Urban (writing in 1746) argued that the “Degeneracy of the People of England” was attributable to “lamented money”, “an inferior God”, and “the propensity to extravagance among the most ordinary mechanics, [whose] savings are expended in debauch, hence the tears of the widows and the cry of the orphans.”<sup>291</sup> Indeed, when the *British Quarterly Review* discussed Morel’s *Traité des dégénérescences* it noted that “the phrase ‘Degenerations in Man’ must not be understood as synonymous with that of the ‘Degeneracy of Man’”, since the latter question was an aspect of the old *querelle des Anciens et des Modernes* that had divided the courtly politics of late seventeenth-century France, concerning itself with a fall from or rise to some “typical high estate of moral and physical excellence” rewritten to consider whether man was “a fallen angel, or a polished and refined ape.”<sup>292</sup> Even within medicine the concept of degeneration, when it was introduced into pathological anatomy in the early nineteenth century, was already an old one and, as Foucault notes, “Buffon [had] applied it to individuals or series of individuals that diverged from a specific type; doctors also used it to designate that weakening of natural robust humanity that life in society, civilization, laws, and language condemn little by little to a life of artificiality and disease.” Figures such as Cruveilhier were quick in “criticizing too wide a use of the term ‘degeneration’ [and] wished to reserve it for that disordered activity of the organism that creates tissues that have no parallel in the state of health; such tissues,

---

<sup>290</sup> T. S. Clouston, *The Neuroses of Development, Being the Morison Lectures for 1890*, Edinburgh: Oliver & Boyd, 1891 (p.40).

<sup>291</sup> Sylvanus Urban, cited in De Clare Woodcock H. ‘Physical Degeneration: Past and Present’, *British Medical Journal*, Aug. 13, 1904, p.354. C.f. Veyne P. *Did the Greeks Believe in their Myths? An Essay on the Constitutive Imagination*, University of Chicago Press, 1988, p137 n.40 [“whatever one says, the most widespread conceptions of time view it as neither cyclical or linear but as decline.”]; Jacques Le Goff, *Time, Work, & Culture in the Middle Ages*, University of Chicago Press, 1980, p.226 [“It is true that for a long while the reigning idea would be not progress but, rather, decline. *Mundus senescit*. The world grows old. Mankind has yet entered the sixth and final epoch of its existence: old age.”]; Andrea A J. ‘The Myth of the Middle Ages’ *Historian*, 55 (1), 1992, p.184 [Protestant polemicists in the German-speaking world “wrote ecclesiastical histories that widened and popularized as never before the idea of a post-Classical age of degeneration.”]

<sup>292</sup> Anon, ‘Traité des Dégénérescences by Dr. Morel’, *British Quarterly Review*, 78, 1864: 425-459.

which usually present ‘a fatty greyish texture’, are to be found in tumours” and other irregular tissue masses.<sup>293</sup> From this increasingly specific application the term was again re-expanded with the work of Morel, though by the time Clouston came to give these lectures the tendency in general medicine was once more to refer to the degeneration of tissues or organs without implying any overall theory of decline.

Hence, Clouston began this series of lectures by drawing attention to the broadest aspects of the question of degeneracy and their relation, through heredity, to the degeneration of tissues and organs. In particular he wished to highlight how Continental theories of criminology that had been in vogue since the inaugural Congress of Criminal Anthropology in Rome (1885) and its successor event in Paris (1889) – events which, though they had attracted discussion in the national press, had failed to attract a single British delegate – were related to the study of pathological anatomy practised by his audience of surgeons and physicians. For example, the work of Benedikt of Vienna – “by far the most notable of the Continental criminal anthropologists” to have discussed the “psycho-neurosis of criminality” – was said to have demonstrated the existence of stigmata unique to certain forms of criminality and insanity, stigmata which “must arise during early growth and development”, and hence were related both to the medical study of pathological anatomy and to Clouston’s own research into developmental abnormality.<sup>294</sup> While Clouston accepted that the conclusions of this school were “not yet fully accepted as facts” in Britain, he submitted that the “question of mental degeneracy, quite apart from idiocy or technical imbecility or insanity, [was] one of enormous social importance” and that the propositions advanced by Continental authorities must be taken seriously by British doctors. Indeed, the question of degeneration was of far greater national importance than the study of mere idiocy or technical (that is, legally recognised) insanity psychiatrists had formerly occupied themselves with. As Clouston told his audience in a lengthy characterisation of the degenerate that is worth quoting in full:

---

<sup>293</sup> Foucault, *Birth of the Clinic*, pp. 192-193.

<sup>294</sup> Clouston, *Neuroses of Development*, pp. 37-38. Clouston’s interest in the work of Benedikt was longstanding; he noted in his *Clinical Lectures* that he had attended the Austrian doctor’s panel at the 1881 International Medical Congress in London. There he had witnessed a display of “a number of brains of habitual criminals which [Benedikt] affirmed had their convolutions arranged in a certain simple form peculiar to the criminal classes, so that on seeing such a brain he could tell the ethical tendencies of the person to whom it belonged . . . There is no doubt that an organic lawlessness is transmitted hereditarily [as Benedikt claims].” Clouston, *Clinical Lectures* pp. 232-233.

For every idiot or insane person we no doubt have ten human beings in society, and weighing it down, who are so much below or away from even a minimum standard of humanity that they must be reckoned among the degenerate. Such persons are the despair of teachers and parents. They afterwards sink in the social scale through incapacity; they are left stranded in nooks and corners and eddies in the struggle for existence; they live at a lower level than average humanity; they are not an interesting class; they need help always and cannot help themselves; they are easily drifted over the border line that separates the criminal from the non-criminal; they fill poor houses and are a heavy burden on the charitably disposed, for they cannot be taught to help themselves; they are only kept at work by their empty stomachs; they are fortunately and fittingly situated when they settle into the grooves of hewing some of the world's wood and drawing its water; they are the grown up children of society who can never attain self government; they always do best under the rule of the strong and kindly; they are responsible to the law and have the liberty of men with the self-control of children, yet liberty in a complete sense is contraindicated for them by the tyranny of their organisation.<sup>295</sup>

Note how many concerns are brought to bear in this description of the degenerate: 1) though they are not suffering from the forms of 'technical' imbecility of insanity society protects itself against, their condition is just as destructive, hence a new approach is needed; 2) they vastly outnumber these recognised members of the insane, therefore the detection and prevention of degeneracy is of far greater social concern than the 'sensitivity' accorded to the insane; 3) they cannot be educated or improved and in fact show an inexorable tendency to deteriorate still further, rendering any of the established methods of philanthropy useless; 4) they may become a direct danger to the public through criminality, but in any case they are always a burden on the State; 5) they are suited to a socially atavistic existence in the forests but wilt at the complexities of modern life, the degenerate is, in this sense, the savage within modern society; 6) as with the savage Other, they are not suited to "self government" and must be colonised and managed by more advanced races;<sup>296</sup> 7) finally, they cannot be dealt with under the existing system of laws, which, like the degenerate, had failed to keep pace with the new conditions of society.

---

<sup>295</sup> Clouston, *Neuroses of Development*, p.41.

<sup>296</sup> Clouston's description of the degenerate as a being fit for hewing wood and drawing water was clearly intended to touch a colonial nerve; a decade later Boer rebel commander Paul Kruger feared that defeat at the hands of the British would see his people reduced to a similarly Gibeonite status as "exhausted remnants" forced to serve as "wood-cutters and water-carriers for a hated race." [Kruger cited in P. Brendon, *The Decline and Fall of the British Empire*, Jonathan Cape, 2007, p.217].

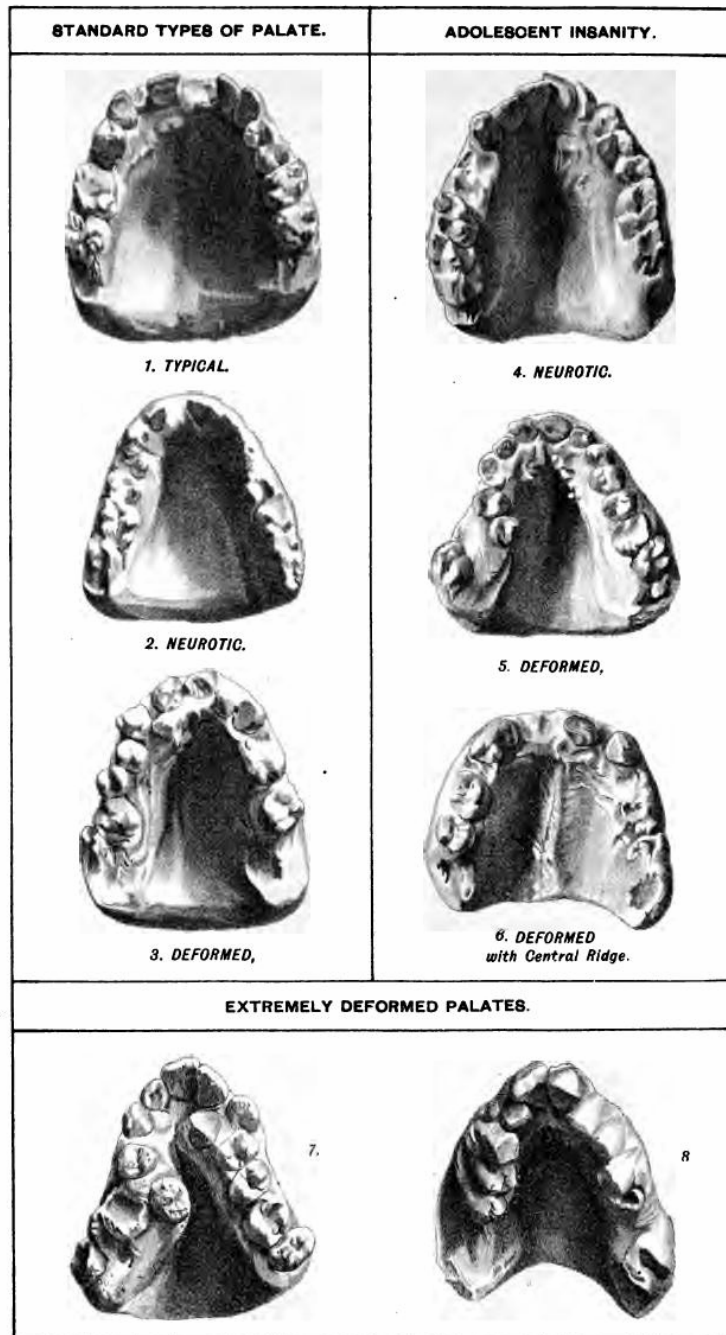
Clearly questions of such social importance should not have been a concern only for Continental theorists. Indeed, Clouston noted, there was much evidence of the degenerate ‘criminal type’ amongst the Scottish prison population, and while he could not endorse Lombroso’s claim that “of all the persons found by him to have the typical criminal head only one has up to this time remained honest”, the presence of degenerate stigmata in habitual criminals was nonetheless a marked feature of his own experience of prisoners. In order to investigate this supposition further Clouston had applied for, and was granted, permission to examine all the inhabitants of Edinburgh Prison over the course of a week, these being chiefly short-sentence prisoners who had committed minor offences. Many of them were habitual criminals and “a large proportion of them [were] of the ‘degenerate’ class bodily and mentally” providing “a fair example of the lesser criminal and ‘degenerate’ class of our large cities.” A common feature in the biographies of these degenerate types was that that “their most marked deficiencies and peculiarities of body and mind were not very apparent till they got to the age of adolescence.” Yet when Clouston had examined the palates of the six babies born to imprisoned mothers – “all women of a degenerate class” – he had found that four had deformed skulls, an early “bodily defect [that] seemed to foreshadow an undue liability to crime, degeneracy, insanity, or idiocy.” Though the full extent of their abnormality would not explode until adolescence, these “four innocent occupants of the prison cells” were already marked with the “hard fate and the unyielding tyranny of their heredity, from which it seems as if it will be as impossible for them to escape as it was for their mothers to burst their prison bars.”<sup>297</sup>

These examinations had alerted Clouston to a prominent feature of criminal degeneracy, namely, the role of deformities of the skull in confirming that crime and insanity were produced by the same process of abnormal development. The evidence for this connection was most strikingly presented in the presence of a warped palate, an abnormal physiological sign serving as an “index of brain and mental development” in which “the criminals and the lunatics stand alike.” While only 22% of the prisoners he had examined had had ‘typical palates’, 43% had ‘neurotic palates’ and 35 % had more extremely ‘deformed palates’ (see figure 1 below). This physiological evidence seemed to offer empirical confirmation of “some of the

---

<sup>297</sup> Ibid., p.38 & pp. 48-49.

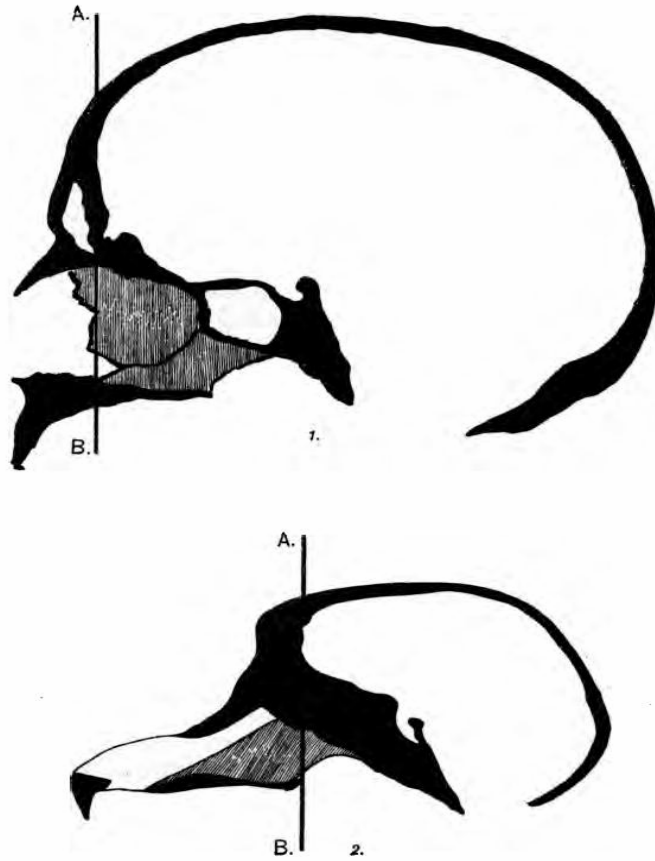
conclusions of the Continental criminal anthropologists, such as Despine, Lombroso, and Benedikt”, though it did not confirm “Lombroso’s idea that the habitual criminal is a ‘reversion’ to the savage type of man.” Savages, Clouston noted, “commonly have good palates”, a fact he had ascertained as a result of his own anthropological investigations at the collections of the Anatomical Museum of Edinburgh University, where he studied the skulls of Europeans, Hottentots, Australians, and extinct American groups. This research led him to the conclusion that ‘false stigmata’ such as dolichocephalism and brachycephalism (disproportionate length and width of the skull respectively) were racial qualities rather than the result of degeneration, and that these conditions did not in any case affect palatal shape and left brain function unimpaired. Furthermore, the comparative morphology of the human and the monkey suggested that there was no connection between the degree of evolution and the relations between palate and skull (see figure 2 below), facts which tended to further disprove the claims put forth by Lombroso and his followers.



W<sup>m</sup> CATHIE LITH

Figure 1: Casts taken from the Royal Edinburgh Asylum showing palates of adult patients: 1) Typical; 2) Neurotic; 3) Deformed. 4), 5), and 6) show the various palatal deformities of adolescent patients; 7) and 8) show extreme palatal deformity





Vertical Mesial Section of Human and Monkey's Skulls,  
to show relation between hard Palate and Brain.

Figure 2: The anterior margin of the brain runs perpendicular to line AB. Here Clouston intends to show that while in human physiology the position of the palate has a direct relationship to cranial capacity, for the primates and lower mammals palatal form is “merely a part of the alimentary system” and has no bearing on brain development, evidence discrediting Lombroso’s account of reversion.

We have seen that, in the year before these lectures were given, Clouston had insisted on the value of ‘savage reversion’ for understanding European degeneration, an insistence that renders somewhat puzzling his rejection of Lombroso’s own rather similar proposal. On closer inspection, however, it appears that Clouston was not really interested in rejecting reversion but was motivated by a desire to preserve the fundamental role of heredity as “one of the marks of a family that is tending towards mental death and extinction.” On this basis it was impossible for him to concede that the deformities common to prisoners and their progeny could be explained as the result of reversion to the savage because this concession would imply that skull shape *preceded* the development of mental function. The discussion of palatal deformity in Clouston’s lectures was neither an incidental detail nor the reporting of observation, but an attempt to reinvest credibility in his earlier theories of heredity degeneration. If, as Lombroso seemed to imply, palatal deformity *caused* cerebral abnormality, it could plausibly be claimed that accidental intrauterine trauma was responsible for cerebral abnormality (for instance, the use of forceps could be appealed to as the cause of rising idiocy). While Clouston accepted that there were “certain cases where traumatism must be put down as the exciting cause of the arrest of brain development”, these cases of traumatic arrest were “more partial” in their effects, leaving certain brain functions in tact along with a facial expression, dental structure, and general gait that was “more natural as compared with the common heredity types of idiocy and imbecility.” Clouston therefore mobilised the study of Hottentots’ skulls *against* his earlier theory of reversion to ‘prove’ that palatal shape could not logically precede brain abnormalities (since it was known that “savages who make their children’s heads square by pressure don’t alter the mental or motor functions of the brain thereby”),<sup>298</sup> a proof that would allow heredity to stand as the undisputed cause of danger to the race.

In this way Clouston’s discussion of ethnology and comparative morphology was used simply to demonstrate that a deformed skull was the *result* rather than the *cause* of brain abnormality, with deformity a sign that there had been a “bad initial neurotic heredity” causing the abnormal cranial convolutions and warped palate. The important element of this argument was that it allowed heredity to remain the primary

---

<sup>298</sup> Ibid., p.54.

cause of degeneration, a fact upon which Clouston remained insistent. The intransigent commitment to an hereditarian paradigm is typically associated with French psychiatry in the late nineteenth century. Yet when the illustrious pupil of Charcot's, Pierre Janet, reviewed Clouston's Morison lectures for the journal *Brain*, lectures "devoted partly to the study of [the] most striking examples of *dégénérescence*", he noted that while Clouston had expanded "the theories of Morel and Moreau de Tours" by "insisting upon the fact that hereditary influences modify chiefly the organs whose development is the slowest" – a modification aligned with the developments produced by "Magnan and his school" in endeavouring to determine the "external manifestations of *dégénérescence*" – the emphasis Clouston had placed on heredity was, even to French tastes, a little too acute. While Janet credited Clouston with the novel suggestion that the age at which the stigmata of degeneration manifested themselves was inversely proportional to the strength of the heredity taint he felt that the proof of this principle relied on an overly extensive list of heredity stigmata and he could not but feel uneasy "at the number and variety of complaints attributed to one and the same cause" of heredity, a restricted emphasis that was combined with the tendency to neglect "among the complex causes at work in the causation of disease, the external influences" such as environment and training. "A disease", Janet wrote, "is always the result of two factors – of a certain innate predisposition and of an occasional cause", and while "evidently, a hereditary predisposition is necessary for the development of obsessions or hysteria . . . the same patients placed under different circumstances would probably not have been affected in the particular manner that they have."<sup>299</sup>

There is of course an interesting reversal here, for it has been argued that the British approach to psychiatry in the late nineteenth century was distinguished on the basis of its reticence in the face of theory and, in particular, theory of the mono-causal variety. For instance, Neil Davie notes the tendency of early British discussions of criminology (i.e. circa 1880-1890) was to "condemn the deductive methods of criminal anthropology" on the Continent, especially since they saw in these theories the premature assumption that all criminal acts must originate from the same cause.<sup>300</sup>

---

<sup>299</sup> P Janet, 'Review of T. S. Clouston, The Neuroses of Development', *Brain*, 1895, **18**: 597-600.

<sup>300</sup> N. Davie, 'Lombroso and British Criminology: Precursors and Influences, 1865-1918', p.5.

Similarly Gayle Davis has noted in regard to the aetiology of GPI that “epistemologies of causation” in nineteenth-century British psychiatry relied heavily on a “broad multi-causal concept” of disease.<sup>301</sup> Clouston, at least, does not appear to conform to this pattern, and we have seen that his rejection of Lombroso’s approach to criminal anthropology and degeneration theory was not based on empirical observations, still less on a desire for theoretical nuance, but rather followed from a determination to preserve the single cause of heredity in his account of mental illness.

Clouston did however concede that while heredity was “the real predisposing cause” of all neuroses it required “an exciting cause to develop the diseases”, a fact which opened up “a large field of preventative measures against the adolescent neuroses.”<sup>302</sup> Yet these preventative measures were also targeted at the level of heredity, and from the *Neuroses of Development* onward there was a growing eugenic element to Clouston’s writings. At the Psychological Section of the BMA’s meeting in Edinburgh eight years later, Clouston delivered a follow-up paper on the ‘Neuroses and Psychoses of Decadence’, supplementing his earlier discussion by considering the nervous and mental conditions that came, not with the development of the organism in adolescence, but of its natural degeneration in old age. Here he clarified his earlier theory of the insanity of adolescence, or developmental neuroses, by noting that such defects “may be looked on as Nature’s effort to stop a bad stock before it reaches the time to reproduce itself”, and that hereditary degeneration was “Nature’s chief means of weeding out the organisms that do not make for the physical ideal she sets up in all species”, a weeding process in which psychiatrists ought to assist.<sup>303</sup> These themes remained with Clouston up to his last major work, *The Unsoundness of Mind*, in which he reworked the classification presented in *The Neuroses of Development*, circumscribing mental disorder within a typology of “mankind as a whole” divided into “eleven orders of brain” falling into three classes: 1) the “independent, responsible, punishable persons, who constitute the self-sustaining world of men”; 2) “the tramp, the born pauper, the instinctive ‘born criminal’, the dipsomaniac, and the moral pervert” marked by the “stigmata of degeneration” – figures who “fall as a

---

<sup>301</sup> G. Davis, *Cruel Madness of Love*, p.22, p.199, & p.244.

<sup>302</sup> Clouston, *Neuroses of Development*, p.135.

<sup>303</sup> *Ibid.*, p.114; Unmarked newspaper clipping: ‘An Address Delivered at the Opening of the Section of Psychology at the BMA, Edinburgh, July 1898’, in LHB 7/12:5.

natural burden on the State” and are, scientifically speaking, “not fit for the exercise of political rights, and their liberty should be strictly conditioned by the requirements of the society in which they live”; and 3) the “dead weights of society” consisting of the “arrested and degenerate man all over” who would be extinguished if left to nature.

The last two classes of “hereditarily connected” degenerates contained members who should not be permitted to reproduce, particularly as “Physical means of preventing reproduction, not dangerous to life or health, loom before us now as a possible solution to this problem”, a solution that waited only for legislation to save the race. Clouston regretted that the public were adverse to this legislation and that “Galton and his new science of ‘eugenics’” was “having a hard task to persuade mankind that this is feasible”. Even “psychiatrists of authority, notably Maudsley and Mercier” refused to accept it, “chiefly on the grounds that the laws of heredity are as yet uncertain and that genius has frequently cropped up in children of such marriages.” Clouston’s own take on the matter was that it would come down to the slightly loaded question as to “whether the world is fully compensated for a hundred thousand degenerates, with all the harm they do, by a genius in a generation.”<sup>304</sup>

### **5.5 The Small Thumbed Patient and the Potential Killer**

At the British Association’s Annual Meeting for 1892 (Edinburgh) the “best attended session”, according to *The Times*, was convened in a crowded hall to discuss criminal anthropology, a subject “introduced by Dr T. S. Clouston . . . whose complaint was that the criminal had not of late years been studied on scientific lines in Great Britain as he had on the Continent.”<sup>305</sup> It was thanks to Clouston’s activities, *The Medical Press* reported, that the subject of the criminal had “taken the stage of scientific

---

<sup>304</sup> Clouston, *The Unsoundness of Mind* (New York: E. P. Dutton & Co 1911, pp. 19-30, p.53, & pp.72-73). German Berrios relegates this book to part of a “popular literature well suited to Edwardian taste” containing little original insight [G E Berrios, ‘Classic Text No. 64: Phthisical Insanity by T. Clouston’, *Hist. Psychiatry*, **16** (4), 2005: 473 – 494 (474)]. It is clear however that Clouston was not merely allying with increasingly popular ideas but was continuing a project he had started over thirty years earlier.

<sup>305</sup> ‘The British Association at Edinburgh’, *The Times*, Aug. 9, 1892 in LHB 7/12:5, (p.238) News of this speech must have reached the Continent, for a year later Lombroso wrote to Clouston, inviting him to attend the 1894 International Medical Congress in Rome (Section on Psychiatry, Neurology and Criminal Anthropology) [LHB 7/12:5].

discovery” in the national press, though the journal saw his speculations as mere Hardean determinism, offering “yet another illustration of the current fatalism that man, when we find him in the criminal mesh, often proves to have been a mere counter in the game of life.” If “the lobeless ear is a degenerate ear and related to earlier types of human evolution”, it continued, then its owner was to be excused from the “normal share of responsibility.”<sup>306</sup> It was this same aspect of Clouston’s theories that *The National Observer* picked up on, writing that while it “may reasonably be argued that crime is a disease” on a purely theoretical level, society must uphold that “science and conduct” remain entirely separate domains, with the “hulks and the gallows” serving as “better remedies than mild doses of bromide or the kindly exertions of the *masseur*.” Clouston’s ideas, even if they were accepted on principle, could “only benefit mankind if they [led] to the accurate discovery of the criminal type. And even then their value would depend upon the determination of the State to lock up a pronounced criminal at sight.” However, it was the existence of this ‘criminal type’ that criminal anthropologists themselves could not agree on; Clouston, along with Benedikt of Vienna, disputed its existence, while even those who accepted it argued over its distinguishing features. In this regard, the article continued, Clouston’s “attempt to bind the State by the conclusions of anthropology” was “the maddest folly of all”, since he maintained that:

if enquiry established physical, hereditary, and psychological bases of criminality, the State would have to treat the criminal from a point of view entirely different from the ‘primitive method’ . . . The outrage upon society is the same, whether the ruffian who perpetuates it be a cynic or an epileptic. But if we followed the criminal anthropologist to his logical conclusion, we should be forced to confess that no wilful crime has been committed since the world began. The murderer is happily abnormal; therefore he is not responsible for his actions.<sup>307</sup>

More explicit condemnation came from *The Standard*, when it reported on Clouston’s lecture by addressing the question; “How does one become a Scientific Criminal Anthropologist?”:

If we may judge from a paper read at the British Association on Saturday, the main thing is to collect a set of long Latin words, and arrange them, as far as possible, according to the rules of English

---

<sup>306</sup> *Medical Press and circular*, Aug 31, 1892: ‘Criminal Anthropology, in LHB 7/12:5 (pp. 239-240).

<sup>307</sup> ‘The Plaything of Science’, *The National Observer*, Aug 13, 1892, p.313, in LHB 7/12:5 (p.241).

grammar. The ideas do not matter very much. Expressed in recondite vocabulary, the platitude resembles a discovery, and nonsense passes for a paradox. We are informed [by Clouston] that the student of Scientific Criminal Anthropology has three great factors to deal with; the heredity of the criminal, the reactive and resistive qualities of his brain, and his environment . . . Do we require any learned Congress to tell us this? And what connection has it with the suggested inference that malefactors are to be placed on the same ethical level as idiots and maniacs? From the purely theoretical point of view, we have no objection to the proposed classification. It is the practical *application* that cannot be tolerated . . . we will talk no more of crimes and penalties . . . we will prescribe the approved *regimen* known as penal servitude. It tends to strengthen the ‘inhibitory qualities’ of his mind, and to counteract his ‘anti-social’ instincts. If we do this in the true penological spirit we shall, no doubt, assist him ‘to accommodate himself to the conditions of a highly organised and extremely artificial modern society.’”<sup>308</sup>

We can see then that Clouston’s brand of criminal anthropology was recognised instantly by the press as a means of pursuing social reform, removing ‘crimes and penalties’ and replacing them with degrees of abnormality capable of ‘binding the State’ to a new theory of conduct. It is also clear that, from 1890 onwards, Clouston stepped up his interest in criminology and degeneration to become, along with Havelock Ellis, Britain’s most vociferous defender of the theory. That is not to say that these ideas had a limited appeal in Britain, indeed, in this same year (1892) the scientific status of criminal anthropology was considered by another Scottish psychiatrist, William Ireland, who published a paper on the subject in *The Cape Law Review* (suggesting once again that intellectual and political boundaries were not synonymous in an Empire Nation).<sup>309</sup> Like Clouston, Ireland rejected Lombroso’s theory of reversion, doubting that “the thieves in the slums of our great cities are the analogues of the free savages who roam in the forests or prairies of America or Africa”, though he was prepared to accept that criminal anthropology could be used to group diverse conditions in terms of their underlying pathology, with the “extended study of these physical peculiarities [rendering] it clearer and clearer that they are common to all the degenerated, to the insane, the imbecile, the neurotic as well as to the criminal.” As with so many of the discussions encountered in this thesis, “the great family of the degenerated” were said to be of importance to psychiatry insofar as it lacked both the “classical symptoms of insanity, such as

---

<sup>308</sup> ‘Criminal Anthropology’, *The Standard*, Aug 8, 1892, in LHB 7/12:5, p.238 (p.234).

<sup>309</sup> W. Ireland, ‘Is Criminal Anthropology a Science?’, *Cape Law Review*, 1892, 9: pp. 86-102.

hallucinations, delusions, involuntary movements and excessive passions” and constituted a greater problem for society than these ‘classical’ forms of insanity, for “with delinquents bearing the stigmata of degeneration, there [was] not only a danger of their begetting their like, but of their bringing into the world a larger proportion of idiots, epileptics and lunatics.”<sup>310</sup>

The early 1890s therefore represents a period of increased interest in criminology amongst British commentators, interest that would culminate in the first appearance of the nation’s doctors at the 1896 International Congress of Criminal Anthropology in Geneva (an event attended by the Scotsmen Thomas Clouston, William Bevan-Lewis, and David Nicolson, along with their English colleague Henry Maudsley). However, just one year before this event the president elect of the Medico-Psychological Association, David Nicolson (Superintendent of the State Criminal Lunatic Asylum at Broadmoor), had used his Presidential Address to disparage the practice of criminology, which was, he noted, thankfully more prevalent abroad than in Britain.<sup>311</sup> Confessing that, as a child, he had wished for his own death merely to disturb his mother, a sadistic impulse he believed to be innate to all, Nicolson argued that this ‘science’ failed to take into account the innate wickedness of the human condition. Hoping that British psychiatrists would never live to see the day when, in their “official examination into the mental condition of suspected persons, or persons lying in prison upon a criminal charge” they would “be expected to produce craniometers for the head measurements”, he argued that the Evangelical “hopes for the betterment of the class by education and for the reformation of the individual by punitive measures [and] prison discipline” would be crushed if British psychiatry were to follow the coarser Continental methods.<sup>312</sup>

---

<sup>310</sup> Ireland, ‘Is Criminal Anthropology a Science?’, pp. 95-97.

<sup>311</sup> Nicolson , ‘Presidential Address’, *JMS*, 1895, **41** (175), pp. 567-591.

<sup>312</sup> *Ibid.*, p.581. Nicolson’s fear that psychiatrists would produce craniometers at criminal trials was ultimately unfounded, though an American alienist named Hamilton did recall in his memoirs a particularly obscene trial at which the “familiar attempts to find the marks of degeneration” had prompted a local hatter to be called into court to demonstrate, by means of his conformateur, the irregularities present in the accused’s skull (Allan McLane Hamilton, *Recollections of an Alienist: Personal and Professional*, New York: George H Doran, 1916, p.337). Whether this convinced the judge is unfortunately not noted, though it is likely a tall story parodying Gratiolet’s researches into the dimensions of Cuvier’s hat, q.v. Stephen Jay Gould, *The Panda’s Thumb*, Norton, 1992, pp. 145-192.



Following Nicolson's address there was a mixed reaction from those assembled. Sir Edmund Du Cane, Head of the British Prison Service, was in agreement with the president, arguing that "too much is made of the idea that criminality is a special quality of the mind." The Irish psychiatrist Dr Conolly Norman spoke of the "puerilities of criminal anthropology" which their president was right to discredit, going on to note that his address was conducted in the "calm and robust way that I hope will be always characteristic of the mode in which Englishmen will engage on these questions." Dissent came from Nicolson's predecessor at Boradmoor, Dr William Orange, who argued that many of the members of the MPA did not follow their president's assessment but were convinced that "a proportion of those persons who are the despair of prison authorities" were suffering from "a certain amount of impairment or defect of mind which hampers them from their birth." Given this assumption, he argued, the degenerationists were right to demand that when a juvenile delinquent was apprehended, doctors should obtain a school report in order to ascertain whether the offender really was "below the average of capacity." Clouston however was capable of no such restraint in his response to the address and, expressing a sarcastic satisfaction with the optimism pervading Nicolson's remarks, commended him for having removed:

the great black shadow that seems to be thrown over science by the work of Lombroso and other criminologists . . . You have told us there is nothing in it; there is no such thing as criminology, no such thing as any special connection between the depraved organization of a defective brain and crime. I am certain that most of us will scarcely agree with you in your optimistic view of criminology and its psychological relation.

Indeed, he continued, Nicolson's dark suspicions concerning his wicked impulses as a child offered support for, rather than an objection to the criminologists' claims: children were likely to commit crimes simply because their powers of inhibition were underdeveloped, and if they lacked adequate moral training then they could similarly have received no instruction compelling them to vice and must be "virtually at that age criminals by compulsion." Nicolson's rejoinder, displaying the characteristic ambiguity of British commentators when faced with the question of degeneration, was to protest that he had "never said that there is no truth in what these criminologists, or criminal anthropologists, or criminalists, say. There is truth in it." Yet this truth was

restricted to those “otherwise law abiding persons [of] feeble mind [who lacked] the power of restraint to avoid committing a criminal act”, a position that was not too far removed from Clouston’s own.<sup>313</sup>

Following these debates, Clouston developed the ideas he had set out at the British Association in 1892 for publication in two revealing forums – *The Journal of the Anthropological Institute of Great Britain and Ireland* and the *Juridical Review* (which was by this time Edinburgh’s most important legal journal) – suggesting that he had been spurred into defending the work of Continental writers in scientific and legal forums.<sup>314</sup> In the first of these articles Clouston made it explicit that his own work on developmental abnormality had always been a part of the anthropological project, and that he had “often directed the attention of [his] own students and assistants to the great interest and importance” of degenerationist ideas, anticipating the time when a knowledge of the theory would be “required of all medical men, and especially of all lawyers and the higher officials of our prison” as tests of responsibility: “Lombroso, Benedikt, and the whole school” had affirmed that just such a test existed, though “British laws virtually deny this, and of course take no measures to meet it”<sup>315</sup>

No doubt as a means of obviating the most common objection posed against criminal anthropology – that its essential foreignness was unsuited to the “men of cooler judgement” who pervaded the North – he insisted once again on the inherently British nature of the science, drawing attention to the three Scotsmen who had laid its foundations: James Bruce Thomson, William Wilson and, somewhat perversely, David Nicolson. These early enquiries had set the lines for a *scientific* enquiry into the links that had for a long time been established between idlers, vagrants, drunkards, and criminals, coming to fruition in the discovery of heredity as the “*pathological nexus*” between these species of deviance. Habitual drunkards in particular offered

---

<sup>313</sup> Ibid., pp. 589-90.

<sup>314</sup> Clouston, ‘The Developmental Aspects of Criminal Anthropology’, *The Journal of the Anthropological Institute of Great Britain and Ireland*, **23**, 1895, pp.215-225; Clouston, ‘Arrested Development and Responsibility’, *Juridical Review*, **7**, 1895, pp.38-52. C.f. also Clouston, ‘Criminology’, *The Hospital*, Aug. 17, 1895, in LHB 7/12:5 (p.475) in which he continued to caution against the theories of Lombroso and the Italian School while celebrating importance of the criminal anthropology (particularly Benedikt’s methods) to psychiatry’s understanding of “imperfect, arrested, and unrelational development” existing in “the low, the poor, and the degenerate.”

<sup>315</sup> Clouston, ‘Criminal Anthropology’, pp. 217-219.

evidence of “a pathological degeneration in the brain cortex” that could be detected by the trained investigator taught how to recognise the signs of arrested development in the degenerate’s biography (though the ultimate causal proof could “only be demonstrated by the microscope.”)<sup>316</sup>

Returning to a theme from his lecture series on the *Neuroses of Development*, Clouston argued that the broader study of “degeneracy in a race or family” that had been explored by many popular writers could also be applied to describe “a non-development in the individual”, a process linking the criminal’s brain to that of the inebriate, the epileptic, the habitual liar and so on. There were then “two great sources of criminality”: “the not fully evolved man” suffering from imbecility and regressive disorders, and “the non-developed man” whose moral faculties had been “pathologically arrested towards the end of the period of adolescence” before they had gained a sufficient degree of control over his conduct.<sup>317</sup> It will come as no surprise by now that the discussion of these abnormally developed offenders was directed toward their legal implications and the theory of “scientific justice”, with Clouston concluding that “if criminal anthropology established physical, hereditary, and psychological bases of much criminality, the State would have to treat many criminals from an entirely different point of view than the punitive methods hitherto applied.”<sup>318</sup>

The forensic implications of this argument were expanded in Clouston’s companion piece appearing in the *Juridical Review* in which he warned the journal’s readers that the process of brain development could not “be left out of [the] account of the jurist; for, on the process of the normal and regular development of the nervous tissues of which the brain is composed, depends the accountability to law, and the amenability to punishment.” Since the civil law protected the mentally enfeebled from contractual litigation, he argued, the criminal law should similarly consider “the amount of brain arrest and mental impairment” to determine “whether this constitutes [the equivalent of] civil incapacity or irresponsibility for crime.”<sup>319</sup> While psychiatry

---

<sup>316</sup> Ibid., p.219.

<sup>317</sup> Ibid., p.225. These elements of Clouston’s theory had been reported verbatim in his 1892 British Association lecture (*Medical Press and circular*, Aug 31, 1892: ‘Criminal Anthropology, in LHB 7/12:5 pp.239-240).

<sup>318</sup> Ibid., p.220

<sup>319</sup> Clouston., ‘Arrested Development and Responsibility’, *Juridical Review*, 7, 1895: pp. 38-52 (38).

could not satisfy the law's demand for gradated measures of the degree of responsibility (and hence of the degree of punishment that should be accorded) – there was, after all, “no possible test for legal capacity or incapacity applicable, like a chemical reagent, with certainty in every case” – the psychiatrist's skills did allow for the “careful psychological analysis and comparison of different cases”, enabling doctors to “perform the very important duty of giving advice or evidence in any given case.”

These arguments were part of a far larger remodelling of society, and Clouston sought to emphasise in his discussion that the successful maintenance of an ordered society required its members to believe that institutions were acting in their interests, while the courts, in refusing to adhere to the scientific understanding of responsibility, were in danger of losing their grip on social order by standing as a preserve of archaic values.<sup>320</sup> Clouston had raised a similar point in the same journal two years earlier, arguing that if the court's antiquated understanding of the laws of the body were not updated, and if legal punishment did not “develop and meet new conditions of society”, the law would cease to be regarded as a guarantor of order and become an arbitrary and despotic system of rules, damaging the State's moral influence on conduct.<sup>321</sup> It seemed to Clouston that an acceptance of criminal anthropology would not represent a significant departure from the practical methods of protection humanity had evolved in response to the danger of degeneracy, since it had “for thousands of years been prejudiced against the moral qualities of dwarfs, hunchbacks, and very ugly men and women.” He did however note an intriguing case where “nature [had] lied and cheated” by presenting him with an infatuating patient, a “girl of seventeen, who, when she first came [to Morningside], was a charming-looking brunette with wavy locks, an intelligent expression of eye, a coquettish manner, and pretty feminine ways”. There was, however, a tell tale sign of degeneracy: her deformed palate. This young girl, “deceptively cloaked in beauty and left at liberty to marry” would, he feared, one day become “the mothers of a race of fools, idiots, lunatics, and cripples.”<sup>322</sup>

---

<sup>320</sup> Clouston, ‘Diseased Cravings and Paralysed Control’, Part I, p.518.

<sup>321</sup> Clouston, ‘Responsibility in Drunkenness’, *Juridical Review*, (6), 1894, pp. 147-57 (157).

<sup>322</sup> Clouston, ‘Arrested Development’, p.41 & p.45.

While this trail of degenerates presented a warning to jurists that they could no longer ignore psychiatric evidence, the appeal to eugenics was undoubtedly recognised as premature and forlorn, and Clouston redoubled the force of his campaign for legal change by emphasising the imminent danger degeneracy presented in the continuum between minor and serious criminal. As many historians of nineteenth-century law have argued, the defence of insanity as an absolute aberration or a fundamental departure from the norm was philosophically more acceptable to Victorian judges than the idea of a metaphysically dangerous and penologically unenforceable emphasis on degrees of normality.<sup>323</sup> However, this latter was precisely what Clouston wished to highlight by drawing attention to the fact that the “bodily arrestments and abnormalities of movement, of head, face, or eyes, go along with and are a necessary accompaniment of congenital mental and moral weaknesses and perversions.” On this account the “small-thumbed patient” and the “potential murderer” simply stood as “different examples of the same pathological process”, and the minor abnormalities that the law overlooked in determining sentencing did not represent an ‘inhumane’ failure to respond to the sentimental appeals of doctors so much as an irresponsible refusal to recognise the potential danger concealed in every minor abnormality. Once again, it was the pathological continuum offered by the theory of degeneration that provided the justification for psychiatric expertise.

## **5.6 From Psychiatry without Symptoms to Psychiatry without Sentiment**

Around the time of Clouston’s turn to criminal anthropology there had been stirrings against the sentimental treatment of the criminal within the MPA. In 1894 Moritz Benedikt of Vienna (1835 – 1920) – the Continental source of Clouston’s criminological interest, though himself a self-professed “disciple of the British school” of psychiatry – had visited Britain to deliver a paper at the MPA on the relationship between moral insanity and the role of the State in punishing criminals.<sup>324</sup>

---

<sup>323</sup> See, for example, M. Weiner, *Reconstructing the Criminal: Culture, Law and Policy in England, 1830 - 1914*, Cambridge University Press, 1990; Weiner, *Men of Blood: Violence, Manliness and Criminal Justice in Victorian England*, Cambridge University Press, 2004.

<sup>324</sup> Benedikt, ‘On Moral Insanity in its Relation to Criminology’, *JMS*, 1894. Benedikt was drawn to the institutional model of British psychiatry on the grounds that it favoured “State control” of the insane over the use of private clinics, though also, it seems, because it was less inclined toward psychologising

Here Benedikt produced a variant of the ‘wild beast’ theory of criminal law, arguing that while the psychiatric model of the dangerous offender showed the criminal to be a “voracious wolf” or a “rapacious animal” whom it would be wrong to regard as “metaphysically guilty”, this should not entail a ‘sentimental’ approach to crime in which the murderer would be “handed over to psychologists”. Alexander Reid Urquhart, Superintendent at the Murray Royal Asylum in Perth, responded to Benedikt’s speech by noting that the moral insanities pursued by certain of his colleagues were merely sentimental attempts to free the guilty, and that “immorality alone [could] never be held to be proof of insanity.” Indeed, he argued, it would be “a very sad day for our science and for humanity if ever it should happen that every person who exhibits vicious tendencies in an incorrigible degree is regarded as insane” (a proposition outlined at length in “a very large book” it had been his “painful duty” to read under professional obligation, in other words, Krafft-Ebing’s *Psychopathia Sexualis*). Hence, while psychiatrists were “neither teachers of morality, nor custodians of morals”, they ought to be cautious not to allow such Continental folly to direct their science into channels that could allow it to be “prostituted for the purposes of vice.”

In that same year Clouston had attended the Psychological Section of the BMA’s Annual Meeting (Bristol) at which, *The Times* reported, Dr Lionel Weatherly had read a paper on insanity and criminal responsibility that provoked an “interesting controversy on the subject” between Henry Maudsley and Sir James Stephen.<sup>325</sup> According to *The Medical Magazine* this controversy had concerned a recent crack-down on Anarchists in Paris – a dramatic strike against a subversive element permitted to fester through the mixture of “slushy sentimentalism, bad physiology and

---

the criminal and excusing sexual inversion, practices he loathed in equal measure (Benedikt, ‘The Waldstein Case at Prague: Two Letters Addressed to the Members of the Medico-Psychiatric Association of Great Britain and Ireland’, *JMS*, 1899, p.86; c.f. ‘Sexual Perversity and the Criminal Law’, *JMS*, 1901, **47**, p.823). William Ireland’s review of Benedikt’s *Juridical Letters on Degeneration* noted that the author had commended the British nation for the sympathy achieved between judges and psychiatrists who had, he alleged, been in perfect synchrony for a quarter of a century, a statement Ireland doubted (Ireland W. ‘Review of Juridische Briefe: Degeneration und Verbrechen Von Prof. Dr. Moritz Benedikt.’, *JMS*, 1901, **47**: 580-582). Benedikt was the author of many scientific works, though his most prominent monograph in the field of criminal anthropology was his *Anatomical Studies upon the Brains of Criminals*, (1878 [trans. 1881], New York: Wm. Wood & Co.). On Benedikt see M. Berkowitz, ‘Criminality and the Jewish Question’ in Becker & Wetzell (eds.) *Criminals and their Scientists*, pp. 61-85.

<sup>325</sup> *The Times*, Aug. 4, 1894.

worse metaphysics” that had been poured out by Europe’s psychiatrists. The main charge against this sentimentalism – “served up in the much-abused name of Science [which] imagines that, when it has accounted for the wickedness of a bad man, it has abolished the distinction between good and evil” – was that it would allow psychiatry to ‘screen’ murderers from punishment and that “any criminal may become an object of interest, or even of sympathy, if some notoriety-hunting doctor can be got to rig up a theory of mental disease.”<sup>326</sup> Even the Professor of Forensic Medicine and Public Health at the University of Glasgow, John Glaister, an otherwise sympathetic reader of psychiatry (see chapter seven), argued at later a Meeting of the BMA that, if courts allowed psychiatrist’s to move beyond their narrowly defined legal competences, a great injustice would be done to the general public, who would be left at the mercy of the psychiatrists’ sentimental disposition to send any slightly peculiar criminal to Broadmoor “to smoke his pipe for the rest of his life”. Psychiatric witnesses, he argued, “ought to try to stem that tide of sentimentalism and leave the sentence of prisoners to the proper legal authority.”<sup>327</sup>

While these hysterical accusations were wildly generous in the power of influence they were prepared to bestow upon psychiatrists, we can nonetheless see that there was a substantial counter-discourse to the psychiatrists’ claims that their knowledge was beneficial to society. We can now understand why Clouston wished to highlight the connections psychiatry had established between minor abnormalities and grave threats, of the small thumbs of a patient as the harbingers of the future killer. This explains why, in the *Juridical Review*, he referred his readers to a somewhat trivial case that had been tried in Edinburgh in 1884, the case of Alan Fergusson, a young male of neurotic heredity whose stunted mental development had been compounded by a fall sustained while playing sports at school, after which he became fixated on the idea of burning down the building, a fixation that led to his starting a fire one night the classroom below his dormitory. Along with Dr Littlejohn, the most eminent member of Edinburgh’s medico-legal community, Clouston had been called by the court to examine the boy, with both doctors attesting to his lack of capacity.<sup>328</sup>

---

<sup>326</sup> Anon, ‘Pathological View of Criminality’, *The Medical Magazine*, Feb, 1894, p.607, in LHB 7/12:5.

<sup>327</sup> ‘British Medical Association Meeting at Edinburgh’, *The Scotsman*, Jul 29, 1897, in LHB 7/12:5.

<sup>328</sup> Though a specialist in toxicology, Henry Duncan Littlejohn (1826 – 1914), was widely acquainted with the diagnosis of insanity: appointed as Edinburgh’s police surgeon in 1854, Littlejohn became the

The *British Medical Journal* had, in its report of Fergusson's trial, noted the "remarkable course" pursued by the judge in allowing medical witnesses to give evidence on the prisoner's history and to describe mental state in reference to facts "communicated to them out of court." These witnesses had affirmed that the boy had a history of committing acts of a "motiveless character" and who had, after receiving his sporting injury, been placed "mentally in the condition of a child of 6 or 8." While at this trial the "Scotch judges [had] shown themselves to be in advance of their English brethren in their appreciation of the bearings of mental disease upon responsibility", the sentence they had awarded was, the journal felt, "more draconic in severity" than those handed out by English judges, for it inflicted punishment upon a child who was shown at trial to be insane.<sup>329</sup>

Clouston seems to have returned to this unremarkable and probably long forgotten case solely to make a point of his disagreement with the interpretation offered in the *British Medical Journal*. Making a great show of this contrast before his readership of lawyers, he highlighted what he believed to be the excessive *leniency* of the sentence the judge had awarded to the boy, a sentence that had imposed a punishment so light as to have no conceivable power of deterrence in a prisoner whose powers of self-control were so utterly enfeebled. The verdict of the judge was therefore not an unduly harsh affront to sentiment (the expected complaint of the psychiatrist), but, on the contrary, it was not harsh enough. Worse still, the methods of the court were "an inefficient mode of *protecting society*." It seemed to Clouston "an illogical thing to cut down the sentence from five years to one in prison because the boy seemed weak mentally, thus letting him out before his full bodily and mental development is completed, to do, perhaps, the same acts again." Surely in this case it was the unscientific judge who was acting out a 'slushy sentimentalism', for if he had followed Clouston's theory of conduct he would have seen that this child was one of the delinquents that schoolmasters and psychiatrists were coming into increasingly frequent contact with, representing a species who "are a danger to society as they grow up, from their want of self-protective, moral, and inhibitory qualities". These

---

city's Medical Officer of Health in 1862 and subsequently served as a Crown medical examiner, a role which called on him to appear at "virtually every notable murder case tried at the high court in Edinburgh." He was appointed professor of Medical Jurisprudence at the University of Edinburgh in 1897. (White, 'Training Medical Policemen', pp. 156-57).

<sup>329</sup> Anon, 'Crime, Disease, and the Law', *BMJ*, 2 (1773), 1894, pp. 1449-1450.



“imperfect specimens of humanity” were impervious to punishment and moral training and would, if the law did not alter its course, only serve to “swell the ranks of the prostitutes, small criminals, vagrants, and paupers; many of them ending in technical insanity and the county asylum.”<sup>330</sup>

We have seen how degeneration was used to re-structure psychiatry’s relations with the law, particularly from the 1860s onwards, a time when psychiatrists began to make explicit their break with the older logic of monomania. While psychiatrists liked to talk up the great antagonisms between medicine and the law in warlike language, perhaps the most striking element of these arguments is their listless lack of spontaneity, with the psychiatric polemic performed in the fashion of a Japanese tea ceremony. This can be seen clearly when we consider how similar Clouston’s position with regard to the law is to that of his former mentors, David Skae and Thomas Laycock.

In an 1867 lecture delivered at the Royal College of Surgeons of Edinburgh Skae had outlined the legal relations of insanity in remarkably similar terms to those later employed by Clouston.<sup>331</sup> Describing the explosive acts of violence produced by “loss of self-control or self-direction” – acts which conferred upon psychiatry a special power to intervene in the social danger represented by insanity – Skae used his lecture to address the contention that, in extending the diagnosis of insanity beyond either a legally defined group of delusional patients or those who were incontrovertibly mentally enfeebled, medicine was being used to “screen the guilty from punishment.” According to this charge, psychiatrists were ensuring that the thief would be protected as a kleptomaniac, the fire-raiser protected as a pyromaniac, and the murderer pardoned as an unfortunate suffering from “a low type of organization”. In response to this charge, Skae invoked the model of law to which psychiatrists were generally drawn, rooted in the principles of the Classical School of Penal

---

<sup>330</sup> Clouston., ‘Arrested Development’, p.51.

<sup>331</sup> David Skae, ‘The Legal Relations of Insanity’, *Royal Edinburgh Asylum Pamphlets* [LHB 7/14/2], orig. *Edin Med J*, Mar. 1867. Skae did not produce a textbook and left only a few journal articles, making any reconstruction of the details of his approach to psychiatry somewhat inferential. Indeed, his major work may be considered to be the Morisonian Lectures delivered by Clouston after his death in modified form (the last three of these being entirely original to Clouston). See Michael Barfoot, ‘David Skae: Resident Asylum Physician; Scientific General Practitioner of Insanity’, *Medical History*, 2009, **53**, pp. 469-88.

Jurisprudence. If the court was to wield a symbolic power over the public, it must not only pose a threat of punishment, but must pose it in systematic and rational terms (demonstrating once again that the psychiatric concern with law was not at heart a desire to expand the boundaries of the profession, but to strengthen the underlying social rationale for the mechanism in which doctors wished to see their science operate). The well-worn hypothetical examples of cases falling outside of the legal tests were introduced in support of this claim, covering impulsive acts which did not seem to accord with any motive, for example when:

A mother, in violation of the common instincts of nature, hates her new-born child and murders it; a wife tells her husband that she fears she will kill him during the night, as she wakes with a horrible impulse to do it, and implores him not to sleep with her; a husband and a father voluntarily seeks protection in an asylum, which he refuses to leave lest he should murder his wife or some of his children, to which he is impelled by an impulse over which he has no control; a gentleman, who has been for a lifetime a model of temperance, and prudence, a piety, suddenly becomes drunken and lavish to folly, and impious and obscene in his language and habits, and may even lose all self-control over his actions and conduct, tear his clothes and bedding to ribbons, and dance around his room naked, laughing, singing, and swearing incessantly, and all this without any intellectual delusion.<sup>332</sup>

However, it was not only the absence of legally recognised motive that rendered such people irresponsible; that, after all, would not make them subjects for psychiatry. The important point was that these acts of impulsive crime were generally accompanied by distinctive physical characteristics, a brutishness inscribed onto the patient's form that would betray his dormant impulses, allowing doctors to detect and apprehend the instinctive criminal. This is not of course to imply that Skae had any intention of locking up anyone with a cleft palate or sloping brow, but one can see that, in making the rhetorical association between defective form, impulsive or explosive conduct, and legal process, he was essentially following the logic of degeneration as it was applied to the law. Indeed, drawing on the typical arguments of French doctors, these distinctive physiological signs were said to be portentous of future danger, since "a man of weak mind, an imbecile, a man of a low type of organization, may commit a murder from motives of revenge of a trivial kind."

---

<sup>332</sup> Skae, 'The Legal Relations of Insanity', pp. 12-15.

While these arguments were generic to European psychiatry, Skae's own take on the theory was directed toward the recent and unprecedented verdict of culpable homicide applied to a murder tried in the Scottish High Court (see chapter six), arguing that such verdicts ought to be extended to "any case of murder where the existence of mental disease, even in a partial degree, was distinctly proved". This seemed to be a particular social expedient in light of the reports of the surgeons and inspectors of Scotland's prisons (particularly those of James Bruce Thomson at Perth General Prison) which increasingly showed that "a very considerable portion of [Britain's] permanent criminal population labours under mental infirmity and disease."<sup>333</sup> Such degenerates, "a curse in any well-regulated asylum", were therefore "proper objects of protection, and segregation", and while "pseudo-philanthropists" believed that psychiatrists were either too sentimental – wishing to assist in granting every convict their reprieve – or too concerned with attracting the government subsidy that would come with each patient, these same philanthropists would, if they considered the economics of abnormality, "congratulate themselves that such persons were permanently placed under proper care than allowed, after repeated sentences . . . . to live at large, perpetuating a diseased and degenerated race, which might otherwise gradually die out."

The other great proximate influence on Clouston's work, Thomas Laycock, was disseminating an almost identical set of arguments in the 1860s. For instance, in one of his Lectures on Mental Diseases at the University of Edinburgh (1864), Laycock discussed the trial of a prisoner, George Bryce, who had brutally murdered a servant girl. Laycock's evidence at this trial led the *Courant* to anticipate:

a time when the general repugnance of capital punishment, acting in conjunction with a deeper sense of the mystery of the connection between mind and matter, will make the treatment of criminals a very difficult affair. 'Organisation' may come, at last, to be placed against all responsibility whatever; but in such a case, the moral law will be in a bad way; and society will have to cast about for new foundations on which to build, and live, and act."<sup>334</sup>

---

<sup>333</sup> Ibid, p.20.

<sup>334</sup> *Edinburgh Evening Courant*, LHB7/12/1, p.161.

To the *Courant*, this confirmed that trial by jury had, under the weight of specialist medical information, ceased to serve as “an engine for the truth”, a problem that would only become more pronounced with the “increasing complexities of civilisation.”<sup>335</sup> Laycock’s courtroom deposition that the prisoner was suffering from “physical organisation of a low type [and was] labouring under a fit of maniacal excitement” at the time of his acts was ultimately unsuccessful (Bryce, it turned out, was the last person to be publicly hanged in Edinburgh). However, in the lecture covering the case he drew attention not to these clinical features of the prisoner’s condition, but to the philosophically unsound theories of responsibility and punishment held by the legal system.<sup>336</sup>

The law, Laycock contended, had misunderstood the proper function of psychiatry, which was not a means of treating delusional patients or those who could not distinguish between right and wrong, but a means of protecting society from “the free homicidal lunatic” against whom the law’s desire to “satisfy public vengeance” would always come too late. Indeed, he made it quite explicit that the increase in insane homicides was not due to a general increase in insanity, but “to the fact that there is a greater number of *dangerous lunatics* at large, and these are so at large because of the legal doctrine as to insanity and the responsibility of the insane.” It is quite clear then that Skae, Laycock, and Clouston sought to give a defence of psychiatry that challenged the ‘rise of sentiment’ hypothesis head-on. It was not that psychiatry sought to claim new objects (the alcoholic, the criminally insane), or that it wished to temper the severity of punishment, but rather it sought to supplement the law by taking into account the potential danger inherent to certain criminals. As Laycock continued, this change was particularly necessary as:

the worst and most dangerous kind of criminal lunatic offers in the early stages none of the symptoms of popular or legal lunacy, he is of necessity left uncertified, and wanders abroad in society, free to commit the vices and crimes to which his insane nature impels him, until, with increase of his malady, he finds his way to an asylum, or a workhouse, or a jail, or the hulks, or the gallows, according to the character of his insanity.<sup>337</sup>

---

<sup>335</sup> *Edinburgh Evening Courant*, LHB7/12/1, p.161.

<sup>336</sup> Laycock’s evidence cited in *H. M. Adv v. Bryce*, 4 Irvine (1864), p.506.

<sup>337</sup> ‘Dr. Laycock on the Legal Doctrines of the Responsibility of the Insane and its Consequences’, *JMS*, 1864, pp.350-66 (pp. 351-53).

It is in this attempt to de-sentimentalise psychiatry that we should ground our understanding of the uptake of degeneration theory by psychiatrists (and particularly by Clouston). If on the clinical level degenerationists wished to emphasise their break with the symptomatological methods of alienistic medicine, on the forensic level they sought to emphasise their break with the accompanying humanistic sentiment with which these methods were tinged. Clearly these ideas were not confined to Clouston (or indeed to Scotland) and we could cite any number of sources arguing much the same thing. Maurice Craig, one of Britain's most eminent psychiatrists in the late nineteenth and early twentieth centuries was even more explicit in condemning the belief that the "morally insane and other degenerates should be judged more leniently for their offences"; indulging the sick was infecting the healthy and it was "incumbent upon society to protect itself from the consequences of their ills."<sup>338</sup>

This new ambition for psychiatry amounted to nothing less than the complete erasure of the portrait of the mad-doctor it had built up over the first decades of the century, a portrait that had been absorbed by the popular understanding of the subject: as the *Edinburgh Evening Courant* noted in 1870, "If there is one point on which more than another the 'nineteenth century' is given to congratulate itself it is the humane treatment it extends to lunatics."<sup>339</sup> The symbolic role of the lunatic asylum as a showcase for the century's virtue had been part of a broader rise in sentiment amongst the British public. In addition to the removal of chains and whirling chairs from the asylum alienists of the early nineteenth-century had witnessed the abolition of slavery, the shaping of private lives through sermonising and legal intervention, and an ever decreasing use of the capital sentence, restricted to the crime of murder in 1837. As one Scottish newspaper told its readers, "the mode in which criminals are now executed is one of the most striking symptoms of a change in public sentiment", a change which would perhaps lead to the adoption of entirely private executions. "Hanging", they noted, "may perhaps have been a necessary and a useful institution,

---

<sup>338</sup> Maurice Craig, *Psychological Medicine: A Manual on Mental Diseases for Practitioners and Students*, London: J & A Churchill, 1912 (2<sup>nd</sup> ed.), p.74. Craig (1866 – 1935) was consulting physician in psychological medicine at Guy's Hospital and consulting neurologist to the Ministry of Pensions (a position which he had acquired as a result of his work with traumatised soldiers during the Great War). He was knighted in 1921 for his War Office work on shell-shock and also served as the chairman of the National Council for Mental Hygiene.

<sup>339</sup> *Edinburgh Evening Courant*, Jan 21<sup>st</sup>, in LHB7/12/1, p.203.

but we all feel that it does not fit into modern civilisation.”<sup>340</sup> Where this sentiment had come from was a mystery to everyone, though it remained a source of confusion well into the twentieth century. One theory was that, “under the influence of civilisation the individual nature [had] become more nervously sensitive”; after all, we are told by one of Edinburgh’s lawyers, “a Chinaman suffers far less than a European under physical chastisement or torture.” While the cause of this change was a matter of speculation, there could be “no doubt” that there was “a great and growing sensitiveness as regards the infliction of suffering even upon the guilty, and that this [was] exercising a powerful influence upon . . . criminal administration.”<sup>341</sup> In an age that was critically self-conscious of its sentimentality toward the convicted criminal and proud of the humane treatment it had extended to its insane, the suspicion that psychiatrists were guilty of blurring the distinction between the two groups was widespread: “There is a feeling growing up in the public mind”, we read in the *Edinburgh Evening Courant*, “that ‘mad-doctors’ have been seeking to extend their domains beyond just limits.” Before this “special branch of the medical profession” had worked its way into public service, they reported, the average citizen had no difficulty in distinguishing sanity from insanity. However, the casuistry of the psychologists, coupled with “the humanitarian tendencies of recent years”, had led the public astray by causing them “to accept the plea of insanity set up on behalf of criminals . . . on the most imperfect medical evidence, simply because it relieves us of the disagreeable duty of hanging the culprit.”<sup>342</sup>

The journalistic commentaries discussed above were preserved within the ‘Morningside Scrapbook’, a monument to professional struggle begun by Skae and continued by Clouston. Occasionally this book reveals the frustrations Clouston experienced with a popular press slow to update its understanding of his science (as when the journalistic use of ‘mad-doctor’ is scored through in red ink). Elsewhere, however, we see that the strategy of renouncing sentiment had gradually seeped into the public consciousness and gained influence in the press. Nearly thirty years after this scrapbook was opened, the *Scottish Leader*, discussing Clouston’s expert testimony at a then recent medico-legal case, noted that for the courts, as well as for

---

<sup>340</sup> Newspaper/date unknown, ‘The Influence of Capital Punishment’, LHB7/12/1, p.166.

<sup>341</sup> Johnston C. N. ‘Sentiment and Crime’, *Juridical Review*, 1912, 23: pp.142-52 (p.143).

<sup>342</sup> Undated piece, circa 1864, LHB7/12/1, p.128.

the general public, “insanity is a dark and repellent problem. How dark and repellent one would hardly have ventured to say without the testimony of an expert.” While the common image of the madman, the piece continued, was of an instantly recognisable caricature subject to delusions or wild eccentricities, this mistaken belief ignored the sizable ranks of madmen concealed in normal society who could not be detected until their illness erupted in murderous or destructive acts. Thus, it argued, while “medical science” had helped people to:

understand that a man may make a homicidal attack and yet be no criminal, may be sane as men go, and yet be of unsound intellect, something more is needed for the security and mental peace of the public. The very subtlety of this form of disease, with the possibility of the wild beast leaping suddenly forth, imposes on public guardians a duty that seems by no means too clearly recognised.<sup>343</sup>

The sentiment that had once pervaded the image of psychiatry had, by the end of the century, been replaced by concern that, “One cannot repress an uneasy feeling that in veering off from the dangers of unjust or unnecessary restraint, the method of the lunatic asylums has passed to undue laxity”, leaving the public exposed to the risk of dangerous criminals. At a time when the Whitechapel murders had stirred interest in the idea of psychopathic criminality, the psychiatric emphasis on the hidden dangers of degeneracy had a receptive audience. As *The Daily Chronicle* asked in 1891: “Who knows but that ‘Jack the Ripper’, save when under the influence of demonic impulse, is not moving in the most respectable society, a prosperous and decorous gentleman?”<sup>344</sup>

## 5.7 Conclusion

I have used this chapter largely to examine how the work of a particular psychiatrist demonstrates the ways in which the science constituted itself in relation to the law, modelling its categories and distinctions in reference to legal notions of insanity. In this dialectic there remains unanswered the returned gaze of the law: how did legal writers discuss, interpret, and utilise psychiatric ideas? To what extent were they aware of the notions of responsibility and degeneration that theorists such as Clouston

---

<sup>343</sup> *The Scottish Leader*, Jun 7, 1890, in LHB 7/12:5 (pp. 84-85).

<sup>344</sup> *The Daily Chronicle*, Feb. 14, 1891, in LHB 7/12:5 pp. 186-87.

developed in relation to their own study of conduct? In the following sections of this thesis I will turn my attention away from the writings of psychiatrists and consider the world of medical jurisprudence and of the legal system proper, examining in detail how legal commentators addressed these same issues.



## 6 Psychiatry and the Scottish Courts: Alcohol, Partial Responsibility, and Experts in Insanity

### 6.1 Introduction

The 1867 case of *Alexander Dingwall* has been noted landmark of nineteenth-century Scottish law.<sup>345</sup> At this trial the presiding judge, Lord Deas (1804-1887), introduced culpable homicide as a potential verdict in capital cases, laying down the maxim that a plea of diminished responsibility could be entered on behalf of offenders whose mental state did not amount to absolute insanity and that evidence of such mental states could be taken into consideration by the jury in reaching their verdict.<sup>346</sup> By the close of the nineteenth century culpable homicide had supplanted murder as the principal category in both the doctrine and practice of homicide law in Scotland. When viewed in its broader legal context the move toward culpable homicide reveals a paradoxical element of social intervention in the late Victorian period, for while judges began to shield killers from the severity of legal punishment, they also began to *increase* the number of acts subject to legal sanction, in effect broadening the scope of social duty that was minimally applied to the older *laissez-faire* legal subject.<sup>347</sup> The move away from absolute insanity as a test of culpability also followed developments in psychiatry which had, from the 1850s onwards, been paying increasing attention to a diverse range of conditions that suggested abnormality without constituting legal insanity. Yet in spite of these wider contextual changes to medico-legal notions of responsibility the increased visibility of the culpable homicide verdict for serious crime in Scotland remained tied in the minds of contemporary observers to the agency of Lord Deas. As *The Scotsman* noted in 1882,

---

<sup>345</sup> See G. Gordon. *The Criminal Law of Scotland, Vol. I*, W. Green and Son, Edinburgh, 2000, p. 453; Farmer, *Criminal Law, Tradition and Legal Order: Crime and the Genius of Scots Law 1747 to the Present*, Cambridge University Press, 1997, pp. 142-175.

<sup>346</sup> The category of culpable homicide was already in existence in Scots law prior to 1867, though it was rarely applied and covered acts that resulted in death while intentionally seeking a non-malicious end, generally through negligence.

<sup>347</sup> Farmer, *Criminal Law* pp. 102-118. See also: E. P. Thompson, *Whigs and Hunters: The Origins of the Black Act*, Pantheon Books, 1976; D. R. Hay, 'Property, Authority, and the Criminal Law' in Hay (ed.) *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, Random House, 1976, pp. 17-63; V. A. C. Gatrell, *The Hanging Tree: Execution and the English People, 1770-1868*, Oxford University Press, 1996; M. Wiener, *Men of Blood: Violence, Manliness, and Criminal Justice in Victorian England*, Cambridge University Press, 2004.

both the change “in the legal conception of the extent of the criminal responsibility of the insane” and “the theory that insanity may be sufficient in degree to found a verdict of culpable homicide is new to the law of Scotland, and due entirely to the aged and learned Judge Deas”.<sup>348</sup> Scotland’s seemingly progressive stance on this matter was well-known in the late nineteenth century, and in 1889 *The Medical Press* noted that the country had been blessed with a sympathetic judiciary ever since Lord Deas made the valuable advance of abandoning the established legal tests of responsibility, after which time “the situation had ripened rapidly” and “the general principle [had been] affirmed that absolute insanity is not necessary to irresponsibility, neither is a knowledge of right and wrong . . . there are gradations of responsibility, and should be gradations of penalty.”<sup>349</sup>

The established tests of legal responsibility Deas had ostensibly broken with were the infamous M’Naughten Rules of 1843, stating that:

To establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason from disease of the mind that he did not know the nature and quality of the act he was doing, or if he did know it, as not to know it was wrong.<sup>350</sup>

The Rules, a formula “quite colour-blind to any permutations between black and white” as Truman Capote complained a century after their formulation,<sup>351</sup> were in use throughout the Commonwealth and in certain North American states throughout the nineteenth century, providing Anglophone psychiatrists the world over with a prominent symbol of the legal resistance to scientific advance. As Edward Cox Mann noted in his *Treatise on the Medical Jurisprudence of Insanity* (1893), to the “physician skilled in psychiatry, nothing appears more absurd, and nothing could possibly be more in conflict with the laws which govern mental disease” than the

---

<sup>348</sup> *Scotsman*, 5th Jan, 1882, p. 5.

<sup>349</sup> ‘The Legal Aspect of Insanity’, in *The Medical Press*, Dec 18, 1889, in LHB 7/12:5 (p.45).

<sup>350</sup> *M’Naughten*, 1843, 10 Cl & F.210. In Scotland it was at the trial of *Gibson* (1844, 2 Broun 332) the Lord Justice-Clerk Hope adopted the ruling set out at M’Naughten explicitly as a part of Scots law. On the details of M’Naughten’s case see R. Moran, *Knowing Right from Wrong: The Insanity Defence of Daniel McNaughtan*, New York: Free Press, 1981 [N.B. M’Naughten’s name appears in various spellings throughout the contemporary records].

<sup>351</sup> Capote, *In Cold Blood*, Penguin, 2000 [1966], p. 286.

M'Naughten Rules, which stubbornly ignored the “advances of scientific knowledge in the field of physiology and psychology, sociology and anthropology.”<sup>352</sup>

The verdict of culpable homicide resulting from the diminished responsibility of the mentally peculiar offender therefore seemed to align Scotland’s judiciary with this progressive psycho-social school, and indeed there was an increased use of psychiatric language to frame legal verdicts along with openness to the notion that responsibility was not an exclusively philosophical notion. This was expressed on numerous occasions during the late-nineteenth and early-twentieth centuries, and the general shift in consensus may be captured by the observation of a Scottish judge who, in 1907, offered the following advice to his jury:

what may be called scientific opinion on insanity has greatly altered in recent years, and Courts of law, which are bound to follow so far as they can the discoveries of science and the results of experience, have altered their definitions and rules along with the experts . . . It is well recognised, that although science has not yet taught us sufficient about the brain to know on what insanity depends, yet it is a perfectly possible thing to have a man who may for all purposes be as sane as anyone on nearly every matter, and yet on one point be hopelessly insane.

These observations were hailed by Clouston who, in a letter to *The Scotsman*, took them to signify:

a new era in the judicial treatment of insanity, and as marking an acceptance of that medical attitude towards mental disease, which maintains that such diseases may be of a kind which produces moral paralysis without impairment of functions; so that mental inhibition may be paralysed by brain disease of special nature, and although such mental conditions may not affect an ordinary man’s powers, they may affect him in his capacity as a law abiding citizen.<sup>353</sup>

In spite of this general change in attitudes toward psychiatric claims amongst lawyers and judges we find that, on examination of specific trials, there is no clear evidence that this change was the product of any development in medical knowledge; indeed judges could have dismissed (as occasionally they did) the evidence of mental incapacity they were presented with in 1900 using the same methodological and

---

<sup>352</sup> Edward Cox Mann, *A Treatise on the Medical Jurisprudence of Insanity*, Matthew Bender: Albany, 1893, xxi.

<sup>353</sup> *The Scotsman*, March 25, 1907, p.9

philosophical arguments that had prevailed at the time of the M’Naughten Commission. In what follows I analyse the development of diminished responsibility in murder cases tried at the Scottish High Court (primarily) under Lord Deas’s jurisdiction, examining both the development of the legal notion itself and the place psychiatric evidence played in its formation. From this I turn to consider the recurring points of contention psychiatrists found with the law, suggesting how the notion of degeneration and the importance ascribed to heredity and inebriety as causes of insanity contributed to psychiatrists’ reluctance to embrace the legal discussion of insanity.

## **6.2 Tonight: The Robbers! Murder and Expertise Prior to Culpable Homicide**

While the trial of *Dingwall* introduced diminished responsibility as mitigation in capital cases to Scottish law, I will begin by exploring the slightly earlier trial of *Milne* (1863).<sup>354</sup> *Milne*’s trial was important to the development of medico-legal relations in Scotland for several reasons. Firstly, a substantial discussion of the medical testimony relating to the prisoner’s state of mind is contained within the Justiciary Reports. Though this ‘psychiatric’ defence was ultimately unsuccessful, the evidence presented at this trial is indicative of the kind of ‘expertise’ entering into Scottish courts at this time. Secondly, although Lord Justice-Clerk (Inglis) guided the jury, he was assisted on the bench by Deas, who later noted (at *Granger*, 1878) that he believed the sentence passed at *Milne* to be unjust, and that the trial had convinced him that greater latitude should be given to expert medical witnesses in Scottish courts. Thirdly, the guidance that the Lord Justice-Clerk laid down at this trial appears to be a notable and perhaps final instance of the ‘pre-modern’ concept of responsibility, in which punishment was based on the prior penal consequences of certain classes of actions rather than on the intentions of actors.<sup>355</sup>

As with most murder trials, the details of *Milne*’s case make for fascinating reading. Having suspected for several weeks that his acquaintance and sometime business partner James Patterson was conducting an affair with his wife, plotting to

---

<sup>354</sup> *H.M. Advocate v Milne*, 4 Irvine, 1861-64 [1863], pp. 301-46.

<sup>355</sup> For a discussion of modern and pre-modern theories of insanity see Farmer, *Criminal Law*, p.151.

take over his business, and conspiring to kill him with poison, Milne stabbed Patterson with an awl during an alcohol induced frenzy. No one who was called to testify doubted that erratic behaviour had come increasingly to dominate Milne's character, marking him out as mentally peculiar. At a Christmas celebration two weeks prior to the murder he had said a long and rambling grace before dinner, carved the haggis in an 'odd way', and organised a strange procession around the table, which he led with a sword.<sup>356</sup> However, the most significant aspect of Milne's unusual behaviour was his extreme and apparently groundless paranoia, and even while he was placed in prison to await trial he maintained his suspicion that the whole event had been staged to effect his demise, repeating his stories of poisoning to an inmate, and going so far as to claim that Patterson was not dead at all, but had been hidden away by the police until he was condemned, at which time he would marry his wife and inherit his business.<sup>357</sup> At his trial Milne spoke of instances in which Patterson had taken "some mercurial stuff" from his pocket and "filled the room with a dense gas" that made breathing difficult and recalled how he had seen Patterson "take up his little daughter and put paper in her nostrils" and then go to his wife with whom he lay on a sofa (Milne was apparently unable to prevent this due to the effects of quicksilver poisoning). The constable who interviewed Milne shortly after the stabbing took place also reported that he spoke of how Patterson had been putting poison in his drink for some days "in order to get his business and his wife" and that he had caught the interloper "on top of his wife" a few days prior to the stabbing, which fatal act had been intended "to teach him a lesson."<sup>358</sup> A later analysis given in 1889 by the lawyer Charles Scott (who had been present at the trial) noted that Milne had claimed his victim appeared from a veil of clouds "smoking a magical cigar, from which thick and deleterious mists arose that filled and darkened the whole room", periodically lifting to reveal glimpses of the liaison between his wife and his tormentor. Milne had also reported seeing a theatre bill posted on his wall upon which was printed: "To-night – The Robbers", an advert of the crime against him that was now imminent, forcing him to take action against the ringmaster.<sup>359</sup>

---

<sup>356</sup> *Milne* (1863), pp.317-320

<sup>357</sup> *Milne* (1863), p.328

<sup>358</sup> *Milne* (1863), p.309-312

<sup>359</sup> C. Scott, 'Insanity in Its Relation to the Criminal Law, Part I', *Juridical Review*, 1, 1889, pp.237-258 (255)

It is a pity this case was tried a good half-century before psychoanalysis began to make inroads into the courts, for Milne would have undoubtedly had a ready made case for his defence – with such persistent fears over loss of power, vitality, property, and of his wife, one cannot help but speculate that Milne’s troubles went beyond an inability to carve haggis properly. As it was, his defence had to rely upon the court’s accepting a plea of insanity, which, following the passage of a recent Act, would either see him tried as sane, but found to have been insane at the time of his actions, or declared to be insane at the time of trial, thereby calling a halt to the proceedings and absolving him from criminal responsibility until his sanity was restored.<sup>360</sup> Since Milne was capable of cogently responding to questions and comprehending the charges brought against him, the latter option did not seem to be open to the jury, while a plea alleging insanity at the time of the act while accepting sanity at the time of trial was phenomenally difficult to substantiate – trials were usually conducted within weeks of the acts libelled and concluded within days; in this case, only two months had passed since the fatal stabbing, rendering it highly unlikely that if insanity in the legal sense were present at the time of commission it had subsided by the date of the trial. However, establishing a defence on the grounds of *delirium tremens*, a transient mental condition recognised both legally and medically as amounting to insanity, was one way of negotiating this difficulty, and the Lord Justice-Clerk informed the jury that if they were satisfied that Milne really was “in a condition of mental disorder or disease” at the time of his act, and not merely suffering from “an anomalous state of mind” or “moral depravity” brought about by his indulgence, then he could be excused without further enquiry into the “exciting cause” of the insanity.<sup>361</sup>

Two years prior to the murder Milne had been declared bankrupt, after which he took strongly to drink. His eyes, it was noted, had become sullen, piercing, rolling, and frantic, a testament to his troubled soul. Various witnesses spoke of his “piercing look”, his “rolling eyes and fierce-look”, a “wild roll in his eyes”, that his eyes were “different after bankruptcy”, that where “he had formerly a mild eye, now it was glaring” and that “there was something very strange in his eyes.”<sup>362</sup> In addition to his

---

<sup>360</sup> *Milne* (1863) p.331. The Act referred to is the 20th and 21st Vict. C. 81, sect. 87, 1862

<sup>361</sup> *Milne* (1863), p.344

<sup>362</sup> *Milne* (1863), pp.317-325

heavy drinking and frantic appearance, lay witnesses testified that they believed Milne to be suffering from *delirium tremens*, a fact that was given considerable attention by the medical witnesses called at trial. While in prison Milne had been given a copy of the *Anatomy of Drunkenness*, a medical treatise on intemperance written by the Scottish alienist Robert McNish. The descriptions of alcohol-induced insanity contained within this work made Milne doubt the reality of his own delusions and suspect that alcohol had been the cause of his erratic behaviour.

Thus, a special defence was lodged on the panel's behalf stating that "at the time of the act charged [Milne] was insane and labouring under insane delusions." Medical witnesses were asked to attend the trial in order to give an impartial assessment of the evidence pertaining to the prisoner's state of mind, though as they were not cognisant of the facts upon which the defence was based, they were, at the Advocate's request, permitted to remain in court throughout the trial. Dr Littlejohn, who examined Milne in the cells at the request of the local constable, noted his fast, weak pulse and suspected that he was in the incipient stages of *delirium tremens*, though he inferred from his present state that he could not have suffered an attack in the past 24 hours (i.e. when the murder had taken place). Indeed, on the day following Milne's arrest, Littlejohn found his condition to be greatly improved and passed him fit to be examined. Thus, the symptoms he had observed were judged to be those "of recent hard drinking", not those of a past fit of *delirium tremens*, making it unlikely that this condition could, at least on Littlejohn's account, be used as an excuse for his conduct. Similarly, Professor Robert Christison and Dr James Simson were called to examine the prisoner in custody. Both affirmed that Milne was not suffering from *delirium tremens*, though they could not help noticing that his "eyes had a dreamy, heavy appearance", and did not believe him to be feigning insanity in order to escape punishment.

Simson was however suspicious of Milne's attempt to excuse the stabbing as an accident, for a "monomaniac does not attribute to accident what he has done under delusion" (indeed he had "never heard of a case in which homicide committed under an insane delusion was first admitted and then denied by a lunatic").<sup>363</sup> Furthermore,

---

<sup>363</sup> Milne (1863), p.333.

neither Simson nor Christison could see any connection between the fatal stabbing and the five main delusions they had been able to discern in Milne's conduct (i.e. at no point, even if the delusions were founded in reality, would it have followed that he ought to commit murder, a fact which made his defence legally weak in reference to the M'Naughten Rules establishing the conditions of responsibility). An alternative medical testimony was offered by Dr John Smith, visiting physician at the Saughton Lunatic Asylum, who argued that Milne's declaration that the stabbing was an accident was not necessarily inconsistent with the presence of delusions, for on the recovery of his senses he may have remembered the delusion and realised his error. Commenting on the divergence of his experience from that of Dr Simson, he noted that he had "known an act done by a monomaniac under the influence of his delusion, and then denied by him. A monomaniac may, immediately after an act committed under the delusion, feel contrition, and try to extenuate the act." Smith also asked the jury to consider whether a monomaniac may know the "nature of the crime" but nonetheless "feel irresistibly impelled to commit the crime", a question dismissed by the Lord Justice-Clerk as legally impermissible, and that "if all the physicians in Europe were to state that I would tell the jury that they must not believe it, or act on it." However, he acknowledged that Milne's Advocate was correct in stating that if the accused was suffering from insane delusions, then the jury did not need to enquire whether he knew that this would constitute murder, for the holism of mind entailed that the presence of insane delusion in one respect could be taken to indicate an incapacity to reason in another.<sup>364</sup>

Citing Baron Hume, the Solicitor-General reminded the jury that, to serve as a defence in Scots law, mental disorder "must amount to an absolute alienation of reason" and not merely indicate that the accused was of peculiar temperament or habit. Thus, the jury was directed that, if they could neither established that Milne was insane at the time of the act, nor at the time of trial, he was to be punished with the full severity of the law. Escaping this final verdict did not seem likely: The evidence against Milne was, from a procedural point of view, fairly damning. The claim that

---

<sup>364</sup> Milne (1863), p.333 & p.343. This point of medico-legal logic would subsequently confirmed in the later Scottish cases of *Miller* (1874) and *Macklin* (1876), where the presence of delusion was accepted as sufficient grounds for a verdict of insanity "whether or not the delusion was connected with the act charged"(H.M. Advocate v Miller, 3 Couper 1874-77 [1874], pp.16-19 (p.19); H.M. Advocate v Macklin, 3 Couper 1874-77 [1876], pp.258-61).



the stabbing was an accident had not been made until the day after his arrest, and he had been clear about his intentions when apprehended. Thus, the Solicitor-General expected the jury to agree with him that the Milne “was not at the time, nor was he now, either an idiot or a furious madman.”<sup>365</sup> Furthermore, Milne’s history of drinking and erratic behaviour was not taken as an exculpation of his crime, but rather an exacerbation of it; the reports of his eccentric mental state were, after all, the product of his own indulgence, and if this indulgence placed him in such a position as to make reckless acts of violence likely, so much the worse for him.

There was a final question for the court to settle however, one that was of central importance to the arrangement of medico-legal claims; namely, if Milne was assumed to be sane, why did he commit his crime? If he was not a delusional madman acting upon fantasy then surely a plausible motive would have to be found to account for his conduct. In Milne’s case, the Lord Justice-Clerk accepted that if it was assumed that the delusions upon which Milne acted “were not really delusions affecting his mind” then the motive would admittedly become opaque, but opacity did not necessarily entail special legal significance, for while he admitted that it was “very true in one sense [that] murder can never be committed without motive”, it was equally true to say that almost no act could be committed without motive, and while many mysterious motives remained the secrets of murderers this did not absolve them of guilt.<sup>366</sup> Thus, the Lord Justice-Clerk gave the doctrine of Scottish law on the issue of criminal responsibility, which, he felt, was an “exceedingly simple” one: “If a person knows what he is doing – that is to say, if he knows the act that he is committing, if he knows also the true nature and quality of the act, and apprehends and appreciates its consequences and effects – that man is responsible for what he does.” Following this guidance, Milne was sentenced to death, though, under a recommendation of mercy, his sentence was commuted to life imprisonment. It was this habit amongst the jury of convicting a prisoner of murder and subsequently appealing for a suspension of the forthcoming sentence that caused nineteenth-century judges so much anguish. For instance, a year later, in discussion of the trial of George Bryce (1864), the *Edinburgh Evening Courant* paid particular attention to the jury’s

---

<sup>365</sup> *Milne* (1863), p.337

<sup>366</sup> *Milne* (1863), p.345

open refusal to follow the judge's directive to find the prisoner either sane or insane: "They could not decide whether to vote unanimously for or against his sanity, so those who had doubts of Bryce's sanity agreed to vote him sane, and thus to convict him, providing the rest of the jury would accept a recommendation for mercy, which, being unanimous, would spare his life."<sup>367</sup> In this way Milne's case served as something of a high water mark, representing both the final High Court case of the nineteenth century in which the older logic of insanity was defended by a judge in such explicit terms and the last instance in which the jury were not offered an alternative to the philosophically imprecise verdict of 'guilty with mercy'.

### **6.3 Diminished Responsibility and Expert Evidence: The Trial of Dingwall**

In 1867 the Lord Justice-Clerk John Inglis, whose intransigent direction at *Milne* was noted above, departed from his former position to become the Lord Justice-General of Scotland (the country's highest legal office). In this same year his successor, Lord Deas, gave the ruling on diminished responsibility resulting from disordered mental states that was to become such a distinguishing characteristic of Scottish law. Dingwall, a retired soldier serving in the Indian army with a long history of inebriety, was arraigned for stabbing his wife on the morning of the first of January 1867 (a date which had special significance in Scotland at the time, constituting the major holiday of the year). His biography was littered with instances of drunken excess: in 1846, following concerns over his drinking, he went voluntarily to 'Dr Poole's Retreat', a reformatory for drunken patients, though, as he was freely able to procure alcohol there, it did him no good. In 1851 the executors charged with overseeing his estate became worried that his profligate spending on alcohol would soon render him bankrupt and attempted to secure medical certification for his removal to an asylum, though his medical attendants did not concur and "continued all along to be averse to granting the necessary certificate." In 1855, as a result of his being "habitually and irreclaimably addicted to drink", the penurious Dingwall was forced to place his estate in the hands of a local Advocate, whom he empowered to fix his residence and limit his allowance which was to be disbursed through his wife. This allowance was

---

<sup>367</sup> *Edinburgh Evening Courant*, LHB7/12/1, p.161

said to include five bottles of whisky per month, though through the sale of articles from his house or by enticing credit notes from local merchants Dingwall frequently managed to obtain extra funds, which he used with grim inevitability to procure more alcohol.

Between his discharge from the army and his fatal crime, Dingwall had spent some twenty years back in Scotland living with his wife in rented accommodation and drawing an allowance from the proceeds of their estates. On the morning of the stabbing, Dingwall had been given a small amount of whisky by the proprietress of the apartments in which he and his wife lived, and had subsequently left the house to make calls on neighbours. This was of course New Year's Eve, a time when such drinking and social calls would not have been out of the ordinary. Dingwall returned to his lodgings a little before midnight, and was given a glass of whisky by his landlord who then left him and retired to bed. At around two in the morning, upon hearing a faint cry issuing from the Dingwalls' room, the landlord went to investigate and found his tenant sitting fully clothed by the bed in which his wife lay bleeding from a wound in her chest. When he asked what had happened he was told by Dingwall that he had "murdered his wife" who, though mortally wounded, survived for two weeks and was able to give details of the case. She reported that, for obvious reasons, she had hidden a pint-bottle of whisky and some money from her husband, an action inciting him to a fit of rage. Dingwall was kind to her when sober, but drinking threw him into a melancholic state in which he frequently spoke of his desire to end both their lives. He was inclined to read morose stories which she blamed for putting such ideas in his head, though she believed that his crime must have been carried out "on the impulse of the moment."<sup>368</sup> His wife's testimony aside, Dingwall's crime appeared to display a degree of premeditation. The bell-pull had been thrown over the top of the bed-frame prior to the attack, for the victim reported that she had reached out for it on being stabbed, but had not found it in its usual place. Furthermore, upon being apprehended, the prisoner had shown no remorse, and indeed expressed regret that he had "missed his mark." Thus, after a long history of uncontrollable drunkenness, it appeared that a mixture of motive and impulse had caused Dingwall to stab his wife repeatedly about the chest.

---

<sup>368</sup> *Dingwall* (1867), pp.467-70

Medical witnesses called to give evidence at the trial drew attention to the likely impact Dingwall's drinking had had on his mental capacity, with Robert Jamieson of Aberdeen Lunatic Asylum making much of the prisoner's habitual use of alcohol. Though Jamieson did not think the *craving* for alcohol Dingwall experienced was a form of insanity in itself, he suggested it might be "an impulse arising out of [a] disease of the mind", and that this uncontrollable "diseased impulse to drink is of the same kind as the impulse to homicide or suicide, equally morbid." This form of uncontrollable impulse was not therefore a disease but a symptom of some underlying degeneracy that was at the same time a cause of its exacerbation, with repeated exposure to alcohol having "a tendency to weaken the intellect, and in the end produce insanity."<sup>369</sup> A key element of this process was the prisoner's hereditary predisposition, and while there was general disagreement amongst the medical witnesses concerning the exact nature of Dingwall's mental aberration, they all agreed there was a marked tendency toward insanity in his family, and "several medical witnesses had been asked, without objection, whether insanity among relatives would increase the probability of an individual becoming insane, to which an affirmative answer had been given." However, when "the Dean of Faculty proposed to ask [a witness] whether he knew that an uncle and granduncle and two aunts of the prisoner (all of whose names were specified,) had been inmates of a lunatic asylum", the Advocate-Depute objected, citing precedents in Scottish law where this line of questioning had been declared impermissible.

Thus, while psychiatrists regarded heredity tendency as perhaps the most important evidential marker of insanity, the law ruled out evidence of heredity on the grounds of presumption in favour of sanity, a fact confirmed in all the major mid-nineteenth-century works of Scottish legal procedure. William Gillespie Dickson's *Treatise on the Law of Evidence in Scotland* (1865), the authoritative manual of judicial guidance, simply noted that: "It has been held inadmissible to prove the existence of heredity insanity in the family of the person alleged to be insane." Similarly, MacDonald's *Practical Treatise on the Criminal Law of Scotland* (1877) stated that under Scottish law "proof is not to be extended generally to events which

---

<sup>369</sup> Cited in 'The Stonehaven Murderer', *Scotsman*, 21st Sept. 1867, p.9

happened before the crime libelled . . . Difficult questions arise as to facts not immediately connected with the case, but which may throw light upon the direct evidence. The question whether insanity of the relations of the accused may be proved has been decided in the negative.”<sup>370</sup> This position placed severe limitations on psychiatric evidence, though it must be noted that many lawyers were unhappy that an accepted cause of insanity could not be adduced to overturn the presumption of sanity, particularly as heredity became such a visible topic in periodicals from the 1880s onwards.

However in 1867 discussions of heredity were only beginning to feature prominently in British intellectual life, and the idea that a science of heredity could assist in determining legal responsibility was still largely confined to the psychiatric profession. While the bench was “anxious to give as much latitude to the defence as possible”, they felt that to follow the line of enquiry they had opened up would be “to introduce a precedent hazardous to the ends of justice.” The matter was therefore turned over to Lord Neaves (Deas’s brother), who deemed that “by the law of Scotland, the proposed line of investigation was incompetent”, and that the claims of a medical speciality founded on the opinion “that insanity in the family increased the probability of one of its members becoming insane” was not sufficient to overturn legal precedent, according to which the appropriate question was only “whether the prisoner was *de facto* insane at a certain date.” Thus, it was maintained that if a person’s insanity could not be “proved directly or substantively” through medical examination, then it “could not be proved by evidence that any number of his relatives had been insane”.<sup>371</sup> Furthermore, to obtain adequate evidence of insanity in these relatives would require a lengthy analysis of evidence and counter evidence that could extend the trial indefinitely. Indeed, Lord Deas made it clear that, even if Dingwall had himself been insane, such a fact would be immaterial “unless he was insane at the time in question, and had committed the act in consequence of that insanity.” In short, if ascertaining whether the prisoner was himself insane presented so many problems, analysis of the sanity of his remote ancestors would be all but impossible, particularly as it had been accepted by all the witnesses that even commission to a lunatic asylum

---

<sup>370</sup> J H A MacDonald, *A Practical Treatise on the Criminal Law of Scotland*, Edinburgh: William Patterson, 1877 (2<sup>nd</sup> ed.), p.487 & pp. 479 -80

<sup>371</sup> Dingwall (1867), p.472. c.f. *McLean*, (3 Couper 1874-77 [1876]), pp.334-40 (p.338)

would not prove that a person was absolutely irresponsible with respect to the law. It is clear then that *Dingwall* raised some very serious practical problems surrounding the speculative or probabilistic evidence of mental states that psychiatry had come to rely upon, establishing a tension that was to be hugely important for the relationship between psychiatry and the law in the second half of the nineteenth century.

In addition to deeming the psychiatric knowledge of heredity to be legally inadmissible, the reports of the Aberdeen Circuit Court at which *Dingwall* was tried suggest more generally that the epistemic authority of medical expertise was minimal. For instance, while eight medical witnesses were called at the trial (including physicians, asylum superintendents, and a prison surgeon), it was made clear to the jury that their expertise was not rooted in a familiarity with theoretical knowledge. Thus, the Dean of Faculty reminded the jury that while the opinions of medical experts could assist them in reaching their verdict, the witnesses' 'expertise' consisted largely in having a direct acquaintance with the prisoner over a number of years, and that the jurors' own opinions concerning the prisoner's mental state could be given equal or greater weight if they had a similar degree of familiarity with his condition, irrespective of their knowledge of medicine or insanity. In situations where the expert witness had no former acquaintance with the prisoner – for instance in cases where the examining witness was called from an asylum or had been instructed to examine the prisoner in the cells – the statements given were not regarded as necessarily pertinent insights, but as mere observations for the jury to interpret. For instance, at the 1864 trial of *Bryce* (noted above), the presiding judge Lord Colonsay had stated that while “medical gentlemen have opportunities of observation which make their testimony very important in reference to such matters . . . the question [of responsibility] is not a medical question.”<sup>372</sup> Similarly, *The Times* had reported in 1862 on a parliamentary debate concerning the Lunacy Regulation Bill. Here the Lord Chancellor had sought to limit the evidence of medical witnesses who frequently drew the types of evaluative conclusions that fell within the province of the jury, arguing that while a medical witness might be “a more accurate and acute observer” than the members of the jury, he should be prevented from offering statements asserting that a

---

<sup>372</sup> *H. M. Adv v. Bryce*, 4 Irvine (1864), p.508

person was mad, particularly if they were based on a series of medical facts which the jury were not qualified to judge.<sup>373</sup>

Around this time psychiatric expertise was generally understood according to this division, both in legal manuals and in works of medical jurisprudence. MacDonald's *Criminal Law of Scotland* used the case of *Dingwall* to highlight the admissibility of certain types of evidence under Scottish law, with "scientific" authority said to apply equally to those "persons who know an individual [and may therefore] be asked as to their opinion about his sanity, even though not possessed of medical skill."<sup>374</sup> Similarly James Fitzjames Stephen had removed technical competence from legal authority by noting in his *Digest of the Law of Evidence* (1871) that while it was "the duty of the judge to decide . . . whether the skill of any person in the matter on which the evidence of his opinion is offered is sufficient to entitle him to be considered as an expert", it remained an unassailable principle of law that the "opinion of the expert as to the existence of the facts on which his opinion is to be given is irrelevant, unless he perceived them himself."<sup>375</sup> This appears to confirm what David Skae had noted in 1867 (presumably in response to *Dingwall*'s trial), when he complained that the legal understanding of experts fell into two classes, "those who know something of the prisoner, and nothing of insanity, and those who know something about insanity, and nothing of the prisoner."<sup>376</sup>

In his advice to the jury, Lord Deas noted that while the medical evidence had generally established that *Dingwall* was weak-minded and eccentric, only one witness, Dr Howden of Montrose Lunatic Asylum, had declared him to be insane. Yet Howden was previously unacquainted with the prisoner and had examined him only once, indicating that his conclusions were to be regarded as personal opinions based

---

<sup>373</sup> *The Times*, March 25, 1862, in LHB7/12/1

<sup>374</sup> MacDonald, *Criminal Law of Scotland*, p.487 & pp. 479 -80

<sup>375</sup> J F Stephenson, *Digest of the Law of Evidence*, Little, Brown, & Co: Boston, 1877 (3<sup>rd</sup> edition), p.105

<sup>376</sup> Skae, 'The Legal Relations of Insanity', p.20. By the early twentieth century, the legal definition of expert evidence had been expanded to include both an acquaintance with the prisoner's diagnostic history and the nature of a particular type of insanity ("if scientific or expert evidence be given, such, evidence will be limited to definite particulars. Either it will consist of facts regarding previous bodily and mental manifestations, and the mental phenomena exhibited by the prisoner at the time; or it will consist of replies to questions regarding the principles or details of some particular form of insanity that may be set up as a defence": W. Ramsay Smith, *Medical Jurisprudence from the Judicial Standpoint*, Unpublished M.D. Thesis, University of Edinburgh, 1913, p.258)

largely on second-hand reports. Since Howden was not a member of the jury it would be irresponsible (and perhaps illegal) for the judge to advise that this witness's *interpretation* of facts was inherently more accurate than the interpretation of the jurors. Furthermore, Dingwall's own Advocate, who had regularly consulted with his client on matters pertaining to the management of his estate over a twenty year period, had never believed him to lack sufficient mental capacity to be involved in these decisions. Having ruled out the probabilistic inferences which characterised medical tests of insanity, evaluation of the prisoner's guilt seemed to come down to the traditional M'Naughten tests of insanity. However, even these presented problems, for there "was no allegation here either of idiocy, or what the law calls furiosity. This was not said to be a case of total deprivation of reason. Neither was it alleged to be a case of insane delusions."

Faced with such a situation, Deas proposed an alternative test, advising his jury that if they "believed that the prisoner, when he committed the act, had sufficient mental capacity to know, and did know, that the act was contrary to the law, and punishable by the law, it would be their duty to convict him."<sup>377</sup> While Deas thereby ruled out a defence of simple insanity, he did note that the sunstroke Dingwall was known to have received while on military service in India, coupled with his frequent attacks from *delirium tremens*, had a bearing on the case, and that "he could not say that it was beyond the province of the jury to find a verdict of culpable homicide if they thought that was the nature of the offence." Dingwall was found unanimously guilty of culpable homicide and received ten years' penal servitude. This trial came fairly quickly to be recognised as the first Scottish case in which medical evidence concerning the mental state of the accused could be used to modify sentencing (a fact that can be seen in subsequent cases referring back to *Dingwall*).

#### **6.4 Monomania, Degeneration, and Culpable Homicide**

---

<sup>377</sup> *Dingwall* (1867), pp.475-76. Deas thought this "a safer and more accurate mod of putting the question before the jury, than to ask them to consider whether the accused knew right from wrong; for an assassin might believe it morally right to kill his victim, and yet be responsible to the law" – while this seems an unsatisfactory argument, it is important insofar as it represents Scotland's first break with the M'Naughten Rule



The next significant trial at which partial responsibility was raised came in 1872 with the case of *Agnes Laing or Paterson*. Paterson had cut her daughter's throat in a fit of drunken rage, an act which she excused when her neighbours intervened by saying "you drink yourselves" (i.e., you know what comes of it). As with *Dingwall* the case involved a murder committed after heavy drinking over the New Year. This state of acute intoxication, it was alleged by Paterson's defence, accentuated the prisoner's traumatic grief concerning the loss of her other two children to measles a few months prior to cutting her daughter's throat (this sense of loss presumably becoming more acute at a time of year when it was customary for families to gather). Summarising the defence, Paterson's Advocate claimed that she could not be held responsible for her actions for the simple reason that while it was possible to imagine a person committing such deeds from "hatred, cupidity, or revenge", a rational being "could not conceive how anyone could commit the crime of murder without having any motive whatever, or how this woman, being sane, could have taken the life, in such a barbarous manner, of the child of whom she was passionately fond." Thus, "while there was not the slightest motive to which murder could be attributed", the Advocate suggested that "there was, however, a way in which the crime in this case could be accounted for", submitting to the jury that they had, in the absence of such motive, "sufficient proof that the prisoner was not on the 3<sup>rd</sup> of January in a sane state of mind." Paterson's defence had intended to "prove that the mother of the prisoner was insane at the time of her birth", and had been confined for a long time to an asylum where she died by her own hand in "a paroxysm of insanity." The defence had proceeded to list a series of English cases in which evidence of heredity appeared to have been accepted, an argument that was met with some sympathy by the chief prosecutor, Lord Cowan, who admitted the strength of the case, though noted that it was difficult to enter into contested legal terrain in the Circuit Courts (as opposed to the High Court), adding that the English cases cited could have no bearing as they had not been authorised by an Act of Parliament. The presiding judge, Lord Neaves, also refused to admit the evidence, referring to an "established point of law" raised at *Dingwall* that confined the jury to consider only the sanity of the accused (and only in reference to the acts libelled) while ignoring "the question of sanity or insanity of half a dozen persons besides herself – an enquiry which might practically be endless and quite away from the matter before us." Thus, evidence of heredity predisposition to insanity was once again rejected on the grounds of precedent and "the great danger

and difficulty which might ensue, should a different decision be come to.”<sup>378</sup> However, the jury found unanimously that the deeds were committed while the prisoner was in an unsound state of mind and found her not guilty.

As we might expect given the nature of this ruling, Paterson’s case was also of interest to the psychiatric profession, and at a Quarterly Meeting of the MPA in 1872 John Batty Tuke, Medical Superintendent of the Fife and Kinross Asylum, read a paper containing his observations on the trial.<sup>379</sup> Coming to his own analysis of the “medical character of the case”, Batty Tuke, who had been present in the court room and had examined the prisoner himself, drew attention to the “miserable story of family insanity” and the “fact that for three weeks at least before the crime was committed the prisoner had been drinking hard, and that she had for long been of dissipated habits.” Further evidence of insanity was suggested by the fact that, during the trial, the prisoner had “protested against statements which rendered her sanity doubtful”, a point that confirmed for Batty Tuke the well-worn forensic maxim that the truly insane believed they were sane while feigners wishing to escape justice attempted to convince courts of their insanity.<sup>380</sup>

In many ways then, Paterson was almost the perfect forensic-psychiatric subject: a woman who did not display clear and distinct insanity but whose suggestive symptoms were so numerous and otherwise inexplicable as to render psychiatric explanation practically essential. However, Batty Tuke’s response to the case was interesting, for he insisted on drawing attention to the preponderance of evidence negating the assumption of insanity. Thus, he noted, no “definite symptoms of insanity” were detected by the examiners. Indeed, in spite of the prisoner’s heavy

---

<sup>378</sup> Paterson, 2 Coup, 1872, pp.222-228

<sup>379</sup> Batty Tuke, ‘Notes on the Case of Agnes Laing or Paterson’, *Journal of Mental Science*, 1872; **18**: pp. 198 – 212

<sup>380</sup> C.f. here the advice given by Casper (1858) in section 67 of his *Forensic Medicine* (‘The Case Against Simulation’): “those actually of unsound mind are well known to complain frequently of morbid *bodily* sensations in their head, a feeling of weight, pressure, or deadness, &c., but never that they labour under *delusions*; of course, because the instant they acquire the knowledge that their delusion is a delusion it ceases to exist as such.” This undisputed psychiatric principle was already an old one by the 1870s (since it paralleled the curative method of confronting a madman with his delusions that belonged to the age of Pinel and Esquirol), though it continued to inform forensic practice in Britain until (roughly) the 1880s. See J. L. Casper, *Handbook of the Practice of Forensic Medicine*, Vol. IV, The New Sydenham Society, 1865 (trans., orig. 1857 – 58), p.126

drinking, no symptoms of *delirium tremens* were noted around the time of the act. Furthermore, while Paterson had denied her insanity, she had also denied her guilt by attempting to blame her husband for the crime (though he was not present at the time), and though the motives for her crime were small, they were not entirely absent – on the morning of the attack Paterson had started drinking early and, having quickly drained her cellar, ordered her daughter to go fetch more whisky. When the young girl refused, her mother cut her throat in a “fit of frenzy” apparently unaware of what she was doing at the time, though her recollection of the event afterwards was clear. Finally, Batty Tuke noted, there was “nothing in the history of this woman which would have justified a medical man in certifying her insane had she not cut her child’s throat when dazed with drink.” During her time in prison Paterson was “under the eyes of medical gentlemen . . . well acquainted with the subject of insanity, and who were fully alive to the necessity of examining her, from the knowledge that insanity would most likely be the defence set up”, yet with the exception of sleeplessness and suicidal tendencies observed by a fellow prisoner (behaviour that could easily be accounted for by her guilt, imprisonment, and impending trial) no insane symptoms were detected by any of the medical examiners.

We can see then that when a case like this was discussed as a psychiatric object the emphasis was placed not on the opaque character of the motive, but on the fact that want of motive alone could not confer scientific legitimacy on the insanity diagnosis. Indeed, for Batty Tuke, the case presented an interesting model for psychiatric diagnosis, since the prisoner had seemed to offer the medical witnesses the opportunity of conducting a “differential diagnosis between insane homicidal impulse and alcoholic mania”, a diagnosis that would not only have been conducted according to the logic of general medicine (the psychiatrist’s dream) but would have held “great importance to public justice.” The case, he continued, had been misdiagnosed at trial, for Paterson was not a patient suffering from a form of simple insanity that could be inferred from a lack of motive (i.e. monomania), but was suffering from “alcoholism acting on a congenitally weakened brain, which did not possess sufficient inhibitory power over violent passion.” Thus, he argued, from “a purely psychological point of view, Mrs. Paterson was insane at the time of her offence. She had all the necessary primary factors for the production of insanity, to which she added the toxic influence of alcohol. But it is very open to question whether she ought to have been excused in

the eye of the law.”<sup>381</sup> This argument formed part of a general reversal taking place around the late 1860s and early 1870s (the precise time when degeneration was becoming increasingly popular amongst British psychiatrists, with Batty Tuke serving as one of its chief advocates), a reversal in which psychiatrists began to distance themselves from monomania and the inherent diagnostic value of the symptom itself to insist on the necessity of an underlying condition (degeneration or heredity predisposition) that would allow psychiatry to function as a science. Indeed it is notable that two years before this case Batty Tuke had delivered a paper to the MPA at Glasgow in which he argued that British psychiatrists should abandon their focus on “leading mental symptoms” to follow the research programme established during the 1850s and 60s by “Morel, [Schroeder] Van der Kolk, and Skae”, all of whom recognised the need to break with the “psychological nosologists”.<sup>382</sup> Thus, in addition to the rejection of heredity evidence noted above, a second tension between psychiatry and the law was clearly generated by the judges’ continued adherence to the logic of monomania, which seemed too close to the symptomatological methods degenerationists sought to break with.

In spite of this psychiatric insistence on the break with monomania, there was undeniably a growing acceptance of criminal insanity amongst Scotland’s judges from the late 1860s onwards. We see this clearly in the case of *Miller* (1874), another habitual inebriate who murdered his wife by stabbing her in the throat and beating her with a clothes-beetle as she tried to escape the house. Initially the defence alleged that Miller was insane at the time of trial, though as he was found to be coherent and sane by the medical witnesses who examined him, could understand the questions put to him, and was able respond in a clear and coherent way in court, this defence was substituted for the claim that he was insane at the time of his acts. Though Miller was found to be guilty of murder and subsequently hanged, his case is of significance for the guidance offered by the presiding judge, who appeared to promote a psychiatrically informed picture of the mind as a complex of forces in which insanity could consist in a perverse desire to subvert the law (rather than a violation of the law merely from ignorance of its form or consequences). The Lord Justice-Clerk

---

<sup>381</sup> Batty Tuke, ‘Notes on the Case of Agnes Laing or Paterson’, pp.206-210

<sup>382</sup> ‘A Pathological Classification of Mental Disease’, *JMS*, **16** (74), 1870: 195 – 210 (196)

(Moncrieff) advised his jury that the question as to whether the defence of insanity had been proved was entirely open to them, and that while Miller's case did not appear to conform to the established *legal* definition of insanity, improvements in mental science had shown these former legal tests to be inaccurate and that a person "may be entirely insane, and yet may know well enough that an act which he does is forbidden by law." Thus, the Lord Justice-Clerk noted, the test a jury should have before their mind must not centre on an abstract definition of a prisoner's knowledge, but on his general "soundness of mind." In this way, he continued, the "right and wrong test" offered by M'Naughten was psychologically inaccurate, for most medical witnesses were of the opinion that a person of unsound mind suffering from morbid impulses may be stimulated to crime by the very knowledge of prohibition, or be incapable of acting on the knowledge of injunction.<sup>383</sup>

It would be wrong however to infer from this that psychiatric evidence was the *cause* of any judicial shift, for two years later this guidance was clarified at the trial of *Macklin* (1876). Macklin was an inebriate who had been subject to paranoid delusions for many years. In particular he believed that his mother was conducting an affair with a local doctor with whom she had murdered his father and was in the process of concocting a scheme to deprive him of his penis. Acting on these delusions he shot her dead with a pistol and fled to a farmhouse where he was subsequently discovered mutilating himself (though the transcript is naturally delicate on this point, it seems that he was in the process of removing his penis with a knife.) It seems (though again the transcript is somewhat opaque) that Macklin had previously suffered from syphilis and that his delusions arose chiefly from the medical attention he had received in consequence, subjecting him "to a very extreme and unnecessary torture under the guise of treatment; that the object of that torture was to change his religion and compel him to become a Roman Catholic."<sup>384</sup>

The symptoms present in Macklin's case were well-known to forensic psychiatry, and as one Edinburgh medical student summarised in the early twentieth century: "The combination of a delusion of mutilation of the sexual organs with the

---

<sup>383</sup> *H.M. Advocate v Miller*, 3 Couper 1874-77 [1874], pp.16-19 (p.18)

<sup>384</sup> *Macklin*, 3 Couper 1874-77 [1876], pp.258-61

delusion that the patient's food is poisoned, and that his wife is unfaithful to him, may be considered to neatly demonstrate the existence of alcoholic insanity as any other group of symptoms in mental pathology."<sup>385</sup> Repeating the guidance he had offered at *Miller*, the Lord Justice-Clerk stated that while he would "lay down no general test from which unsoundness of mind may be inferred", the jury had been selected on the assumption that it represented a random cross-section of public opinion, meaning their judgement was to be considered "not merely or mainly as a question of law or science, but on the ordinary rules which apply in daily life."<sup>386</sup> Thus, while there was within Scottish law a move away from rigid cognitive tests of responsibility and toward a notion of mental unsoundness that appeared to follow psychiatric evidence, this was explicitly not an attempt to define insanity according to medical notions. However, the implication in both *Miller* and *Macklin* was that a jury should be permitted to follow popular notions of insanity, and if these happened to be informed by medical discussion, whether in the press or at trial, they were permitted to act on this knowledge.

Why was this notion being pushed so consistently by Scottish judges? As I suggested above, judges wanted to avoid the sort of ambiguity that led to split juries openly negotiating a punishment amongst themselves by agreeing to find a prisoner guilty with a recommendation to mercy – a process that seemed to make the law arbitrary in its disposal of criminals (the law was, it must be remembered, theorised as a self-stabilising social mechanism by many prominent legal scholars of the period). However, even as judges implied heavily that diminished responsibility was preferable to a divided sentence, juries continued to ignore them, as was demonstrated in the following year at the case of *Middleby or Tierney* (1875), concerning a miner accused of killing one of his colleagues with a pick.<sup>387</sup> From the exculpatory evidence it emerged that Tierney had been of sound mind until 1860, at which time the death of one of his children had greatly affected his mood. A fellow miner testified to the effects this had had upon the prisoner's mind and conduct, noting that his work became gradually less steady as his conduct became more erratic. On one occasion Tierney's wife had approached the witness telling him that her husband had cut a cat

---

<sup>385</sup> John Maxwell Dawson, *Alcoholism*, C.M. Thesis, University of Edinburgh, 1908, p.70

<sup>386</sup> *Macklin*, 3 Couper 1874-77 [1876], pp.258-61

<sup>387</sup> *Middleby or Tierney*, 3 Couper 1874-77 [1875], pp.152-66

into four pieces, and upon arriving at the house he found blood on the floor and was told by the prisoner that he “had been disposing of a witch.” Tierney’s actions became so unpredictable that his wife began to fear for her safety and, on consultation with a local doctor, had her husband removed to Ireland as a pauper lunatic. On his eventual return to Scotland he quickly resumed his old habits, burning all the clothes he could lay his hands on and displaying such a contempt for those around him that his wife was obliged to live separately, returning only ten days prior to the occurrence of the crime for which he was libelled. This act of separation would of course have been imbued with a far greater moral and social significance in the 1870s, and a Roman Catholic Clergyman acquainted with the family testified at the trial that he had intervened to protect the reputation of Mrs. Tierney from the local community, telling them that, as her husband was insane, it was right for her to live separately from him. Furthermore, had refused to give Tierney the sacraments on the grounds of his weak intellect, arguing that “[t]o receive the privileges of religion a man requires to be sane, and I refused him those privileges on that account.”

While there was a good deal of evidence that Tierney was of unsound mind, the prosecution denied that he was insane. Firstly, the doctor who had initially certified Tierney insane sixteen years prior to his final crime had re-examined him shortly after the murder had taken place and did not deem him to be insane (indeed, though he did not doubt that he had granted the certificate, he had no recollection of having previously examined Tierney). Dr Yellowlees, Physician Superintendent at Gartnavel Asylum, had also examined Tierney while he was detained at Hamilton Prison, and on two separate occasions had conversed with him for nearly an hour. While he believed that the prisoner seemed suspicious and a “dour, sulky, repellent sort of man”, he did not believe him to be insane. Under cross-examination Yellowlees was pressed on the point of Tierney’s former insanity and noted that, while interviewing the prisoner, he found it impossible to forget that he had been at one time insane, and that the erratic nature of his behaviour could indeed have resulted from his former attack of insanity, though he maintained that there was nothing to show that Tierney was, at the time of examination, insane.

While Yellowlees saw nothing that would allow him to certify the prisoner insane, he believed that the mental peculiarity described in his case history “may have

lessened his power of self-control and self-regulation” (though he was quick to add that this would not be sufficient to “make him the mere helpless instrument of his own impulses”). It is striking that Yellowlees was not only permitted, but was actually encouraged to address the jury in this way, with his statement delicately rephrased by the bar for the benefit of the jury to read: “[if there] was no actual access of mania, the mental deficiency of [the panel] might have removed his power of self-control, so that an amount of irritation which would not have enraged another man might have enraged him greatly.” This suggestion of uncontrollable impulse – a novel notion in courts of law at this time that was never fully accepted in either Scotland or England – was questioned by the prosecution, who seized upon the presence of motive, particularly the fact that Tierney had, on the morning of the murder, misreported the number of crates he had managed to fill at the coal mine. Under cross-examination Yellowlees accepted that the desire to take credit for another’s work could perhaps be a “sufficient motive” for such an attack, particularly if the mind was already weakened, conceding that if “immediately after [the murder] he incorrectly stated the number of hutches he had filled, conversed quietly, and asked to be taken to the top of the pit, that would afford the presumption that he was then sane.”<sup>388</sup> Following this revelation, the Advocate-Depute proceeded to his summation of the evidence, stating that the jury had clearly before them “an adequate motive” for murder, “it might be an insufficient motive; but murder has been held to be committed in many cases where the motive was much slighter.” However, he also allowed for their taking an “intermediate view” of the prisoner’s mental responsibility, one which fell between sanity and insanity to declare that “the panel had to some extent lost the power of regulating his actions.” In this instance the guidance was not followed, and the jury returned the type of ambiguous verdict culpable homicide was supposed to remove from the legal records by unanimously declaring the prisoner to be guilty but recommending him to mercy “on account of the excitement which might result from previous insanity.”<sup>389</sup>

## 6.5 The Development of Diminished Responsibility

---

<sup>388</sup> A footnote in the *Justiciary Report* pursued this motive even more relentlessly, noting that as Tierney had not correctly called the number of hutches he had himself filled, he wished to get credit for the deceased’s work “therefore, he killed Campbell.” *Tierney* (1875), p.165

<sup>389</sup> *Tierney* (1875), pp.160-66



The diminished responsibility of the mentally peculiar offender was not confined to cases of homicide, and evidence pertaining to the mental state of the accused was admitted into trials for lesser offences. As we have seen, following the case of *Dingwall* the notion of diminished responsibility was raised in several cases carrying the capital sentence at which Lord Deas was absent. The next trial of this nature Deas presided over was at the trial of *McLean* (1876), a case of housebreaking and theft involving a prisoner who had recently escaped from the Royal Lunatic Asylum at Aberdeen. While this was of course a less serious crime than those discussed above, it must be remembered that housebreaking was still a capital offence at this time, though judges were reluctant to punish it as such and would have gone to great lengths to excuse such a prisoner.<sup>390</sup> Thus, while it was unusual for the court to hear expert medical testimony concerning mental states in a case of theft, or for such a crime to be tried in the High Court of the Justiciary, McLean's case was used to demonstrate the progress of Scottish law on this matter. Indeed the Lord Justice-Clerk, James Moncrieff, noted that he sought to take precautions beyond the ordinary course pursued in such a case, while Lord Deas, who was appointed as judge, made it clear to his jury that the medical report would be central to their verdict, and advised them to take the prisoner's mental state into account. Returning to his verdict at *Dingwall*, Deas advised his jury that they may take this into account mental peculiarity when arriving at the level of responsibility (and hence punishability) to be imputed, stating that a prisoner, "without being insane in the legal sense" may nonetheless "labour under a degree of weakness of intellect or mental infirmity which may make it both right and legal to take that state of mind into account" and that "the state of the panel's mind" would be "allowed to modify both the nature or (sic) legal category of the crime and the punishment." In walking this line, he advised, the court should avoid the error of inflicting punishments either "in excess of their object" or liable "to degenerate into irregular and mistaken leniency, calculated to mislead the individual and betray the interests of society, which last alone can justify human punishment at all."<sup>391</sup> After considering both of these concerns, and the medical evidence pertaining to the accused's mind, a sentence of six months' imprisonment was read.

---

<sup>390</sup> *McLean*, 3 Couper, 1874-77 [1876], pp.334-40. On this case see also Gordon, *The Criminal Law of Scotland*, p.461

<sup>391</sup> *McLean* (1874), pp.337-39.

The next case at which diminished responsibility resulting from the mental state of the accused was to be considered was of an altogether more serious nature. This was the case of *Granger* (1878), a successful railway contractor who was “respectably connected” to the extent that his trial for homicide “excited considerable interest” amongst the public.<sup>392</sup> Up to the date of his offence Granger’s sanity “did not appear to have been at any time doubted” by those he was connected with, though he had been drinking heavily for a number of days prior to his crime, and this prolonged drinking bout had transformed his character beyond recognition. One morning at around six Granger left home and travelled to Inverness station, whence on toward Grantown (a small village in the North of Scotland), drinking all the while and behaving in a “noisy, extravagant, and excited manner.” This journey, in effect a small dissociative fugue, eventually saw Granger being assisted from the train and escorted by the stationmaster to a local hotel where he was to wait for a doctor. When the doctor arrived Granger became fearful that he would be put into a sleep from which he might never awake, and began to behave once more in an agitated and destructive manner. He was therefore sent to a room at the hotel to gather himself, where he attacked two men with a knife, one of whom subsequently died (the other being a police officer called to the scene).<sup>393</sup>

Granger’s Advocate lodged the special defence that his client was not guilty by reason of insanity at the time of the act charged, and that in particular he was suffering from *delirium tremens*. Here the defence counsel referred to the case of *Murray* (1858), in which the Lord Justice-Clerk Inglis had laid down that a person suffering from *delirium tremens* was to be treated as insane as far as criminal responsibility was concerned. This was not taken to be an authoritative statement at *Granger* (precedent law, by its very nature, required subsequent confirmation).<sup>394</sup> The

---

<sup>392</sup> *Granger*, 4 Couper, 1877-82 (1878), pp.86-112

<sup>393</sup> *Granger* (1878), p.88

<sup>394</sup> By 1889 the position had come to be recognised as a legal fact in Scotland when Lord Young went so far as to refuse to let a prisoner go to jury on the grounds of *delirium tremens*. (Case of *Elizabeth Short*. See ‘Drunkenness as an Excuse for Crime’, *The Journal of Jurisprudence*, 33, 1889, pp.457-58 and c.f. Glaister, *Medical Jurisprudence*, p.587) Similarly, in 1881, this position that *delirium tremens* amounted to insanity had been laid down in English law (which was, in spite of Scottish judges’ claims, a recognised source of authority for the laws of Scotland). *Rex v. Davis*, 1(4 Cov. C. C., p.563). This was confirmed by the case of *Dir. Pub. Pros. V. Beard* (House of Lords, 1920), where it was deemed that “the defence which is founded on drunkenness is one thing. The defence which is founded

condition was unequivocally recognised by psychiatrists as an insane one, with a well-marked cluster of symptoms in which the patient would suffer from “visual hallucinations . . . usually of a horrible character. Over the bedclothes are seen crawling rats, mice, snakes, lobsters, etc., and the same objects are affirmed to be wandering about the room. The patient . . . imagines his attendants to be an attacking army, and does his best to overwhelm them in combat.” Such symptoms were pretty generally accepted as constituting delusions that could be readily incorporated within existing *legal* definitions of insanity to supply “logical motives for the most appalling and brutal crimes.”<sup>395</sup> However, Lord Deas appeared to be less indulgent towards the defence than on previous occasions, and while he accepted as reliable the testimonies of a prison doctor and a druggist who declared Granger to be suffering from *delirium tremens*, he refused to accept that this ought to translate automatically into legal irresponsibility, arguing that *delirium tremens* was not, nor had it ever been, equivalent to insanity under Scots law (a position that seemed doubtful, if not patently false).<sup>396</sup> Given that the presence of *delirium tremens* was not doubted, Granger’s case is particularly interesting historically, for as the Justiciary Report notes, the question of guilt would focus entirely on the conclusions that could legitimately be inferred from psychiatric claims concerning “the state of the panel’s mind, and the question of responsibility applicable to that state of mind.”<sup>397</sup>

In his opening counsel to the jury, Deas stated that, aside from the presence of *delirium tremens*, the details of the case pointed toward the prisoner’s sanity. Granger had shown a good deal of reason and forward thinking throughout the day, even if he was severely inebriated: he had deposited his money safely at the station, and had been able to recall the exact amount deposited after his crime, he had disposed of the murder weapon by dropping it out of the hotel window, and had deliberately inflicted a wound upon his leg, smearing the walls with blood in an apparently calculated effort to convince the police that he had attempted to commit suicide after the stabbing. These were, it seemed, the acts of a man who wished to make the most of his altered

---

on insanity is another.” This case, a contemporary medico-legal observer noted, “authoritatively and finally stated the position of (English) law on drunkenness in regard to murder” by clarifying that *delirium tremens* would always constitute *de facto* insanity (Thomas MacNaughton Davie, *The Criterion of Responsibility in Insanity*, Unpublished Ph.D. Thesis, University of Edinburgh, 1921, p.3).

<sup>395</sup> Dawson, *Alcoholism*, pp.67-70

<sup>396</sup> *Granger* (1878), p.104

<sup>397</sup> *Granger* (1878), p.88

mental state, and “although his nervous system was greatly shaken, [he] still knew the quality of the act he was committing, and the responsibility it inferred.” However, the determination of sanity was once again left to the jury, who were told that no binary definition dividing sanity from insanity could supplant the particulars of the case as diagnostic aids, and that the M’Naughten Rules were in particular “only calculated to mislead.” There is a clear sense in these trials that the agency of Lord Deas (and to a lesser extent the Lord Justice-Clerk Moncrieff) was instrumental in maintaining the acceptability of diminished or partial responsibility in response to medical evidence. In Granger’s trial this involved a sleight of hand through which, having ruled out *delirium tremens* as a proof of insanity, Deas went on to advise his jury that “it did not follow that they must convict him of the capital offence”, and a direct circumvention of the capital sentence would be legally sounder than a recommendation to mercy if they wished to consider the prisoner’s “weak or diseased state of mind, not amounting to insanity whether arising from *delirium tremens*, or from some other disease or infirmity” (a guidance that was subsequently followed).<sup>398</sup>

In a series of final cases tried by Deas we see the notion of diminished responsibility come to stand clearly and unambiguously as the law of Scotland, almost without exception in cases where psychiatric evidence was heard (though again this was not a causal relationship; trials likely to be considered for this verdict were also likely to hear such evidence). Nonetheless, we see in these final cases of Deas’s reign as High Court Judge a development of both the legal understanding of insanity and the types of claims psychiatrists advanced in reference to this notion. The trial of *Ferguson* (1881) concerned a drunken butcher who stabbed his wife after she refused to give him drink and subsequently attempted to kill himself. Ferguson was said to be a quiet though generally unpleasant man when not under the influence of liquor, though when intoxicated (and he often was) he became violent. A special plea was lodged stating that Ferguson was insane at the time of the stabbing, though the circumstances of the case did not look favourable to such a conclusion. The only evidence suggestive of insanity was a suspicion concerning his wife’s infidelity, and, more substantially, a report from his sister claiming that on the day prior to the stabbing he had spoken of seeing a dead relative. However, immediately after the

---

<sup>398</sup> *Granger* (1878), p.102; p.108

attack he had told onlookers that he meant to do it and that his trade as a butcher had taught him well how to carve flesh. Thus, while Ferguson's case had certain features in common with *Dingwall* (both had stabbed their wives while drunk for withholding alcohol): his drunken conduct was not exceptional to his character, making the legal supposition of monomania less likely.<sup>399</sup> Indeed, Deas noted that this appeared to be quite a different type of crime, in which there was very little evidence of mental disorder (the testimony of Ferguson's sister did not suggest the existence of any recognised form of insanity), though he laid down "in more explicit terms" than at *Dingwall* that he considered "the effect of weakness of mind might reduce a charge of murder to culpable homicide", a doctrine "which had since been approved of in the High Court, and repeatedly acted upon in Circuit Courts" of Scotland.<sup>400</sup> The jury did not take Deas up on his offer however, and found Ferguson guilty of murder (with a recommendation to mercy), a fact that would undoubtedly have rankled the judge, but also caused *The Scotsman* to question the propriety of their decision in an article noting that while there was no exceptionality to his conduct (the logic of monomania), the prisoner displayed marked symptoms of "a physical degeneracy which is, in the opinion of some eminent authorities, the invariable concomitant of mental weakness."<sup>401</sup>

Two final cases tried in the following year conclude Deas's involvement with culpable homicide. The case of *Thomson* (1882) concerned a woman who placed her illegitimate son, aged two, upside down in a butter-kit which she filled with water. Thomson had been "depressed, inattentive to her work, and dirty and negligent in her dress and habits" for some months prior to the homicide, apparently the result of a visit she had paid to her mother in a lunatic asylum. Both the manager of the linen works where Thomson was employed and the doctor who examined her in the cells reported that she was a woman of weak intellect, though neither believed her to be insane. Deas did not think the jury needed any special direction in this case and he made it clear that diminished responsibility in cases of mental peculiarity was now sufficiently established under Scots law for the case to be left to their discretion – a

---

<sup>399</sup> *Ferguson*, 4 Couper 1877-82 (1881), pp.552-59 (553)

<sup>400</sup> *Ferguson*, (1881), p.555

<sup>401</sup> *Scotsman*, 5th Jan, 1882, p.4

verdict of culpable homicide due to weak intellect was returned.<sup>402</sup> Finally, there was the case of *Gove* (1882), an “aggravated egoist” who attacked and killed his father with a spade. A special defence was lodged stating that at the time of his acts Gove was “insane, or labouring under mental delusions or maniacal paroxysms, which inspired and uncontrollable impulse, and deprived him of his senses.” Two medical witnesses were called, one of whom had examined the prisoner on six separate occasions, and both stated that they would grant a certificate of lunacy. However, Deas reminded his jury that “the evidence of medical men in questions of this kind [is] no more valuable than the common sense judgement of friends and associates of the panel.” By now the ruling at *Dingwall* was declared as “the recognised law of the land”, one which admitted that there “might be men of habits of mind who should not be punished with the capital sentence of death, as they would have been if they were in full possession of all faculties.”<sup>403</sup>

Deas retired from the High Court in the following year, though his name remained connected with the discussion of diminished responsibility. In concluding this section I will consider the details of the cases tried in his immediate aftermath, showing how the same themes of heredity, monomania, alcoholism, and degeneration continued to structure medico-legal relations in Scotland. Following Deas’s withdrawal from the bench his successor, Lord McLaren, continued to guide the jury in the same fashion, as we observe at the case of *Margaret Robertson or Browne* (1886), who had placed her two grandchildren in the fire on New Year’s morning while their parents were away making social calls.<sup>404</sup> Her son testified that around half past three in the morning his mother had come to his window crying and muttering about his deceased brother who had drowned himself the previous New Year (making the case to some extent similar to *Paterson*, 1872). Browne implored her son to take the opportunity the New Year offered to visit friends and neighbours with his wife, offering to mind their children while they were absent. Around an hour later she located the couple at a neighbour’s house and announced that “the children are all burned.” Their mother testified that when she arrived at the house the eldest girl was burned and her dress was wet (it was presumed that Browne had poured water over

---

<sup>402</sup> *Thomson or Brown*, 4 Couper 1877-82 (1882), pp.596-97

<sup>403</sup> *Gove*, 4 Couper, 1877-82 (1882), pp.598-600

<sup>404</sup> *Browne*, 1 White, 1884-6 (1886), pp.93-105

her in an attempt to put out the flames). When she asked what had happened, she was told that their grandmother had put them on the fire, a statement she doubted, suspecting that her daughter was not fully conscious at the time. However, the children survived for a little over a week before dying of their injuries, and the eldest spent her last days calling out “Grandmother . . . Don’t put me on the fire” at regular intervals, a fact which confirmed to investigators that Browne had been the author of the crime.

Since her son’s suicide the previous year Browne had become an “inebriate of rough manners”, and while she was drunk on the night of her crime, her state was apparently no worse than had become custom (the whisky that was left in her son’s house, it was noted, had remained untouched). The prisoner herself reported that she had been subject to strange delusions at the time, and that a gang of “circus folk” or “show-people” who were in the habit of visiting their town during the holiday period had entered the house and attacked her and the children. While the children’s parents had been away at the police station, Brown had visited a neighbour and discussed the incident with her saying “this is an awful scrape I’ve got into”, and that “a big woman had come into the house” bringing with her a strange beast that Browne had struggled with. The chief prosecutor reported that the prisoner had told him she fell asleep at the house where her grandchildren slept and awoke to find herself shrouded in darkness, held down by a gang of circus folk who proceeded to burn the children before her eyes. The Justiciary Reports note that again at trial Browne had testified that:

some one had taken advantage of her; that she struggled with him; that it was not something earthly; that it appeared to belong to the show folks; that it was not the Devil; that she afterwards found she had a burn on one of her arms; that she did not know where the burn came from; that she did not drink all the rum and whisky she bought; that she was drinking for some days before; that she got past the unearthly person and left the house; that she could not say what made her say the children were burned.

This was clearly a case in which the reality of Browne’s delusions was central to the degree of responsibility to be imputed, though the presentation of medical evidence caused the presiding judge (Lord McLaren) to remind his jury that under Scottish law expertise must be founded on a concrete acquaintance with the facts of the case itself, a maxim that forbade witnesses from trying to infer a prisoner’s state of mind at any

time falling outside of their direct examination. Thus, the medical witnesses were not permitted to extrapolate Browne's likely state of mind during the New Year from the details of her trial, though they were given license to explain how the medical theory of insanity could account for such conduct in the abstract, with one witness speculating that:

[An] access of homicidal mania might be sudden, and might take effect in the way of causing those who were attacked to injure those who were near and dear to them. The absence of a son, at a time when there ought to have been a reunion, might have acted on the prisoner's brain. In cases of homicidal mania the maniacs may have delusions, imagining they see things which do not exist, and the sights that are seen may be imprinted on the memory. That kind of insanity may disappear as soon as it appeared.<sup>405</sup>

In his summation Lord McLaren acknowledged that Browne's case was a particularly difficult one for the jury to settle: The "nature of the act and the circumstances in which it was committed" suggested no transparently malicious motive: "there was no evidence of ill-will" and "as there was no motive disclosed, the deed must be presumed to have been committed under a momentary fit of insanity." On the other hand, there did not seem to be any substantial evidence in support of the special defence of somnambulism and, until the fatal burning, no one had suspected Brown of being insane. Her case therefore seemed to balance a lack of discernible motive against a lack of insanity. In an attempt to negotiate this deadlock the judge suggested that, though the crime might appear as a simple murder, the presence of intoxication might be relevant to the distinction between murder and culpable homicide in such an exceptional act, since it had the power to take away intent. Thus, if the jury could not satisfy itself of insanity, it could conclude that under some "momentary hallucination induced by drunkenness" it was possible to commit such deed without forming the malicious intent necessary for murder (the jury followed this guidance and found Browne guilty of culpable homicide).<sup>406</sup>

As with the case of *Paterson*, a medical witness who had been present at the trial felt compelled to question the way in which the law had inferred insanity from lack of motive when he presented the case to the MPA. This was Andrew Turnbull,

---

<sup>405</sup> *Browne*, (1886), p.101

<sup>406</sup> *Browne*, (1886), p.104-05



Medical Superintendent at the Fife and Kinross District Asylum, who had personally examined the prisoner prior to her trial, though had been prevented from speculating on the likely cause of her crime in court. Freed from these restrictions he noted that it was almost certain the “prisoner fell asleep when with the children, and either during this drunken sleep, or more probably at the time of awaking from it, the hallucinations were developed.” This would have been consistent with medical knowledge of delusion in states of acute intoxication, particularly if the sleep had been “short and unrefreshing, and was perhaps suddenly interrupted, [leaving] her in a state in which her brain was temporarily more susceptible than before to the action of alcohol.” The medical witnesses present in court were privately of the opinion that her mental state fell between somnambulism and insanity, without strictly being a case of either and that, as a result of drunkenness, the prisoner was “not fully or properly aware of what she was doing.” This then was the main point of divergence between psychiatry – which insisted that it was illogical to regard drunkenness as sanity – and the law – which maintained that the two states must be kept apart at all costs. Furthermore, as with the case of *Paterson*, the medical witnesses were suspicious of the monomania pushed by the bench, and once again we see a gap opening up between the psychiatric and the legal understanding of insanity, which, even while acknowledging partial responsibility and entertaining medical evidence, was still largely based on the principle of exceptionality. As Turnbull put it, while “paroxysmal attacks of insanity [lasting] for a short duration” were not unknown to psychiatry, the suggestion that such an attack may have been present in this case seemed rather convenient, particularly when, as in Browne’s case “the attack coincides with a time when the patient is away from any observation by others, covers the committal of a very serious crime, and passes off before the patient comes again under observation – all, too, within the space of one hour.” Thus, he continued, “one cannot but feel very suspicious of the alleged insanity”, for the judge accepted that she had not been “insane at any time other than just during the hour when the criminal act was committed”, and the plea of insanity, though ultimately unsubstantiated, was allowed by the judge only on the basis of “the extraordinary nature of the crime, not from any direct evidence of insanity.”<sup>407</sup>

---

<sup>407</sup> A. R. Turnbull, ‘A Recent Medico-Legal Case: A Question of Insanity’ *J. Ment. Sci.*, **32** (139), 1886: 337-49

A similar tension can be observed in the next murder trial at which diminished responsibility was alleged (ultimately unsuccessfully), the trial of *McDonald* (1890), concerning an habitual inebriate accused of beating his wife and their lodger to death with an iron bar. McDonald's Advocate entered a more ambitious plea that the drunken assault had been brought on by "a sudden access of insanity, not distinguishable by pathology or law, except in point of degree, from *delirium tremens*" and that his client was therefore not guilty by reason of "temporary insanity caused by drink." In support of this claim he cited "the most recent textbooks" in the field of psychiatry, which showed that the brain consisted of "a series of ganglia or fibres, any one of which might be hurt or deteriorated by a variety of causes to the effect of deranging reason." Alcohol abuse and heredity predisposition were, he continued, known to be the most prominent causes of degeneration precipitating insane acts, both of which were operational in McDonald's case, where a "congenital disease" bordering on insanity had been "developed by the surrounding habits of the subject . . . alcoholism for fifty years had injured the brain, making the prisoner the victim of frenzies, which the medical evidence and the medical authorities" regarded as insanity. Quite apart from this medical evidence, the Advocate believed that, legally speaking, "the presence of such elements [as extreme intoxication] had, in recent years, always been held to lower the character of the offence [as was shown at *Brown, Gove, Browne, and Dingwall*]." <sup>408</sup>

This was, according to the Lord Justice-Clerk, the most wildly and mistakenly ambitious defence ever attempted in a Scottish court. The mere suggestion that medical and psychiatric textbooks could have any evidential status in a court of law, let alone serve as the foundation for a defence to murder, was, he argued, sufficiently incompetent to discredit the proposed defence. However, he did believe there to be a "show of plausibility" in the claim that the "prisoner was of unsound mind when the acts charged against him were done", though such a defence could not be sustained in reference to abstract discussions in medical works, but must "be supported by proof that the prisoner was actually of unsound mind at the time." Similarly the judge acknowledged that the notion of temporary insanity was an appealing one in a case

---

<sup>408</sup> *McDonald*, 2 White, [1890], pp.517-24

like this, where “a motiveless crime” showed itself in a “sudden paroxysm that produces results not accounted for except by a sudden access of insanity”. Hence, the judge argued, while “it is not the duty of the prosecutor to prove motive”, a manifest absence of motive was strongly suggestive of insanity. In a case like McDonald’s, where death had been caused by a person “smashing about in a fit of rage” and there “was really no motive”, a presumption of insanity could be held irrespective of the relative lack of evidence suggesting that this was the case.<sup>409</sup> While this presumption of monomania was permitted, the suggestion that alcohol had acted on the brain to produce a fleeting state of insanity was rejected as being too close to a description of normal drunkenness, for while the law held that alcoholism could cause insanity, the judge was cautious to maintain the distinction between this claim and the psychiatric notion that drunkenness was a type of insanity. Thus, he continued, if drunkenness had produced “a disease of the brain, and if its effect is real insanity, then, to use the simple but expressive language of our law, he does not know the ‘quality of what he is doing’ . . . This is, however, quite a different thing from saying that all drunkenness necessarily entails legal insanity.”<sup>410</sup>

## 6.6 Conclusion

In examining the details of these High Court trials four principal legal obstacles were shown to have plagued psychiatrists in Scotland throughout the nineteenth century. Firstly, we have seen that the very notion there might be a form of theoretical expertise connected with the mind was largely rejected by judges. Psychiatric witnesses were not permitted to draw inferences beyond their direct experience, though the law of Scotland did allow the *jury* to draw inferences based on psychiatric evidence. In the cases considered here this point was stated clearly and repeatedly from *Dingwall* (1867) to *McDonald* (1890). Secondly, we have seen that

---

<sup>409</sup> This point was confirmed at *Kane* (1892), a further case of drunken murder. While no medical evidence was presented at this trial, the Lord Justice-Clerk clarified that: “The difference between a man insane and a man under the influence of drink, is that in the one case the man is a diseased man; there is actual disease present in the man. In the case of drink, the man brings his brain temporarily into a somewhat similar condition to that which consists in the brain of the insane, solely from what he does himself.” However, while simple intoxication was itself no defence under Scottish law, it could have a bearing on the degree of malice a jury could legitimately infer, allowing them to distinguish between “aimless violence” leading to death (a crime not amounting to “absolute murder”) and malicious, premeditated acts. *Kane*, 3 White, 1892, pp.386-90

<sup>410</sup> *McDonald*, 2 White, [1890], pp.517-24

inadmissibility of heredity evidence gave psychiatrists all the more reason to publicise its effects outside of the courtroom. We saw in the previous chapter how the psychiatrists Clouston, Laycock, and Skae became disenchanted with the legal process and turned their attention to promoting psychiatric knowledge through the popular press, seeking to mould public opinion away from the official channels while simultaneously creating an image of danger and threat that eluded the grasp of a liberal legal system. The opposition between ‘psychiatry’ and ‘the law’ is not quite accurate here, for the wider legal profession (that is, lawyers and legal writers outside the High Courts) were, in the final quarter of the century, increasingly vocal in their support for such evidence. An article in the *Journal of Jurisprudence* noted in 1875 that the “occult and difficult enquiry” into insanity pursued by the law ought to welcome “anything tending to shed light upon” the prisoner’s state of mind. Thus, the article continued:

looking to the undoubted fact that mental disease is often hereditary, one of the most extraordinary things in our law of evidence is that evidence as to the insanity of near relatives should be excluded . . . Can it be doubted that if a prisoner was allowed to prove that his father and mother both died in a mad-house the grave doubts as to sanity would be changed in the jury’s mind to a certainty of insanity?”<sup>411</sup>

In 1887 the same journal complained that while “medical psychologists regard the heredity transmission of insanity as an established scientific fact”, the law of Scotland “excludes all evidence tending to prove its existence in any particular case.”<sup>412</sup> By 1902 Scotland’s other main legal publication, the *Juridical Review*, was of the opinion that heredity was so central to medico-psychiatric thought that “before long in all probability such evidence will be universally admitted as strictly relevant. Even at present it would be hard to find anyone who doubts either its relevancy or materiality.”<sup>413</sup>

Thirdly, the question of alcohol’s role in causing temporary insanity was raised at almost every one of the major trials in which diminished responsibility was permitted as a possible verdict. The cases discussed above suggest that Scottish

---

<sup>411</sup> W. C. S. ‘The Plea of Insanity in Murder Trials’, *Journal of Jurisprudence*, 19:227, 1875, pp.561-73 (p.571)

<sup>412</sup> ‘Evidence of Heredity in Insanity’, *The Journal of Jurisprudence*, **31**, 1887, pp.586-592 (586-89)

<sup>413</sup> Chisholm, ‘Insanity and Criminal Responsibility’, *Juridical Review*, 1902, pp.386-93 (391)

judges were prepared to allow for drunkenness to constitute mental aberration capable of reducing guilt from murder to culpable homicide on the grounds that intoxication could negate malicious intent. As one Edinburgh law student wrote in 1921, Scottish law seemed to uphold that “the absence of ‘mens rea’ demonstrated, in certain cases of insanity and drunkenness.”<sup>414</sup> However, the application of the law in Scotland was both ambiguous and inconsistent on this point, and even eminent medico-legal writers seemed to be at a loss to capture the position of Scottish judges in regard to drunkenness with any precision. Writing in the early years of the twentieth century John Glaister (Professor of Forensic Medicine and Public Health at the University of Glasgow) was of the opinion that a doctrine had developed during the second half of the nineteenth century holding that drunkenness may bring a person’s acts “under certain circumstances within the category of insanity and irresponsibility”, though this was “not intended to illustrate the fact that alcoholism is one of the more indirect causes of the insane condition, but to signify that insanity – perhaps of a temporary kind – may be induced by the direct effects of alcohol.” However, according to Glaister’s interpretation, this mitigation of guilt relied on supplementary psychiatric evidence that alcohol had not just caused a lack of control, but had acted “abnormally on an individual whose brain and nervous system are easily rendered unstable, or upon persons who have been victims of profound brain and nerve disturbance.”<sup>415</sup> This seemed illogical to psychiatrists who were convinced that the tendency to drink displayed in the violent criminals brought to court was itself the product of a hereditary degeneration.

Fourthly, the growing strength of the degenerationist paradigm caused psychiatrists to reject the legal grounds upon which insanity verdicts were based. Degeneration had been used to dissolve and proliferate of the formerly serious monomanias since at least the 1860s, with kleptomania and dipsomania standing as the two great trivial manias of the age of degeneration. For instance, a medical student working under the guidance of Thomas Laycock had produced a thesis in 1866 arguing that kleptomania and dipsomania offered evidence of trivial moral insanities that corrupted the “affective faculties alone without, necessarily, any aberration

---

<sup>414</sup> Thomas MacNaughton Davie, *The Criterion of Responsibility in Insanity*, Unpublished Ph.D. Thesis, University of Edinburgh, 1921, p.2

<sup>415</sup> Glaister, *Medical Jurisprudence*, pp.587-588

whatever of the intellectual faculties” (a position that could be traced back to Prichard).<sup>416</sup> Here kleptomania was described as a condition well known in the animal kingdom “seen in animals such as rats who are fond of stealing shillings.”<sup>417</sup> An example of this kleptomania was forwarded to the author by David Skae, who had provided him with “the notes of another case of a lad of 15, H.P., who when young stole things of no value to him, as his sister’s gloves and the like, which he never sold, but hid under his bed.” While the absence of financial gain conformed to the older legal understanding of crime without motive, it was the potential danger of the seemingly trivial condition that interested the author, who argued that its medico-legal significance lay in the fact that, in his later years, the same boy had “tried to set up a ridiculous plot against the life of an uncle of his for which he was sent to Morningside. He was to a certain extent clever but could never see any difference between a selfish and weak and a high minded man.”<sup>418</sup> This thesis therefore provides an interesting example of the paradoxical turn to degeneration in which psychiatry insisted on the normality of the monomaniac (who could simply be a young thief) while at the same time arguing that inside every young thief lay a potentially serious criminal.

Thus, as the species of mania psychiatry described became ever more widely accepted, the inference of insanity as simple lack of motive – an inference placing the emphasis on the act’s legal rather than its medical character – was increasingly rejected by psychiatrists. In this way we see a somewhat puzzling trend from the 1860s onwards, in which doctors came to renounce categories of mental defect that were just beginning to gain a hold on that entirely mythical construct to which they tirelessly referred: ‘the public mind’. Indeed even *The Times* accepted the special mania of theft amongst the social elite by the 1870s, writing that: “Everyone who is

---

<sup>416</sup> Henry Munro, *On Moral Insanity, with Especial Reference to its Manifestation as Kleptomania and Dipsomania*, Unpublished M.D. Thesis, University of Edinburgh, 1866 (p.47). For a detailed history of Prichard’s theory in relation to Pinel’s and Esquirol’s notions of moral insanity and *mania sans délire* see Hannah F. Augstein, ‘J C Prichard’s Concept of Moral Insanity – a Medical Theory of the Corruption of Human Nature’, *Medical History*, 1996, **40**: 311-343. Augstein notes that the preservation of social order and the dangerous nature of the lunatic were key elements in Prichard’s discussion of moral insanity (p.341).

<sup>417</sup> C.f. Clouston here, who wrote that kleptomania is marked by an unconscious desire “strongly developed in the animal kingdom, in primitive and savage man, in children, and in many kinds of mental disease. Imbeciles appropriate and hide what they fancy, just as jackdaws do.” (Clouston, *Clinical Lectures*, p.254)

<sup>418</sup> Munro, *On Moral Insanity*, pp.37-38

acquainted with London society could at once furnish a dozen names of ladies who have been notorious for abstracting articles of trifling value from the shops where they habitually dealt.”<sup>419</sup> There was here a considerable overlap between the ‘popular’ discourse on trivial mania reported in newspapers and the ‘scientific’ presentation offered in works like Clevenger’s *Forensic Psychiatry*, where it was recorded that the widespread acceptance of an “irresistible impulse [such as] kleptomania in persons who are recognised as sane is a matter of considerable medico-legal importance”, but that if this species of insanity were “to occur in a poor or friendless person its discovery would most likely be punished as theft, pure and simple; but as the obsessed generally belong, as the Italian and French writers observe, to the educated and cultivated classes, it may be that kleptomania in the sane is confined to the so-called upper classes.”

Clevenger’s account continued to discuss a case submitted by the Marquise de Fontenoy concerning a social notoriety that had occurred in 1895, when speculation was rife in London as to “the identity of the English duchess who, according to the annual police reports of the French government just published, has been arrested during the last twelve months in one of the great Parisian emporiums for shoplifting.” This woman was suffering from “a form of insanity far commoner among the high-born and delicately natured classes than people realize, and as much as Paris is the headquarters of everything in the shape of feminine elegance and goods calculated to tempt the purse and wishes of the fair one, it is only natural that those afflicted with this moral ailment of kleptomania should find it most impossible to suppress on the banks of the Seine.”<sup>420</sup> Indeed the duchess was not the only lady of rank recently arrested in Paris for purloining small articles: professor Lacassagne of Lyon (a member of the Medico-Legal Society and editor of the *Journal of Criminal Anthropology*) had also written on this condition, noting that “the great stores, with their rich display of goods so temptingly arranged, [with] heaped-up counters whetting the feminine appetite for greed . . . are in a measure responsible for the acts of these women.” While Lacassagne believed that these commercial “aperitifs of

---

<sup>419</sup> Cited in John Hutton Balfour Browne, *The Medical Jurisprudence of Insanity*, 1876 (2<sup>nd</sup> edition), Philadelphia: Lindsay & Blackiston (p.319)

<sup>420</sup> Clevenger, *Forensic Psychiatry* (vol. II), pp.848-50

crime” would test even the strongest feminine will, he was certain that their allure could exert a force sufficient to “overmaster the feebler and degenerate minds.”<sup>421</sup>

We can see here a certain tension between the social acceptance of these new species of disease, which appear to have been reported in widely sympathetic terms by the press and accepted in court by judges, and the psychiatric account of them, which relied on this popular appeal while seeking to distance itself from the overt equation of symptom with disease. Thus, for instance, when Thomas Clouston discussed this kleptomania in a short article appearing in *The Scotsman* in 1896, he disabused this popularly held notion, writing: “In the public mind, kleptomania is a mental disease, the victims of which are, as a rule, rich”, an assumption founded upon a mistaken premise that overlooked the “causating organic disturbance” distributed evenly across the social spectrum.<sup>422</sup> Interestingly, the psychiatric presentation of these new manias also gained wide acceptance from legal reporters, who were happy to discover an independent body of evidence underwriting the legal annulment of responsibility that followed from motiveless crime. Thus, the *Journal of Jurisprudence* adopted the same position as Clouston, Clevenger, Lacassagne *et al* when, in an 1889 editorial discussing a case of intermittent kleptomania, the editor wrote that he and his colleagues in Edinburgh’s legal community were:

strongly of [the] opinion that amongst the class of habit and repute thieves this form of insanity is very rife indeed; and the fact that the defence of kleptomania is almost never advanced in such a case, can be due only to the extreme difficulty of substantiating the plea on behalf of a person so miserably circumstanced, and in whom a strong motive for theft can so readily be imagined. . . . Only where the worldly position of the accused is of a kind to remove all supposition of the motive for theft, is the presence of kleptomania ever [accepted].”

This, the article continued, was an inconsistent practice, since “the other forms of *monomanie sans délire*, such as homicidal mania, pyromania, and erotomania, are recognised without discrimination of class in the sufferer.”<sup>423</sup> However, as we will see

---

<sup>421</sup> ‘Kleptomania as a Disease and a Defence’, *American Lawyer*, **154**, 1896, p.533. On kleptomania as a gender and class bound syndrome see Elaine S. Abelson, ‘The Invention of Kleptomania’, *Signs*, **15**, 1989, pp.123-143

<sup>422</sup> Clouston, ‘Kleptomania’, *The Scotsman*, 12 Mar. 1896, in LHB 7/12:5

<sup>423</sup> ‘The Plea of Kleptomania’, *The Journal of Jurisprudence*, 1889, **33**, pp.396-97



in the following chapter, the psychiatric access to insanity continued to rely on these same methods ,with degenerationists forced to concede there were significant parallels between their methods of diagnosis and the past age of monomania.

## 7 From Moral Insanity to Insane Morality

### 7.1 Introduction

At a Meeting of the 1890 Social Science Congress held in Edinburgh the Lord Advocate Baron Robertson introduced the weekend's discussion by raising the issue of legal codification, a subject that had occupied medico-legal writers ever since Sir James Fitzjames Stephen's attempt to codify the British laws in the 1870s. Here the Lord Advocate noted that:

The criminal jurisprudence of Scotland is, like the common law of the sister country, founded on custom and the decision of judges. No authoritative statement of its principles has ever been promulgated in writing. Its definitions are to be found in the commentaries of judges and advocates, its sanction is supposed to be the conscience of the community; its classification of offences is purely arbitrary.

“Arbitrary punishment,” he continued, “in fact as well as in name, dominates the whole category of criminal law in Scotland”, with the disposal of criminals, the admission of expert evidence, and the measure of responsibility all based on the caprice of judges. Against this arbitrary law, Baron Robertson noted, legal theorists had “proposed the great and universal panacea, a code; rather, indeed, we should not say it is proposed, but its advantages are pointed out, and its actual existence, as sketched out by Sir James Stephen, predicted for no distant day.” Reporting on the Lord Advocate's speech, the *Edinburgh Journal of Jurisprudence* added the voice of Scotland's wider legal profession to these remarks, declaring that “a code is the ultimate form of every good system of laws” with the power to sweep away “all confusion and complexity [of] the past.”<sup>424</sup>

Ever since Stephen had revitalised Bentham's dream of a codification, Scotland's legal journal had published evidence of the divide between those who wished to see a united British Penal Code and those who remained committed to a

---

<sup>424</sup> Anon, ‘The Jurisprudence Department of the Social Sciences Congress’, *Journal of Jurisprudence*, **24**:287, 1890, pp.581-92 (586-87).

distinctly Scottish legal tradition.<sup>425</sup> While the legal divide between modernity and tradition ran along a more general political fault line, it was the place that psychiatric evidence would play in the national laws that brought this divide into particularly sharp focus. In the 1880s Scotland's legal journals were habitually claiming that while psychiatry had "made vast forward strides" since the middle of the nineteenth century, the law continued to employ eighteenth-century categories of mind that were meaningless to expert witnesses.<sup>426</sup> That this was felt to be a problem in particular for the British legal tradition was highlighted by Stanley Atkinson, an English barrister of the Inner Temple, who argued in the early twentieth century that "the highly complex psychological variations" of certain impulsive criminals had "not been fully appreciated during the evolution of our Common Law."<sup>427</sup>

It was precisely these deficiencies of the Common Law tradition that legal modernisers claimed a united British criminal code would correct, establishing a new and explicit social contract based on stated facts rather than an implicit series of guidelines (Stephen's own favourite parallel here was the railways, likening the Common Law Judge to a passenger who must discover his route by "examining and comparing all the orders given by directors of railways from their origin, and interpreting them in accordance with a set of unwritten customs, putting special meanings on the various terms employed.")<sup>428</sup> Writing in support of the Code in 1876, the *Edinburgh Journal of Jurisprudence* noted that those Continental systems of jurisprudence that framed their definitions of insanity in medical terms had moved far

---

<sup>425</sup> Stephen, who had helped codify the laws of British India during his time Calcutta (1869 – 1872), made sustained efforts to have the laws of Great Britain codified following the 1874 election of Disraeli's second government (though Stephen had run against the Conservatives when he stood for election with the Liberals in Dundee). He spent the summer of that year perfecting his grasp of German and reading the works of German jurists while preparing what he hoped would be the England's first piece of codified legislation (the Evidence Act). In 1877 this became the subject of a Parliamentary Commission, with the Lord Chancellor drawing a Bill to establish the introduction of a penal code. The painfully slow progress of the project eventually ran aground in 1880 with the voting in of the second Gladstone Ministry, a new Lord Chancellor, and "the general vortex which swallows up such things" following a change of political prerogatives (Leslie Stephen, *The Life of Sir James Fitzjames Stephen*, Smith & Elder: London. pp.351 – 358 & p.381). This vortex did not however swallow up enthusiasm for a Codified law, which was still the "burning question" amongst English legal empiricists in the 1880s and 1890s (W. Stokes, *The Anglo-Indian Codes*, Oxford, 1887, x). For Stephen's own discussion of codification see J. F. Stephen, *A History of the Criminal Law of England* (3 vols.), London: Macmillan, 1883, vol.II, Ch.17; See also, J. F. Stephen, 'Suggestions as to the Reform of the Criminal Law', *Nineteenth Century*, 2, 1877, pp. 735-59.

<sup>426</sup> Anon, 'The Month', *The Journal of Jurisprudence*, 27 (320), 1883, p.322.

<sup>427</sup> Stanley Atkinson, 'Forensic Psychology of Inebriety', *British Journal of Inebriety*, 2, 1904, p.16.

<sup>428</sup> L. Stephen, *The Life of Sir James Fitzjames Stephen*, p.346.

in advance of the British practice of allowing a judge to determine whether medical evidence was consistent with the legal definition of insanity. The newly formed Germany was seen as the leading nation in this process, and the definition of insanity had been modified in dialogue with both lawyers and physicians to remove terms such as *Wahnsinn* [lunacy] and *Blödsinn* [imbecility] that no longer accorded with psychiatric understandings of mental disorder. This, the journal continued, provided the new German Criminal Code with the admirably modern clause reading: “An act is not criminal when the actor at the time of its commission was in a state of unconsciousness, or morbid disturbance of the mental functions, through which the free determination of his will was excluded.”<sup>429</sup> By the end of the century the journal was still pushing this matter, writing in 1899 that if the psychiatric understanding of insanity was ever to gain ground in Scotland “it must be through legislative enactment, as in Germany and France.”<sup>430</sup>

As usual, there is something a little too convenient, perhaps even suspicious in this British characterisation of the Continental utopia, and when we examine the medico-legal situation abroad, we see quite a different picture emerge. As the Harvard Law Professor Roscoe Pound noted in 1911, there had, since the late nineteenth century, been a vocal reaction on the Continent “against administration of justice solely by abstract formula”, with the Germans agitating toward a deconstruction of the rigid formula of the Classical School and the establishment of a *freie Rechtsfindung* [free adjudication] resembling the British model, while the French were seeking to move away from rigid definitions to adopt a “freer method of interpreting the codes.”<sup>431</sup> Thus, while in Great Britain it seemed that the French, German, Austrian, and North American penal codes signified a rational and

---

<sup>429</sup> A. G., ‘The Plea of Insanity in Criminal Cases’ (part ii), *Journal of Jurisprudence*, **20**, 1876, pp.377-88 (386-87). A similar provision was made in the Austrian Code stating: “An act is not punishable if the actor at the time of commission was in a state of unconsciousness or morbid restraint, or disturbance of his mental faculties, which made it impossible for him to determine his will freely, or to perceive the punishable character of his act.”

<sup>430</sup> Anon, ‘The Legal Culpability of the “Criminal Insane”’, *Journal; of Jurisprudence*, **41**, 1899, pp. 22-23.

<sup>431</sup> Pound, ‘Introduction’ in, R. Saleilles, *The Individualization of Punishment*, Boston: Little, Brown, & Co., 1911, (xv). On *freie Rechtsfindung* in relation to Anglo-American Analytic theories of law see A. Kocourek, ‘The Century of Analytic Jurisprudence since John Austin’, in *Law: A Century of Progress, 1835 – 1935*, Vol. II, New York University School of Law, 1937, pp. 212-221.

enlightened break with the traditionalism of the past, theorists working within these nations saw the code as a Procrustean monolith that restricted progress.

In France the case against the code was most famously made by Raymond Saleilles, Professor of Comparative Law in the University of Paris, whose monograph on the subject, *Individualization of Punishment* (1898), argued that in fixing punishment as a proportional response to certain categories of *crime* rather than certain types of *offender*, the French Penal Code had retained the ancient assumption of Free Will as the foundation of responsibility, a fact that rendered it scarcely different from the presuppositions that had prevailed prior to the Assembly. While the Code had been modified in 1810 in an attempt to confer on magistrates “some discretion in setting punishments”, these modifications had failed to remove the inherent flaw of the codified laws, since the greater degree of judicial liberty still did “not imply that the subjective circumstances in terms of *responsibility* were deemed adequate to modify the *punishment* for any given crime.” For Saleilles, these subjective circumstances corresponded to the need for ‘Special Types of Individualization’ in the administration of law, a flexibility of punishment that would be capable of addressing the varieties of crime produced by “the neurotic, the degenerate, and other such classes as are affected with partial responsibility.”<sup>432</sup>

Similar complaints could be found in a number of French commentators, who, contrary to British assumptions, had become convinced that the codified law did not represent a scientific understanding of the criminal, but rather ignored the criminal altogether by fixing its attention only on crime. For instance, Bellanger’s *Les théories nouvelles de la criminalité* contained within it the complaint that:

The School which has presided at the execution of our codes, the Classical School, [was concerned] above all, to fix punishments, [neglecting] almost completely the criminal himself . . . Moreover, according to this School, every man is free, equally free, absolutely free. Placed by destiny, as Hercules of old, at the crossways of vice and virtue, it depends on himself alone whether to advance to the right or to swerve to the left.<sup>433</sup>

---

<sup>432</sup> R. Saleilles, *The Individualization of Punishment*, Boston: Little, Brown, & Co., 1911, pp.56-57 & p.286 (italics added).

<sup>433</sup> A, Bellanger, cited in Charles Bell Porter, *The Legal Conception of Criminal Responsibility in View of the Modern Theories of Criminology*, Unpublished Ph.D. thesis, 1924, p.18. Bellanger’s name is

In Britain this point had been advanced in Havelock Ellis's 1890 work *The Criminal* (the only monograph by an Anglophone writer dedicated to Criminal Anthropology available at the time), a work the *Journal of Jurisprudence* suggested "every lawyer ought to read", particularly as it showed the legal community the desirability of supporting the "abolition of the definite and predetermined sentence" and promoting the extension of indefinite sentences that could be measured according to the criminal's nature.<sup>434</sup>

## **7.2 Vengeance amongst Rabid Dogs: Anti-Codification and Vituperation in Scottish Legal History**

It is clear then that the Continental model of law shaped by the Classical School did not differ significantly from the metaphysical understanding of crime penal reformers in Britain saw in their own national tradition. Thus, while psychiatrically informed critics working in these differing contexts may have charged their national system of laws with perpetuating social ills, it was, at heart, the legal assumption of an unlimited power of freedom, an assumption overlooking both the nature of the criminal and the post-degenerationist theories of conduct that united their campaigns. In fact, both sides of this tension were well represented within the Scottish legal tradition which had, for reasons peculiar to its own institutional history, divided neatly along these lines.

The Scottish legal establishment generally favoured an un-codified law, based on the philosophical principles elaborated in the great legal commentaries, though ultimately left to the discretion of judges and jurors. The Common Law system of Scotland that emerged after the 1707 Act of Union was solidified during the nineteenth century by what Lindsay Farmer describes as a "stubborn resistance to the

---

nowhere to be found in connection with the criminology of the early twentieth century, and no book of this title is listed on the Bibliothèque nationale de France's catalogue. It is unclear from Porter's discussion whether Bellanger was the author of an unpublished thesis or if the title of the work referred to was confused with Émile Laurent's *L'anthropologie criminelle et les nouvelles theories du crime* (1891).

<sup>434</sup> Anon, Review of 'The Criminal', by Havelock Ellis, *The Journal of Jurisprudence*, 1890, **34**, pp. 321-22.

idea of codifying the substantive law” on the part of Scottish judges.<sup>435</sup> On the face of it the resistance to codification seems a strange anachronism: the national code of laws was one of the distinctive products of the Age of Enlightenment, standing, as Farmer puts it, “in both a historical and theoretical sense at the juncture of law and modernity.”<sup>436</sup> Furthermore, although Scotland’s High Court remained formally distinct from English authority, and was empowered to create categories of offence during the process of trial, criminalising citizens without prior warning, this power was put into practice only once following the Act of Union (in the case of *Greenhuff*, 1838).<sup>437</sup> This suggests that resistance to a standardised British code was not motivated by a desire to maintain a divergent legal practice. Indeed in 1844 the highest legal authority in Scotland, the Lord Justice Clerk-Hope, stated explicitly that the laws of Scotland concerning criminal responsibility were substantially those of England.<sup>438</sup>

The resistance to codification within the Scottish High Court was not therefore driven by a desire to keep legal practice autonomous, but by the peculiar nature of Scotland’s legal profession, which, from the union of the crowns up to the around the 1830s (a period of parliamentary reform), concentrated political power within the hands of a “small oligarchic elite of lawyers” who were entrusted with political authority by Westminster for well over a century.<sup>439</sup> Following a similar chronology, the legal historian John Cairns places the origins of “modern Scots law” in the early decades of the nineteenth century, a time when “reforms in legal procedure and court structure” induced “a general fear for the survival of Scots law in the great reforming movements of the nineteenth century” (which of course would break their power to dictate matters of state.)<sup>440</sup> Beyond foreign intrusions into a protected trade, it was more generally the possible emergence of a reforming Whig government that seemed

---

<sup>435</sup> L. Farmer, *Criminal Law*, p.21.

<sup>436</sup> Farmer, *Criminal Law*, p.399. On the role of codification in modern law, see: Bar Karl Ludwig von, *A History of Continental Criminal Law*, London, John Murray, 1916. For a discussion of the codification debate in England see L. Farmer ‘Reconstructing the English Codification Debate: The Criminal Law Commissioners, 1833-45’, *Law and History Review*, 2000, 18:2, pp. 397-425 and ‘The Principle of the Codification We Recommend Has Never Yet Been Understood’, *ibid.*, pp. 441-444.

<sup>437</sup> Farmer, *Criminal Law*, p.24

<sup>438</sup> *H.M Adv. vs. Gibson*, 1844, 2 Broun, 332.

<sup>439</sup> Farmer, *Criminal Law*, p.102.

<sup>440</sup> J. W. Cairns, ‘The Influence of the German Historical School in Early Nineteenth Century Edinburgh’, *Syracuse Journal of International Law and Commerce*, 20, 1994, pp.191-203 (p.192).

troubling to large sections of educated Scottish society (it must be remembered that Scotland in the early nineteenth century was a nation in which a fraction of the populace possessed the vote and in which political and economic power was concentrated within tiny spheres of influence). In resisting the personal devastation any move to unify the two nations' laws might cause, this narrow managerial cartel propped up their power by appealing to the political conservatism that had marked the Scottish Enlightenment, mobilising a widespread distaste for the French Revolution to encourage the notion that codified laws were a means of smuggling Continental insurrection into the country. Thus, the institutional writings of Scottish legal commentators such as Baron Hume uniformly denounced the modernising project of Bentham and his followers, and expressed caution over "the fallacious conjectures of human wisdom before the event" enshrined in codified law, appealing instead to the 'good sense' of the citizens who formed the jury.<sup>441</sup>

It was this notion of 'good sense' or conventional wisdom that, by the second half of the nineteenth century, had come to define the ideological opposition between the dominant legal theorists of England and Scotland. While English theorists tended to follow James Fitzjames Stephen in arguing that the creation of a national code would produce a synthesis of formal and tacit morality, explicating in clear terms the values of the people, Scottish authorities approached the same question in reverse, arguing that successful legislature was not produced by maximising public assent, but by minimising public dissent. Thus, in Scotland, the intellectual interests of judges and 'conservative' legal theorists was always inclined toward an account of the law that found its sources, justification, and legitimacy in historical developments supposedly rooted in the character of the people. Shaped by the work of Edmund Burke and, in particular, Edward Gibbon's *History of the Decline and Fall of the Roman Empire*, the 'mythical' understanding of national tradition popular amongst the Scottish legal establishment was furthered in the 1820s when the Edinburgh Advocates' Library began to acquire works from the German Historical School of law under the influence of head librarian David Irving, formalising the historical approach through scholarship and establishing regular contact between Continental and Scottish legal theorists. The increasing popularity of the German Historical School amongst

---

<sup>441</sup> Farmer, *Criminal Law*, pp. 35-37.



Scottish legal theorists during the 1820s and 30s was no coincidence, for this was a time when English incursions into Scottish legal practice were increasing, and, following debates on the possibility of legal codification in Westminster and at the Temple Bar, many Scots jurists feared that English codification would entail British codification. Thus, beyond the genuine intellectual interest Scottish legal theorists took in Continental debates, they had good practical reasons to ally themselves with the German Historical School, with works such as Carl von Savigny's *The History of the Roman Law in the Middle Ages* offering theoretical resources to defend against codification through the creation of a sometimes strained affiliation between Scottish and Roman law in a move that allowed Scots jurists to distance themselves from English traditions.<sup>442</sup>

While the Historical School represented the dominant movement within Scottish legal thinking, there also ran a concurrent Benthamist streak that can be traced back most notably to the founding of the famous Whig journal, the *Edinburgh Review*, in 1802. Three of the journal's four founders were lawyers with an interest in Bentham's penal theories and one, Henry Brougham, later Baron Brougham and Lord Chancellor of Britain, was a prolific and visible disseminator of Benthamite philosophy.<sup>443</sup> In its early years the journal published Bentham's writings on civil and penal legislation along with a host of essays and commentaries dealing with the theories of the 'Classical School'. Brougham, whose story intertwined further with the fortunes of psychiatry in 1843 when he introduced the Parliamentary question that ultimately led to the M'Naughten Commission, was therefore a notable dissenter who challenged the assumptions and theories of the Historical School, doubting in particular that Scottish law did in fact have a recognisably Roman heritage.<sup>444</sup>

This brief overview of Scottish legal history explains the intellectual phenomenon that was perhaps most visible in the nation's legal press during the

---

<sup>442</sup> Cairns, 'Influence of the German Historical School', pp.193-200 See also, C. Harvie, 'Legalism, Myth and National Identity in Scotland in the Imperial Epoch', *Cencrastus*, 1987, pp.35-41. For the influence of Scottish anti-codificationists in America see Mathias Reimann, 'The Historical School against Codification: Savigny, Carter, and the Defeat of the New York Civil Code', *The American Journal of Comparative Law*, 37:1, 1989, pp. 95-119.

<sup>443</sup> Cairns, 'Influence of the German Historical School', pp. 199-201.

<sup>444</sup> On Scots law and its relation to Roman law see Brougham, 'Scottish Marriages of English Persons', *Edinburgh Review*, **100**, 1828.

second half of the nineteenth century, namely the battle that was fought between the two major schools of British jurisprudence: the Historical School and the Analytical School. While both schools of jurisprudence operated under the assumption that modern law was central to national progress and the maintenance of social order their members differed as to the best means of securing this. The Analytical School, though ultimately derived from the philosophy of Jeremy Bentham, owed its existence to the writings of John Austin (1790 – 1859), who developed the theoretical analysis of what he termed ‘universal’ legal concepts. In his well-known review of Austin’s *Lectures on Jurisprudence* (1863), John Stuart Mill defined positive law as the study of “legal institutions which exist, or have existed, among mankind, considered as actual facts.” This project therefore sought to minimise national differences by emphasising that each particular system of laws contained “similar substantive provisions (designed as these are for the same world, and for the same human nature)” along with a “common groundwork of general conceptions or notions, which can be traced through every body of law, and are the same in all.”<sup>445</sup> This commonality was not of course manifest – Austin and his followers did not claim that the English, Scottish, or Persian laws were *prima facie* similar – but that theorists could reduce the manifest differences to a common set of concrete features through a process of abstraction and analysis. In this way the Analytical School argued that legal terms (responsibility, duty, property etc) were ‘fictitious entities’ whose meaning was ultimately derivative of the natural entities or states of affairs they signified (bodies, desires, or concrete facts issuing from the actual commands of a ‘sovereign’).<sup>446</sup>

In contrast, the Historical School saw legal notions as descriptive entities rooted in community or tradition, denying the presupposition pursued by Austin that values were essentially fictitious signifiers of facts. Values, they contended, *were* facts precisely because law and morality developed out of common social and historical experiences that could not be reduced to two distinct notions (‘facts’ and ‘values’). On this account ways of thinking about right and wrong (mores) and their expression (laws) were not abstractions from concrete entities, but concrete entities in themselves, rooted in the historical development of a particular community and

---

<sup>445</sup> Mill, Review of ‘Lectures of Jurisprudence &c.’ *Edinburgh Review*, **118**:242 1863: 439-82 (442-43)

<sup>446</sup> P. Schofield, ‘Jeremy Bentham and Nineteenth-Century English Jurisprudence’, *Journal of Legal History*, **12**:1, 1991, pp. 58-88 (58-61).

constitutive of an essentially divided ethico-political order. Thus, in contrast to Austin's minimisation of social difference a fiction, the Historical School liked to emphasise the distinctive nature of each culture's particular system of laws and customs, ultimately allying themselves with quasi-progressive social movements that reified the notion of national difference into a concrete quality. Around the 1880s the Scottish Historical School began to sell itself on the principle of 'Political Ethnology', a term borrowed from Herbert Spencer and designating an approach to the study of society that appealed to the natural character of a people as a cause of national difference. This model of explanation was explicitly tied to the Non-Interventionist movement in international relations, arguing, as the *Edinburgh Journal of Jurisprudence* put it in 1883, that the "nations of the world will, if left to the operation of natural laws, gradually work out their own political salvation and attain the same desired and desirable goal" without the need for military or bureaucratic intervention. The bearing of these ideas on Scotland's own political situation is of course clear, and the ethnological peculiarities of each nation's ideals not only suggested their right to self-determination, but conferred a duty upon "the politician, the legislator, and the jurist to give effect to these ideals in shaping laws and political institutions." It was, the journal continued, "on these principles that we argue for the full maintenance of our Scottish system of jurisprudence and the administration of justice; that we maintain the peculiar laws of Scotland ought to be in full accord with Scottish ideas and untampered with by English judges."<sup>447</sup>

A second significant Germanic influence to shape the intellectual approaches of the Historical School in Scotland came via the development of 'British Idealism', a philosophical movement popularised in the 1870s by the Oxford professors Edward Caird, F. H. Bradley and T. H. Green who, along with other notable philosophers like Bernard Bosanquet and John. McTaggart developed Hegel's notion of 'Absolute Ideality' to produce a social philosophy that "converged around such principles as the primacy of community, the moral qualities of the state, and various notions of self-development." Accused by its critics of being a "parrot-like imitation of German cloud-cuckoo-land", this school nonetheless rose to become the dominant philosophy

---

<sup>447</sup> W. Kinnaird Rose, 'Political Ethnology: The Influence of Race on the Development of Law', *Journal of Jurisprudence*, 26(313), 1883, pp.57-64 & pp.177-183.

within British academia during the 1880s and 1890s. As Sandra Den Otter notes in her study of this movement, the “preoccupations with community and spirited controversy about the study of society” British Idealists engaged in reflected “the distinctive climate of *fin de siècle* Britain”, in which a “number of issues provided a focus for anxiety about the fragility of the social tissue.” In this way, she continues, “Hegelianism dovetailed with contemporary Victorian interest in historical change and, more precisely, in the ideas and practice of development. Interest in German historical scholarship had escalated throughout the 1840s, 1850s, and 1860s when Savigny’s critique of natural law traditions was taken up by British theorists.”<sup>448</sup>

The extent to which these ideas infiltrated British intellectual life was remarkable; even a judge like Sir James Stephen, whose “philosophical position was substantially that of Bentham, Mill, and the empiricists”, had been a regular presence at the members-only Metaphysical Society.<sup>449</sup> This debating club, attended by the nation’s cultural and political elite, remains largely mysterious (meetings were “strictly private” with minute keeping and reports considered “a breach of confidence”), though we know that its members would present metaphysical papers and attend dinners at which they apparently discussed the relevance of Idealism to a variety of political, legal, and scientific concerns. In this forum notable “scientific agnostics” such as Huxley, Tyndall, and William Kingdon Clifford met with members of the political ruling class including Gladstone and Lord Selborne, accompanied of course by eminent British Idealists like James Hutchinson Stirling, Henry Sidgwick, and T. H. Green (though it was suspected by Stephen’s brother and biographer that only “a small minority” of those assembled “had ever really looked into Kant”, while “Hegel was a name standing for an unknown region wrapped in hopeless mist.”)<sup>450</sup> Whether these men had or had not read the works of German Idealism (though presumably the professors of philosophy had), the fact that they regularly convened to discuss metaphysics explains the general interest British intellectuals took in these

---

<sup>448</sup> Sandra Den Otter, *British Idealism and Social Explanation: A Study in Late Victorian Thought*, Oxford University Monographs, 2004, pp.5-7. The criticism of British Idealism was made by Frederic Harrison (cited p.2). For a detailed discussion of the theories of this School see William Sweet (ed.) *Bernard Bosanquet and the Legacy of British Idealism*, University of Toronto Press, 2007.

<sup>449</sup> L. Stephen, *The Life of Sir James Fitzjames Stephen*, Smith & Elder: London, p.124. Though he shared Mill’s philosophy, Stephen had published a book-length attack on the Liberty principle (*Liberty, Equality, Fraternity* of 1874).

<sup>450</sup> L. Stephen, *James Stephen*, pp.358-362.

ideas, even if they remained formally opposed to them. This was, for reasons that will become apparent, a significant context for the discussions of psychiatry in Scotland's legal press.

While in the 1850s the leading factions at the University of Edinburgh (particularly the Evangelical Party) had offered staunch resistance to the “dangerous German doctrines” they feared were bewitching Scottish students, it was a battle they eventually lost, and away from its intellectual heart in the colleges of Oxford, British Idealism thrived in particular in the Scottish universities. It was the confluence of the Historical School's dominance in the Advocates' Library and the Idealists' dominance in the philosophy faculty that formed the intellectual context for one half of Edinburgh's distinctively divided legal community in the late nineteenth century. Against this somewhat reactionary ideological community were the sizable margins of the city's legal profession, where copy clerks, junior lawyers, and legal journalists generally more receptive to ideas of the reforming Benthamites were gathered. Thus, while both the Analytical School and the Historical School were represented in the Scottish Universities, there was often a deep political symbolism attached to one's allegiance to these respective philosophical positions, which tended to divide the conservative elite from the disenfranchised wider legal profession. Indeed, when the Liberal M.P. and lawyer Richard Haldane recalled his philosophical education in Edinburgh during the 1870s, he noted that it offered students more or less a direct choice between Mill and Hegel.<sup>451</sup>

This opposition between Mill and Hegel, which roughly mapped on to the opposition between reformers and conservatives in Edinburgh, was captured nicely in an article on ‘The Scottish School of Jurisprudence’ that appeared in Scotland's leading legal journal in 1883. Here, the position of Scottish legal theory was tied to a model of retributive justice supposedly derived from Kant and Hegel and according to which the “authority of law springs from the fact that it enjoins the realization of our permanent and essential self.” The journal argued that obeisance to these principles defined the Scottish approach to legal theory, going on to note welcomingly Hegel's dictum that “by the conscious commission of crime the higher nature of man consents

---

<sup>451</sup> Otter, *British Idealism*, p.22 & p.29.

to punishment” distinguished their metaphysical and historical approach from the members of the English School, who had “divagated through the theories of Hobbes, Bentham, Mill, and Austin into a marshy ground of empiricism which affords no sure foothold.”<sup>452</sup> This ‘Scottish School’ did not however represent the sole, or even the predominant approach to legal theory in Scotland, and there were just as many lawyers who disputed these ideas, even though they liked to present themselves as lone voices of sanity set against an irrational mob. Indeed, in 1872, the Edinburgh Advocate J. R. Blair had written in the same journal to complain that “the prevailing, if not universal, idea of criminal law is, that it is an institution for the purpose of *punishing crimes*”, a belief “not confined to the uneducated” but also prevalent among “lawyers and jurists.” One of the most formidable defenders of this theory, he continued, was “Hegel, the German philosopher, whose views on the subject have been so ably expounded to the legal profession in Scotland by Dr Stirling’s recent admirable lectures on the Philosophy of Law.”

For Hegel, Blair continued, “*punishment is the true remedy*” to crime, and as the criminal “acts upon his own will, and against the will of the majority of the community”, the right to suppress crime through punishment was conferred upon the judge. Against this view, the ‘social defence’ school of which Blair was a member argued that the “great object of criminal law (and criminal law is the fundamental part of all human law), is *the protection of men from their fellow men*”, and that the “exigencies of human life, however much they may require *pain*, do not require the *punishment* of criminals.” Hence, the main difference between these two schools was that, for the ‘Scottish School’, or those who followed Kant and Hegel in constructing a metaphysical defence of punishment as the necessary consequence of guilt, justice was taken to be the *end* of law, while for those who accepted the “utilitarian views of law held by so many jurists, politicians, and philosophers, – among others the English jurists Bentham and Austin”, punishment was a means subordinated to the end of “protecting men from their fellow men.”<sup>453</sup>

---

<sup>452</sup> G. P. McNeill, ‘The Scottish School of Jurisprudence’, *Journal of Jurisprudence*, 27:320, 1883, pp.393-404 (p.400).

<sup>453</sup> J R Blair, ‘The Nature and Object of Criminal Law’, *Journal of Jurisprudence*, 16:181, 1872, pp.467-77 italics in original. For further details of Kant’s theory of law in this regard see John Ladd’s introduction to Kant, *Metaphysical Elements of Justice*, Hackett Publishing, 1999. For Hegel’s critique of the Classical School see G. W. F. Hegel & S. W. Dye (trans.), *Philosophy of Right*, London: George

As we can see then, a well defined demarcation between the retributive and social defence schools of penal theory spread across the Continent, though it played a particular role in the social and political divides of Edinburgh's legal community. Furthermore, there was a considerable overlap between the interests of psychiatrists, lawyers, and social reformers who approached the question of punishment as a problem in the tactical arrangement of social defence rather than a celebration of human dignity. However, it must be noted that the individual interests of these groups differed greatly, and in particular lawyers like Blair had no intention of changing the practical administration of criminals, but called only for a "different style of language when speaking of the nature and function of law." Thus, while the psychiatric theorists were persuading themselves of the need to tear down the entire edifice of criminal responsibility and erect new scientific legal codes, appealing often to the sympathetic ear they found in the wider legal profession, lawyers were meanwhile protesting that they "must not be understood to insinuate that there is anything materially wrong with the way in which criminals are dealt with in [Scottish] courts of law" and that if they were to attain mastery of the courts "criminal law would, or at least ought to, remain unaltered." After denouncing metaphysics in the name of social defence, they even claimed that there was "little actual difference between the ideas of Hegel and those of the utilitarians as to the necessity of law, and the practical shape which law ought to assume." It is therefore perhaps best to remain at the level of the abstract when considering the confluence of psychiatry and the law in this regard, with one point at least satisfying the social defence school of both camps: that "the metaphysical subtlety termed free-will [should] be proved to have no existence."<sup>454</sup>

### **7.3 History's Greatest Illusion: Free Will, Degeneration, and Legal Reform**

When in 1902 the *Juridical Review* attempted to "arrive at an approximation to the burden which Scotland bears" from degenerates who had fallen away from "the march

---

Bell & Sons, 1896 (orig. 1820), pp.98-100. Hegel's theory of punishment is bafflingly complex, and the discussions of it that were picked up in Scottish law journals during the nineteenth century were no exception. For more recent overviews of this theory in legal philosophy see L. P. Hinchman, 'Hegel's Theory of Crime and Punishment', *Review of Punishment*, 44(4), 1982, pp. 523-45; I. Primoratz, *Justifying Legal Punishment*, Humanities Press International, New Jersey, 1990, pp. 67-83.

<sup>454</sup> J R Blair, 'The Nature and Object of Criminal Law', *Journal of Jurisprudence*, 16:181, 1872, pp.467-77 italics in original.

of evolution”, it claimed that such evidence was barred from the Scottish court by the lasting institution of free will. As ever, the journal looked longingly to that suitably vague place “the Continent”, where scientists and philosophers “with more or less determinist views” had shown that a great number of crimes were the product of “some abnormal development [or] degeneracy.” While these Continentals had shown that degeneration produced sub-normal citizens who were “to some extent, if not altogether, irresponsible” for their acts, this new approach was having difficulty taking “deep root in this country, where, by the great bulk of the people, free-will is still considered to be an essential fact.”<sup>455</sup> A similar position was taken up by the French anarchist Augustin Hamon, who denounced the prevailing legal assumption of hypothetical freedom in his late nineteenth-century monograph *The Universal Illusion of Free Will and Criminal Responsibility*, a work considering the legal implications of that problematic class of “doubtful criminals [and] men on the frontier of insanity” who, though not technically insane, “approach insanity under certain forms of degeneration” to produce a condition of “semi-responsibility.”<sup>456</sup>

Somewhat paradoxically, the increasing tendency of judges in the second half of the nineteenth century to accept partial or semi-responsibility without declaring a criminal to be legally insane came at a time when polemicists in Europe and North America were combining psychiatric, psychological, and criminological evidence to produce a sweeping denunciation of the legal system. In France, the idea of partial responsibility had been popularised by Joseph Grasset’s discussion of the *demifous*, which he set out in a sprawling work arguing for the existence of partial states of insanity in reference to literary, artistic, and psychiatric sources. Grasset’s study, a forensic analogue to Nordau’s *Degeneration*, drew its evidence indiscriminately from medical and artistic sources, combining the psychiatric theory of degeneration with the descriptions of degenerates found in Ibsen, Balzac, Flaubert, Zola, and Dostoevsky.<sup>457</sup> In this way, Grasset’s *demifous* designated what the British

---

<sup>455</sup> A. B. M’Hardy, ‘The Economics of Crime’, *Juridical Review*, **14**, 1902, pp.45-58 (p.49).

<sup>456</sup> Hamon, *Universal Illusion of Free Will*, London: The University Press, 1899, p.94.

<sup>457</sup> Joseph Grasset, *The Semi-Insane and the Semi-Responsible (Demifous et Demiresponsible)*, Authorised American Edition: New York & London, 1907. Following the methods of pathography laid down by Möbius, this model of explanation appears to have been well established in French psychiatry in the early twentieth century. For instance, a medical thesis submitted to the University of Lyon by Gaston Loygue, (*Un Homme de Génie, Th. M. Dostoyefsky, Étude Médico-Psychologique*, Lyon, 1904) argued that Raskolnikoff, though not a born-criminal, belonged to the list of heredity degenerates found



psychiatrist Heinrich Oppenheimer labelled “a category of people comprising degenerates, those descended from neuropathic stock, the backward, neurotics, such as epileptics, hysterical females, those in whom the chronic abuse of alcohol or a drug habit has enfeebled the brain”, with the notion of semi-responsibility encompassing “those whose mental condition excites suspicion, but whom it is, nevertheless, impossible to class among the insane.” Key to Grasset’s argument, Oppenheimer continued, was the insistence that the state of semi-responsibility was “not a mere expedient invented by legal medicine, [but] a real pathological entity” which, if adopted as a forensic term by doctors *en masse*, would become “a lasting institution, even in the countries of the Code pénal.”<sup>458</sup>

Naturally one thinks of Lombroso and the Italian School when situating these debates in a medico-legal context, though these same ideas were advanced by a variety of European and American commentators who claimed that the “terms free-will and responsibility must be considered in the light of fresh knowledge. We are but machines of varying potential endurance and capability, and according to the quality of the mechanism so we should be judged.”<sup>459</sup> This fresh knowledge was of course the psychiatric theory of degeneration, and the discourse on legal reform in reference to human degeneracy permeated a range of medical and legal debates during the late nineteenth and early twentieth centuries. As John Batty Tuke and Charles Howden (Sheriff-Substitute of Inverness) argued in a paper published in the *Juridical Review* in 1904, the “question of mitigated punishment [had become] one of practical importance in those cases of defect and degeneration, for the most part of a congenital or heredity nature, which lie on the boundary of insanity”, though such concerns were rejected by a legal system that placed “metaphysics and free will . . . at the basis of all criminal jurisprudence.”<sup>460</sup>

---

in Morel. As a “diathetic psychopath” rather than a “congenital moral fool”, he continued, Raskolnikoff’s crime was of a type that could be productively studied by forensic psychiatrists

<sup>458</sup> Heinrich Oppenheimer, *The Criminal Responsibility of Lunatics: A Study in Comparative Law*, London: Sweet & Maxwell, 1909, pp. 227-28.

<sup>459</sup> A. Wilson, *Education, Personality, and Crime: A Practical Treatise Built up on Scientific Details Dealing with Difficult Social Problems*, London: Greening & Co., 1908, p.236. See also Wilson, *Unfinished Man: A Scientific Analysis of the Psychopath or Human Degenerate*, London: Greening, 1910, pp.70-100 (‘Responsibility’) & pp.100-113 (‘Sin and Crime’).

<sup>460</sup> Batty Tuke J. & Howden C. R. A. ‘The Relation of the Insanities to Criminal Responsibility and Civil Capacity: I.’, *Juridical Review*, 16, 1904, pp. 1-19 (p.3).

The psychiatric campaign against free will was set out in great detail by the neurologist and medical journalist Maurice de Fleury (1860 – 1931), whose well-known study on *The Criminal Mind* (1899) opened by noting that: “The modern scientific ideas concerning the criminal brain are displeasing to the great majority of magistrates and jurists, and are most strenuously repudiated by those who have had no leisure to study them otherwise than superficially.” These legal personages had, he continued, “been brought up in a firmly-fixed belief in Free Will, and accustomed from their school time to regard that faith as fundamental and indispensable to the proper working of civilized society; nothing can be less surprising than their refusal to adopt new theories.” Seeking to replace these abstract theories of intention, guilt, and revenge with a more rational test of responsibility based around what he labelled “the prophylaxis of evil”, de Fleury offered a succinct presentation of the stakes involved in the contest between competing notions of responsibility. On his account magistrates were not only led astray by their lack of acquaintance with the new psychiatric theories, but were encouraged to refuse such evidence in defence of their interests, for it was impossible not to notice that support for the prophylactic model of law rooted in the psychiatric theory of degeneration would entail:

A restriction of the *role* of the jurist and the magistrate respectively, and to diminish the importance of their office and rank, by regarding them no longer as judges discerning the intentions of men, and appointed to punish those who have voluntarily chosen the path of evil, but simply as defenders of public order and civic peace.<sup>461</sup>

This magisterial protection, critics like de Fleury contended, would crumble in the absence of its irrational militia – the herd – whose bloodlust was fed by daily reports of monstrous crime sustaining an “unconscious primitive instinct, the savage need to imitate the act, to return blow for blow.” This of course shifted the psychiatric target from the law to the public mind, for even if legal institutions were shattered, if the bench were captured by psychiatrists, or if the Cours d’assises were ever to “exhibit a clemency and to send a criminal to the hospital as a patient, if they were to refuse to inflict a punishment, a social vengeance, upon him, the people would not understand; they would take justice into their own hands.”<sup>462</sup>

---

<sup>461</sup> Maurice de Fleury, *The Criminal Mind*, Downey & Co: London, 1901, p.x.

<sup>462</sup> de Fleury, *The Criminal Mind*, p.11.

Thus, according to the social defence school, the institutions of justice spoke to two groups: the masses who appealed to revenge as “a sort of religion” sanctifying their most brutal and unthinking cravings, and the magistrates who clung to their birthright by denouncing “modern scientific ideas upon crime and the criminal [as the judicial equivalent of] anarchist, or at the least collectivist, ideas in the domain of politics.”<sup>463</sup> There was of course an ironic reversal present in de Fleury’s presentation of the symbiotic relationship between the judicial belief in Free Will and the determinism of unconscious herd instinct. Indeed, it was the psychiatrists’ attempt to illuminate the unseen causes acting upon the degenerates drawn from the mob itself that inspired the masses to react with instinctive revulsion against:

doctors, talking to us, without being asked, of determinism and fatality, of mind-sickness inherited or acquired! Why, this ‘savant,’ who would curb the vehemence of our natural feelings by argument, who thinks he can divert our just vengeance by a philosophic discussion, and wants to snatch its prey from our legitimate craving to punish, is a nuisance, an intruder, almost an accomplice.<sup>464</sup>

While the first half of de Fleury’s book covered the major theories of the criminal that had been proposed by psychiatrists, the second half concerned itself with “a problem much more complicated and more delicate than all the others, the problem of *responsibility*.” Comparing the social defence model of criminal law that was generally preferred by psychiatrists with the Hegelian theory of punishment prevalent amongst judges, he noted that what was called ‘responsibility’ in the individual really came down to the question of “whether we ought to defend ourselves from [the criminal] as from a mad dog, or to punish him in the very name of his dignity as man.”<sup>465</sup> The author’s own answer to this question followed the Benthamite notion of punishment to the letter in noting that the judge of the future should abandon all pretence of metaphysics and declare:

There is nothing to permit me to judge, and I am not qualified to allot punishment . . . I am here to feign to punish, in order to make this example effective, and that future evil-doers when tempted may

---

<sup>463</sup> de Fleury, *The Criminal Mind*, p.115.

<sup>464</sup> de Fleury, *The Criminal Mind*, p.xii & xvii.

<sup>465</sup> de Fleury, *The Criminal Mind*, pp. 83-84.

know that they expose themselves to the reprisals of society [so that] the image of a heavy punishment may be made to counterbalance the image of a guilty pleasure in his mind.<sup>466</sup>

However, the unfortunate and intractable problem with turning away from the protectionism of judges and vicious instinct of the crowd was that, while their methods were “antiquated, irrational, and dishonouring to humanity”, there was at the same time no credible alternative measure of responsibility. On the psychiatric side the “methods laid down by Lombroso and Baron Garofalo . . . M. Paulhan, or even those of M. Tarde” were scarcely preferable in terms of their practical application, while on the legal side the dedicated work of philosophers had not “taught [reformers] to modify Criminal Procedure and the Penal Code with very appreciable advantage.”

The most promising suggestion as to how the new system of social defence would operate had been outlined by “Magan and his pupils”, who advocated the construction of institutions that were “half-hospital and half-prison, for criminals who, without being quite insane, are nevertheless suffering from a malady sufficiently formal, sufficiently classified, to enable the jury to admit what it is agreed to call ‘extenuated responsibility.’”<sup>467</sup> This reform would, de Fleury noted, “be a great step in advance towards a new era, precisely because the progress of neurology enables us a little better every day to demonstrate the existence of a malady of mind where hitherto only free choice of evil was recognised.” Thus, as a first step toward scientific jurisprudence, the social defence school advised that philosophically trained judges should be employed only in civil cases (where knowledge of legal principles was sufficient), with criminal cases presided over by psycho-social specialists trained in sociology, psychology, and criminal anthropology (the disciplinary elements of the Psy-function).

---

<sup>466</sup> de Fleury, *The Criminal Mind*, p.118. As Slavoj Zizek notes, the ‘auto-ionic’ theory that “the thing is its own best sign” pursued by this philosophical school not only explains why they continued to believe that the best way to make punishment *appear* in the minds of others was through executing it in *reality*, but also why its founder Bentham wanted to have his whole body preserved as a memorial to his life; why bother with the mere appearance of the body through statues or portraits when the reality itself would serve the same function far better? See Zizek, *The Fright of Real Tears*, 2001, British Film Institute: London (p.29).

<sup>467</sup> de Fleury, *The Criminal Mind*, pp. 115-17.

While this school of thought was undoubtedly recognised by Scottish commentators as belonging to the Continent, it was nonetheless reported with great interest by the country's medico-legal commentators. The Professor of Forensic Medicine and Public Health at the University of Glasgow, John Glaister senior (1856 – 1932), considered these same themes in his *Medical Jurisprudence* (1902), an authoritative text-book on forensic medicine that was in common use for around half a century (albeit through his son's extensive revisions to later editions). The third edition of Glaister's *Medical Jurisprudence* (1915) discussed at length how the ideas of Continental psychiatrists had come to influence Scottish approaches to criminal capacity, particularly in reference to the "defects of volition" that produced *conscious* acts contrary to the will (a theme that, as we saw in chapter three, had special significance for psychiatry in the late nineteenth century). Here Glaister drew on Carrier's monograph *Contributions a l'Etude des Obsessions et des Impulses a l'Homicide et au Suicide* (1899), which had demonstrated that "the true test of the existence of such mental states may be summed up in the word degeneracy, and that this degenerate condition is characterised by neurotic antecedents in the progenitors, and by the physical state and psychological condition of the individual."

In such criminals, Glaister noted, the physical stigmata served as "an essential and permanent indication of the tendency to degeneration, and lack of equilibrium in the degenerate person – in the intellect, the emotions, and in the will – frequently bound up with persistent possessory ideas or obsessions." These obsessions and impulses were therefore "two phenomena of the same nature", since both indicated the kind of "inharmonious mental action" that could "only be met with in degenerates." The existence of this species of mental degeneration called upon the medical examiner to testify that "the crime is purposeless or motiveless, that it is committed upon victims either the best beloved by the culprit, or upon those who are absolute strangers to him." Indeed, Glaister continued, according to "the advanced psychological school, composed of such men as Lombroso, Ferri, and Garofalo in Italy, and Broca, Bordier, Lacasagne, and Manouvrier in France", the criminal was a being caught between "two orders of influence", the internal and the external, "from which flow two kinds of responsibility – viz. individual responsibility and social responsibility, neither of which, they declare, exists in the homicidal degenerate." Though Glaister did not comment on the ideas of the 'advanced psychological school'

in his *Medical Jurisprudence*, it is clear from his discussions at the psychological sections of the annual BMA Meetings that he never wholly accepted its approach. None the less, the idea that degenerates could be compelled toward conscious and motiveless crime led him to conclude that the judge-led model of British law was inherently defective, and that “when the time comes for our criminal law to be codified, the question would require to be raised whether it should not be stated in express terms that insanity may destroy the power of self-control” without thereby implying delusion or absence of consciousness.<sup>468</sup>

The British criminal law was of course never codified, though the formalised provision for irresistible impulse Glaister had recommended was considered in 1922 following the trial and subsequent dismissal of Ronald True, an eccentric murderer whose case had prompted Lord Darling’s 1924 Bill to the House of Lords suggesting that judges ought to “make it quite clear that the Law does recognise irresponsibility on the ground of insanity where the act was committed under an impulse which the prisoner was, by mental disease, in substance deprived of any power to resist.” However, this proposal met with a lack of support by Members of the House who almost unanimously refused to recognise “the advisability of the admission of ‘Uncontrollable or Irresistible Impulses’ as a defence”, which they felt would provide criminals with “additional means of escaping punishment [while offering] an additional incentive to the commission of crimes.” Dampened by this unexpected resistance, the Bill was instantly withdrawn and the M’Naughten Rules continued to serve as the sole recognised test of culpability in Great Britain and the Commonwealth.<sup>469</sup>

In pursuit of these same themes, a student of law at the University of Edinburgh, Charles Bell Porter, submitted a thesis alleging that the unscientific “cornerstone of Criminal Responsibility [was] Free Will”, a masonry upon which judges had built a law that was “not at all in keeping with modern Psychological and

---

<sup>468</sup> John Glaister, *A Text-book of Medical Jurisprudence and Toxicology*, Edinburgh, 1915 (3<sup>rd</sup> edition) pp. 566-67.

<sup>469</sup> Appendix A, ‘Insanity and Crime’, in Charles Bell Porter, *The Legal Conception of Criminal Responsibility in View of the Modern Theories of Criminology*, Unpublished Ph.D. thesis, 1924.

Psychiatric thought.”<sup>470</sup> While on the Continent and within the United States “philosophers, doctors, jurists, and criminalists have given and are giving this most controversial question of Penal Responsibility their closest study”, Porter argued that English and Scottish writers had failed to grasp the significance of this body of literature, which showed that both the metaphysical approach to crime as a noxious deployment of free will and “the Classical Solution” based on the psychological model of Bentham were becoming “impossible in the light of modern scientific knowledge” of the criminal. Indeed, he continued, the Classical School was little different in its approach from the metaphysical school insofar as it began from the assumption of rationality as a necessary postulate rather than an empirically demonstrated property of the criminal’s psyche.<sup>471</sup>

For Porter, the question of responsibility was to be viewed from “a social and not a metaphysical basis”, with psychiatric theories of the criminal’s conduct essential to overcoming the deficiencies of both judge-led and codified systems of law, which began from a hypothetical state of desirable conduct. However, while he wished to see the law abandon these abstract tests, he was cautious to note that the ‘moral’ dimensions of crime could not be entirely overlooked, not least because it was inescapably “born in mind by many judges when dispensing Justice” throughout Europe and North America, a fact that could “readily be observed from the phraseology adopted by them when passing sentence.” More importantly the perspective of this critical school of forensic psychiatry was unashamedly internationalist in its outlook, refusing to situate itself “in reference to a definite system of law, be it English, French, or German.” As such, it approached responsibility in general or abstract terms (as an ‘ethical’ quality) rather than as a definition provided by a particular legal code or rule.<sup>472</sup> Thus, Porter argued, while the leading ‘anti-metaphysical’ theories of responsibility were to be found in the psychological studies of Continental writers like Féré and (somewhat surprisingly) Otto Weininger, the contextual differences between British and Continental systems of jurisprudence had been overplayed, since it was clear that the assumption of free

---

<sup>470</sup> Charles Bell Porter, *The Legal Conception of Criminal Responsibility in View of the Modern Theories of Criminology*, Unpublished Ph.D. thesis, 1924, ii.

<sup>471</sup> Porter, *Criminal Responsibility*, p.34.

<sup>472</sup> Porter, *Criminal Responsibility*, p.2 & p.18.

will was also written into “Continental systems of law, for even under the German Penal code. . . the criterion of Responsibility is based upon Freedom of Will”, minimising the difficulties of drawing direct comparisons between the discussions of volition by English jurists and “the Will test as indicated by Von Krafft-Ebing.”<sup>473</sup>

A similar argument was presented in a 1913 thesis submitted to Henry Duncan Littlejohn, arguing that the discussions between the various legal schools concerning the law of responsibility had “given rise to all sorts of legal casuistry, psychological refinements, and medical sophistries” since 1843, though very little clarification had resulted. This, the author suggested, had led to a growing body of medico-legal writers who were keen to abandon the question of responsibility altogether and replace it with that of ‘punishability’, seeking to legitimise legal power in reference to the protection of the “social organism” rather than “the vindictive psalms” or the “reformation . . . of the criminal parasites which infest it.” What was needed, he continued, was a “new legal order” in which there would be “great changes in two directions, the study of insanity and the treatment of the criminal.”<sup>474</sup> However, as we saw above, this project of social reform produced an uneasy relationship between the theory of ‘punishability’ represented by the Classical School of jurisprudence and the notion of conduct held by psychiatrists. As Richard Wetzell points out, there is something paradoxical in the fact that the criminologists and psychiatrists of the 1870s and 1880s who took such a keen interest in the law relied on a Benthamist penological model that “depended on the assumption that most people were

---

<sup>473</sup> Porter, *Criminal Responsibility*, p.9. Porter published nothing further on this subject and left the world of criminal science. The only subsequent public record of his existence came when *Time Magazine* (Sep. 27, 1948) reported on the mysterious circumstances surrounding his death. Here Porter appeared as a “fluttery, fastidious little man” quite out of place in the rough and rowdy offices of the *Washington Times-Herald* where he was employed as chief accountant. He was however “no newsman but an esthete, a collector of rare stamps and Chinese porcelains, a Ph.D. in criminology from the University of Edinburgh, his native city. He liked to shut himself up in his office with a basket of fruit and play symphony records.” Having learned of a codicil in the will of his employer that would deny him an expected million-dollar share of the company, Porter drove to West Virginia and checked into a hotel-room, where he resumed his habit of seclusion, emerging furtively only to eat. On the fourth day he fell, jumped, or was pushed from the window. In the hotel-room drawer detectives found a ticket for a cruise liner bound for Egypt that same week, though they could not locate the briefcase Porter he had travelled with, said to contain sensitive financial information on the dealings of his former business associates. Two days later the society editor of the *Times-Herald* was found dead in her home following an apparent suicide, though the coroner’s report suggested it was murder, deepening “the mystery of Charles Porter.”

<sup>474</sup> W. Ramsay Smith, *Medical Jurisprudence from the Judicial Standpoint*, M.D. Thesis, 1913, University of Edinburgh, p.245.



autonomous and rational individuals who calculated the consequences of their actions in advance.”<sup>475</sup>

The increasingly untenable nature of older models of criminality had of course been discussed by Criminal Anthropologists on the Continent. For instance, when Lombroso’s writings first appeared in English translation, his daughter used her editorial introduction to clarify the relationship between the assumptions of the Positive School of Penal Jurisprudence to which her father belonged and the Classical School of Penal Jurisprudence established by Bentham and Beccaria, noting that while the latter had “based its doctrines on the assumption that all criminals, except in a few extreme cases, are endowed with intelligence and feelings like normal individuals, and that they commit misdeeds consciously”, the new approach to the treatment of crime pioneered by her father and husband (Ferri) maintained that “the anti-social tendencies of the criminal are a result of their physical and psychic organisation, which differs essentially from that of normal individuals.”<sup>476</sup>

This much is well known, but it is nonetheless surprising to note the extent to which this same discourse of degeneration had begun to influence those who seemed the most inveterate of Benthamites within the British legal profession, as even moneyed liberals like Lord Bramwell became increasingly concerned about the ability of their legal philosophy to capture the essence of justice, and as the nineteenth century drew to a close there was a sense amongst these legal theorists that the project of reform they had been defending throughout the century, a project that relied on a somewhat reductive psychological model of the calculating citizen, was running aground. As Bramwell’s biographer noted in 1898, in order to contextualise the mature period of the baron’s views on the law, it must be understood that there was a revival in Britain “about the year 1880 of avowedly Socialistic theories, of which little had been heard, except in J. S. Mill’s ‘Autobiography’, after the collapse of the Revolutionary movement on the Continent and of Chartism here in 1848 – 49”. While in Mill’s time those who had “affiliated themselves to Socialist organizations were, as

---

<sup>475</sup> Richard F. Wetzell, *Inventing the Criminal: A History of German Criminology, 1880-1945*, The University of North Carolina Press, Chapel Hill and London, 2000, p.34.

<sup>476</sup> G. Lombroso Ferrero, *Criminal Man, According to the Classification of Cesare Lombroso*, Putnam: New York & London, 1911, pp. 4-5.

a rule . . . weak, and physically unsound”, being for the large part “town-bred worker[s] who had lost most of [their] second teeth and [were] short-sighted and bald at twenty”, when the question of socialism was intensified in the 1880s the ravages of industrialism had convinced physically and mentally capable citizens that there might be something in it. Thus, a change could be observed in liberals like Bramwell, who were increasingly ashamed of the “physical wreckage of the competitive system” with its “great industrial machine” stamping out “feeble and degenerate human types, physically unfit to compete in the struggle.” In addition to this shame, those who had formerly defended Bentham’s vision of society realised that the innate servility of the “physically degenerate man [of] low and defective type” could not be accommodated within the psychological model of the Classical School, whose economic axioms were modelled on the assumption of a rationally calculating and physically capable citizen. Thus, for figures like Bramwell, individualism gradually gave way to the “biological standpoint” of collectivist political economy that was more suited to the “physically degenerate or artificially pauperized men” of the 1880s.<sup>477</sup>

These elements were discussed endlessly throughout the 1880s and 1890s, with periodicals commenting on the “strain of pessimism noticeable in the writings of the last few years. Sometimes it takes the form of despondency as to the future of humanity at large or of a particular people. Sometimes it rather seems to indicate perplexity over some great moral problem. Now and again it is a regret over some system or faith that has disappeared.”<sup>478</sup> This pessimism, espoused by men of sufficient reputation to be taken seriously, had fed on the fear that there loomed a bureaucratic and entirely industrialised Britain with “houses designed by a State architect, and built more or less with monstrous uniformity”. Worse even than the State Socialists in fanning the flames of pessimism were the psychiatrists, whose “old battle against free-will in the individual” was experiencing a moment of “absolute success” as even the established Liberal tradition laid down its arms. In this climate, the *Fortnightly Review* continued, it was hardly necessary for “Galton and his compeers on the Continent to teach us the doctrine of heredity”, since the dark clouds of deterministic certainty had already coalesced into the dogma that “everything

---

<sup>477</sup> Fairfield, op. cit., pp. 86-89.

<sup>478</sup> Charles H Pearson, ‘The Causes of Pessimism’, *Fortnightly Review*, 54:322, 1893, pp. 441-53 (441).

which has once been in the race endures as a permanent influence modifying it, and that family types are apt to remain scarcely alterable for generations”; a fatalism that was felt to be more hopeless than was ever taught by Calvin.

The fact that this dogma had received the credible assent of scientific writers had fortified its effects and the pessimism was “beginning to beset society”, particularly in the administration of law, as public attitude towards notions of criminal responsibility were rapidly transformed. Where formerly a person was held to be “altogether accountable for his acts”, the fashion had come for regarding a person to be “almost entirely an irresponsible agent” (though this tendency was still most visible in the French courts, where any “plausible theory to extenuate violence” was apparently accepted without critique). Extrapolating from this trend, the journal feared the time would soon come when “juries might refuse to inflict any but light sentences upon the perpetrators of rather serious offences”, and that “in days not very distant it is conceivable that the record of the whole family will be investigated as well as that of the individual”, placing the final nail into the coffin of British legal tradition.<sup>479</sup>

#### **7.4 Against Ancient Doctrines: The Search for Stable Stigmata**

*The Medical Press* noted in 1889 that the increasing judicial sympathy towards those with “a taint of insanity” had resulted from a combination of the public’s growing aversion to the death penalty and the increasingly sound foundations upon which modern psychiatry stood. To this end, they wrote, Charles Scott, “a Scotch Advocate of eminence”, had published an important piece on criminal insanity in Scotland for the *Juridical Review* that was destined to further integrate the medical and legal theories of insanity.<sup>480</sup> Scott’s article was in fact nothing special, covering well trodden paths in punitive theory by attempting to synthesise the assumptions of Classical School with new theories of mind (several substantially similar pieces could be selected from the same journal in the surrounding years), though it was perhaps the extent to which he endorsed the legitimising power of psychiatry in service of social

---

<sup>479</sup> Pearson, ‘The Causes of Pessimism’ (pp. 446-48).

<sup>480</sup> ‘The Legal Aspect of Insanity’, in *The Medical Press*, Dec 18, 1889, in LHB 7/12:5 (p.45).

defence that caught his medical audience's attention. In his article, Scott reproduced the usual polemics against the magisterial theology that viewed the criminal as a "wilful rebel against the Almighty", denouncing at the same time "the high-flown metaphysics of Kant and Fichte" that presented "the *will* as a kind of omnipotent and independent entity within the *mind*, which could act with absolute freedom, and independent of causes." Indeed, Scott continued, any Hegelian belief in the moral propriety of punishment as the "restoration of justice" was to assume "free-will", a problematically spiteful notion that was always "mixed with [the] question of revenge." This prevailing philosophy of German Idealism had, Scott contended, lent support to the judicial notions of responsibility – notions that belonged "to the age of Kant's Categorical Imperative; the mystic voice inside of man, issuing infallible moral commands."

For Scott, the fact that questions of private immorality were largely ignored in courts of law demonstrated that "it is not revenge which the modern penal law is really seeking, but another and much more justifiable purpose – that of prevention."<sup>481</sup> In this way reformist lawyers like Scott argued that punishment (and by extension the law itself) was not a *moral* system at all, but a consensus grounded in "the defence of society." Five years later in the same journal Clouston followed Scott in arguing that "the law does not judge the rightness or wrongness of moral conduct. It merely makes penal certain kinds of conduct that are inconsistent with the well-being of social order." To the extent that morals were metaphors for social regulation, he continued, the opposition between rights and wrongs was chimerical insofar as these were "brain qualities as well as moral qualities" existing on a continuum, and the law should therefore "take the pathological facts into consideration in awarding its punishments." In this way, penal reformers like Scott and psychiatrists like Clouston argued that the regulation of conduct in the modern age required the citizenry to believe that the law was an enlightened master, and by eliminating psychiatry from their enquiries judges were perpetuating an "administration of the law [that did not] promote social order."<sup>482</sup> It was then to psychiatrists that lawyers would turn when they wanted to underwrite their theory of law by placing the act of punishment within the:

---

<sup>481</sup> Charles Scott, 'Insanity in its Relation to the Criminal Law' Part I, *Juridical Review*, (1), 1889, pp. 237-258 (p.246).

<sup>482</sup> Clouston, 'Responsibility in Drunkenness', *Juridical Review*, 1894, 6, pp.147-57 (p.147 & p.154-6).

same category as the serpent which has been trod upon, or the savage who has been assaulted, and assumes at once the safety of society and self-defence as the sole object of this infliction of punishment. [We] punish the man for the same reason as the dog, [because] general safety imperatively requires it, without concerning ourselves the least in this world with the existence or non-existence of free-will.<sup>483</sup>

This use of the ‘rabid dog’ as a metaphor for the criminal was almost certainly a swipe at James Hutchinson Stirling, the notorious Scottish Hegelian whose 1865 work *The Secret of Hegel* was so opaque that it provoked a popular witticism holding that “if Mr Hutchinson Stirling knew the secret of Hegel he had managed to keep it to himself.”<sup>484</sup> In a paper on Hegel’s Philosophy of Right delivered at the Juridical Society of Edinburgh in 1871 Hutchinson Stirling had denounced the members of the Classical School present in the audience for supporting the ideas Bentham and Beccaria, ideas that would, “as Hegel points out . . . resemble the lifting of a stick to a dog while [refusing to] respect man as a free being [and] treating him as a dangerous animal that must be kept under.”<sup>485</sup> Such presumptions, Scott observed, had begun “to crumble beneath everyday observations and scientific inductions” shown by “the great Italian jurist [Lombroso] in the clearest light” and revealing that habitual crime not only bypassed the will, but was “often indicated by the very features and form of the criminal”, with “crime and lunacy often [arising from] the same causes” and perpetuating themselves in a procession of degeneration “till the race becomes eliminated.”<sup>486</sup>

As ever, it was drunkenness that showed up as a particular area of concern, demonstrating that the law of Scotland continued to rely on the same language of will rather than the language of social defence. Rather than considering the criminal as an individual capable of self-reflection, Scott argued, jurists ought to consider the degenerate family as a “continuous individual, of which the several members are

---

<sup>483</sup> Scott, ‘Insanity in Its Relation to the Criminal Law, Part II’, *Juridical Review*, (1), 1889, pp.333-43 (342).

<sup>484</sup> Cited in Otter, *British Idealism*, p.26.

<sup>485</sup> James Hutchison Stirling, ‘Lectures on the Philosophy of Law’, *Journal of Jurisprudence*, 16:181, 1872, pp.1-15.

<sup>486</sup> C. Scott, ‘Insanity in Its Relation to the Criminal Law, Part I’, *Juridical Review*, 1, 1889, pp.237-258 (pp.241-44).

merely organs; and the state of mind which is under investigation is simply one stage in the progress of a disease which has begun generations back, and which may run for generations to come.”<sup>487</sup> This was especially the case of alcoholic degeneration, where “the passion for drink is not always transmitted under this form [of dipsomania] to descendants, but . . . degenerates into madness, idiocy, hallucinations. In the same way the madness of ascendants becomes alcoholism in descendants” (though, following Lombroso and Ribot, Scott did not identify crime with madness). In punishing and releasing the drunkard as a wilful law breaker the courts therefore failed simultaneously to do justice to the individual (who was merely acting out the fate of bad heredity) and to protect the race from the danger of the criminal’s dipsomania “replaced in a succeeding generation by suicide or murder.”<sup>488</sup>

Similarly, when in 1897 the hygienist John Francis Sutherland (who was then Senior Deputy Commissioner in Lunacy for Scotland) came to review *The Abolition of Punishment* by Julius Vargna, Professor in Justice at the University of Graz, he noted that in Scotland, as in England, there had been little real engagement with the series of problems raised by Continental discussions of forensic psychiatry, and “with the exception of papers read by Dr Clouston and myself at the meeting of the British Association in Edinburgh in 1892 . . . and the papers published by Mr. Charles Scott, Advocate, in the *Juridical Review* on insanity in relation to crime”, there had been no systematic British attempt to uncover what was “valuable and lasting in the propositions ably and persistently put forward by the German, French, and Italian schools of thinkers and observers.” These Continental Schools of jurisprudence had, wrote Sutherland, united the professionals managing deviancy – “jurists, legal and medical penologists, alienists, prison administrators, social reformers, and to all who have at heart the well-being of the State, and of the individual” – though he considered that there were good “statistical, economical, and penological” reasons for the “apparent lack of interest in the ‘criminal man,’ and his destiny” in Scotland, a nation where “the alcoholic aggressor” rather than the slighted lover turned premeditated poisoner provided the dominant criminological trope.<sup>489</sup> Indeed, the

---

<sup>487</sup> C. Scott, ‘Insanity in Its Relation to the Criminal Law, Part I’, p.250.

<sup>488</sup> C. Scott, ‘Insanity in Its Relation to the Criminal Law, Part I’, p.258.

<sup>489</sup> Sutherland, ‘Abolition of Punishment: A Study in the Reform of Punishment by Julius Vargna’, *Juridical Review*, 1897, 9: pp.101-03. This pattern, it must be noted, was not uniquely characteristic of

1895 Departmental Committee on Habitual Offenders, Vagrants, Beggars, Inebriates, and Juvenile Delinquents had revealed that, if contraventions of local police regulations were removed from the statistics of Scottish crime, between 90 to 95 % of all crime appearing before police magistrates was directly or indirectly the result of intoxication.<sup>490</sup>

In the same year (1897) Sutherland raised similar concerns when he attended a panel of lawyers and psychiatrists convened to discuss developments in ‘State Medicine’ at the BMA meeting in Edinburgh. The data on crime in Scotland showed that the nation saw an average of nearly five hundred serious offences a year without a single notable case of injustice through judicial failure to apply the lunacy laws. There had, on the other hand, been countless cases where, as Sutherland put it, “gross injustice had been done to [criminals] who through intoxication, were insane at the time the crime was committed”, a fact suggesting that any reforms to the lunacy laws were not required in regard to “the deluded man, but with regard to the intoxicated man who committed crime of which he had no consciousness that it should have taken place.” Intoxication, Sutherland continued, “was insanity of the purest kind, and yet the law did not recognise that intoxication per se was insanity.”<sup>491</sup>

Sutherland was one of Scotland’s most vocal campaigners for legal change in relation to psychiatric evidence, and in 1898 he returned to this subject within the pages of the *Juridical Review*, arguing that “homicides with motive, or with premeditation” were all but unknown in Scotland. While these data suggested the increasingly elaborate theories of the criminal produced on the Continent were largely useless when applied to Scotland, he advised his audience of lawyers to demand from judges a change in the laws so that “the pathological condition present during sobriety as well as ebriety be made the subject of enquiry at the trial, as well as questions of the heredity of insanity or of inebriety.”<sup>492</sup> Furthermore, while intricate profiling of criminal types might have been unnecessary in a country where alcohol was so overwhelmingly to blame for crime, he could not rule out the theory that drunkards

---

Scottish society at this time. Ruth Harris has argued that from around 1880 onwards French criminal statistics are dominated by alcoholic *crimes de sang* (Harris, *Murderers and Madness*, p.249).

<sup>490</sup> W. G. Scott-Moncrieff, ‘Habitual Offenders’, *Juridical Review*, **8**, 1896, pp.18-27.

<sup>491</sup> *Scotsman*, Jul 29, 1897, in LHB 7/12:5.

<sup>492</sup> Sutherland, ‘Jurisprudence of Intoxication’, *Juridical Review*, **10**, 1898, p.309-23 (p.311).

were suffering from “an inherited neurosis, which in some instances may be considered as the finger-post pointing to the asylum, in others to the reformatory and the jail”, and that on the basis of this new scientific understanding of conduct, along “with the march of human thought and progress, all desire for revenge on the part of society for the breaking of its laws should cease.”<sup>493</sup> As we saw in the previous chapter, this rejection of evidence surrounding the cravings of inebriates was central to the antagonisms between doctors and judges in Scottish court cases, but for Sutherland it was more generally a problem for the two models of law that prevailed in Scotland. On the one hand, the Historical School had based its theory of punishment on the “certainty of an absence of latent or patent physical and mental degeneration”, while on the other the Classical School, assured of the deterring effects of punishment, had shown “ignorance of the psychology of the drunkard and of questions immediately associated with it inseparable from his psychological state, such as heredity, habit, and disease”, factors that made the criminal incapable of responding to threats.<sup>494</sup>

Legal publications initially responded positively to this new method of presenting evidence. For example, the *Journal of Jurisprudence* noted in 1876 that while psychiatrists had formerly displayed an unfortunate tendency to group a mass of different conditions under a single heading, this practice was notably diminished and “in the more advanced books we are now rid of such useless headings, we can see the importance of the change in conception when we turn to such books as Krafft-Ebing’s recent work.”<sup>495</sup> However, the tension between monomania and degeneration, or rather the realisation that the two approaches to insanity were essentially identical, haunted forensic psychiatry during the late nineteenth century, with the parallel admitted even by those who set out to challenge it. Indeed, the curious element of these social defence school polemics is that, almost without exception, the texts undermined themselves by admitting that the psychiatric evidence upon which the

---

<sup>493</sup> Sutherland, ‘Abolition of Punishment: A Study in the Reform of Punishment by Julius Vargna’, *Juridical Review*, 1897, 9: pp.101-03. Sutherland’s interest in ‘sophisticated’ theories of the criminal grew in subsequent years, and in 1908 he published his major monograph in this field (more or less a précis of various Continental discussions) entitled *Recidivism: Habitual Criminality and Habitual Petty Delinquency, a problem in sociology, psychopathology, and criminology* (Edinburgh: W. Green, 1908).

<sup>494</sup> Sutherland, ‘Jurisprudence of Intoxication’, (p. 315 & p.321).

<sup>495</sup> A. G., ‘The Plea of Insanity in Criminal Cases’ (part ii), *Journal of Jurisprudence*, **20**, 1876, pp.377-88 (382). This was not of course a reference to *Psychopathia Sexualis*, which was not published until 1886. The journal is probably referring to Krafft-Ebing’s *Die Melancholie* of 1874.



whole endeavour was founded lacked practical support and offered no immediate remedy to the problem of measuring responsibility.

Thus, while these theorists suggested that the methods psychiatric researchers contained the embryonic form of future scientific tests, they were obliged to treat such science on faith as an hypothesis awaiting future confirmation (a position that was of course little different from that of the judges they attacked). In the absence of such a test, advocates of social defence philosophy were pushed into an acceptance of inferential methods close to those invoked in former cases of monomania as practically the only way to determine the responsibility of the criminal. If the binary test of responsibility enshrined in law could only be removed in the presence of a method capable of addressing the degree of responsibility, no suitable method was forthcoming, a fact which seemed to both point toward and to preclude psychiatry: while psychiatry presented itself as the most likely candidate for a specialism capable of determining the capacity of the mind, it was also clear that no such precision measurement fell within the capabilities of psychiatrists. Forensic psychiatrists were therefore forced to concede that the notion of a 'border-land' of insanity could not be applied in courts in light of the fact that it was "wellnigh impossible for psychiatry to solve so knotty a problem" as the specific degree of mental responsibility, necessitating some alternative test to preserve justice from "the spectacle in courts of law of hearing the diagnosis of moral insanity made in the case of a prisoner who is perfectly sane on all other subjects" save for the commission of the acts libelled.<sup>496</sup>

Following this logic, Charles Scott was convinced that while the psychiatric and criminological programme outlined by the Florentine School or the experimental psychology pioneered by Wilhelm Wundt would hold the key to a future scientific test of criminal responsibility, until such methods were perfected legal theorists would have to rely on the older method of inferring irresponsibility whenever the acts examined "have little or no reference to any profit or pleasure to be got by the transgressor, excepting, perhaps, that of the commission itself." As an example he noted:

---

<sup>496</sup> Oppenheimer, *Ibid.*, p.205.

the case of the Scottish clergyman who was found to be a kleptomaniac, and in whose manse a perfect magazine of old rotting tarts and odd and broken crockery was found. It has by some biologists been referred to what is called Reversion, but it bears a very striking resemblance to some vice beginning in the habits of ancestors, coming in time to operate like instinct without any conscious purpose, and yet, in consequence of being of no use, not being selected and continued by nature in any race or nation.<sup>497</sup>

A similar pattern was present in John Hutton Balfour Browne's *Medical Jurisprudence of Insanity*, a work first issued in response to Sir James Fitzjames Stephen's call before Parliament for the introduction of a general code capable of reducing complex legal issues to a simple series of propositions while illustrating these principles with a list of cases.<sup>498</sup> In attempting to meet the criteria Stephen had set, Browne wrote from a diluted Benthamite perspective according to which the State's role in punishing its citizens was to serve as what he called "the motive administrator" of the people, forever adjusting the balance of pleasures and pains in order to maintain the social equilibrium.<sup>499</sup> The main problem in reference to this equilibrium was whether or not jurists ought to recognise motiveless crime as a special category of medical defence ('moral insanity'). The evidence for the existence of such an illness, beyond the fact that medical writers commonly testified to its existence, was, as we have seen, chiefly the cases in which a criminal act seemed to lack any motive or was accompanied by a "depraved impulse." However, Browne noted, the existence of these impulses was generally accompanied by a "hereditary tendency" toward crime, an independent medical fact that was capable of "withdrawing certain acts from the influence of will" and giving them an "apparently motiveless character".<sup>500</sup>

---

<sup>497</sup> Scott, 'Insanity in its Relation to the Criminal Law, Part III', p.65.

<sup>498</sup> John Hutton Balfour Browne, *The Medical Jurisprudence of Insanity*, Philadelphia: Lindsay & Blackiston, 1876 (2<sup>nd</sup> edition). Browne (1845 – 1921) was descended from two intellectually dynastic Edinburgh families. The scions of the illustrious Balfour family into which his mother was born included the geologist James Hutton and the botanists Isaac Bayley Balfour and John Hutton Balfour, while the Browne line had produced W. A. F. Browne and James Crichton Browne (his father and brother respectively). John Hutton Balfour Browne was no less distinguished in his legal career, in which he served a member of the Queen's Counsel and leader of the parliamentary bar, extending his influence through the publication of numerous theoretical and practical treatises on the law, though he was also a well-known writer of prose fiction, including a romance of political intrigue that distinguished itself by opening with the immortal line: "Some one, it was said, had stolen the King's false teeth." (*A Little Revolution*, Longmans: New York, 1908).

<sup>499</sup> Browne, *Medical Jurisprudence of Insanity*, p.72.

<sup>500</sup> Browne, *Medical Jurisprudence of Insanity*, pp. 281-284.

There was a consistent overlap between psychiatry and the law here, with figures from both camps arguing that the theory of punishment held by judges was philosophically unfounded and ignored scientific fact while accepting that the only practical access to insanity was to circumvent scientific evidence (histology, psychology, heredity) and focus solely on the nature of the act itself. We see this same phenomenon spread across the world of forensic psychiatry and social defence philosophy during this period, and in the same year that Scott published this article, Charles Féré's *Pathology of Emotions* had appeared in translation, outlining an almost identical argument from the psychiatric side. Féré, one of France's leading neurologists, set out the familiar social defence argument by complaining that:

the basis of penal right reposes on the doctrine of free choice which has not itself any scientific foundation and which is contrary to what physiology teaches us. The penal law admits two categories of individuals, the one responsible, the other irresponsible. *This distinction is not founded on any scientific argument*: desire, passion, impulsion, virtue, vice, madness, are allied to organic conditions betwixt which science can only establish degrees of intensity.

From this denunciation of legal metaphysics, he proceeded instantly to the admission that “categories of responsables, demi-responsibles, [and] irresponsibility” were similarly inaccessible to psychiatry and its allied discourses, with neither the “works of anthropology referring to criminality” nor the post-mortem study of the “morphology of organs” allowing for the problem of legal responsibility to be adequately settled.

Thus, while Féré believed that the facts of modern psychiatry had rendered the legal understanding of responsibility obsolete, and while he wished to see accepted as the foundation of justice the maxim that “the sole principle of the law can only be the right of social defence”, there was something contradictory in his approach, for social defence could not be grounded in the very psychiatry that had made its necessity manifest, but had to be guided instead by the simple assumption that “Every criminal act results from the ignorance of reasonable motives of action.”<sup>501</sup> This psycho-legal insistence on the necessity of inferring insanity from want of motive seemed, of

---

<sup>501</sup> Féré, *Pathology of Emotions: Physiological and Clinical Studies*, London: The University Press, 1899, pp. 507-508.

course, to refer back to monomania, the hallmark of an ‘unscientific’ age of alienism in which doctors and judges were grasping at metaphysical straws even when they confirmed the existence of insanity. Thus, a second principle was more or less always to be found somewhere alongside this defence of inferential methods in forensic psychiatry: the pinning of motiveless acts to the physically and mentally degenerate condition. As Féré noted apropos of his description of “systematic emotivities”, while the logic he employed “may appear a return to the ancient doctrine of monomania”, it was in fact entirely different, since these psychological manifestations were not the *only* evidence of defect, but were generally found in “degenerates, neurasthenics, or subjects debilitated by a general malady.”<sup>502</sup>

An identical tension can be observed in Shobal Vail Clevenger’s seminal two-volume *Forensic Psychiatry* (1898), where these same tensions were brought into even sharper focus than in the writings of Scott or Féré.<sup>503</sup> Clevenger (1843 – 1920), a noted psychiatrist and sexologist who was for a long time the Associate Editor of the journal *Alienist and Neurologist*, planned his work on forensic psychiatry as a systematic updating of medico-legal theory. Indeed, this manual was, he claimed, the first synoptic presentation of forensic psychiatry to have been produced by an Anglophone writer for 60 years (since Isaac Ray’s 1838 *Treatise on the Medical Jurisprudence of Insanity*), a redress particularly needful following the then recent (1892) appearance in translation of Krafft-Ebing’s *Psycopathia Sexualis*. In seeking to bring the ideas of French and German authors to an English speaking audience, Clevenger planned his work around the subject of degeneration, which not only served as one of his twelve principal categories of insanity, but was used to structure his account from beginning to end with a second volume dedicated exclusively to the subject. Given this overt insistence on the significance of degeneration as a scientific grounds for psychiatric theory, one would expect Clevenger’s discussion of the relationship between the manias of the past and the degenerations of the present to

---

<sup>502</sup> Féré, *Pathology of Emotions*, p.417.

<sup>503</sup> Shobal Vail Clevenger, *Medical Jurisprudence of Insanity or Forensic Psychiatry: With an exhaustive presentation of the judicial decisions upon the subject*, (Vols. I. & II) Rochester, New York: The Lawyers’ Co-operative Publishing Company, 1898. Sulloway notes that Clevenger, who earned himself the “posthumous epithet ‘Don Quixote of Psychiatry’ for his vain crusade against fiscal corruption within state institutions for the insane”, was one of America’s foremost sexologists (Freud, *Biologist of the Mind*, p. 291). See also, Ivan Crozier, ‘Pillow Talk’, for a discussion of Clevenger’s theories on sexuality.

capture the rhetorical essence of this new psychiatric project. However, when he came to consider a category of crime like kleptomania, he was merely puzzled by fact that the “older writers” on forensics did not mention it, and that this ubiquitous medico-legal species was “not recorded as an obsession until the appearance of more recent and accurate text-books on insanity.” As we have seen, the sudden ‘appearance’ of these new manias was a result of the restructuring of psychiatric theory around this time, creating a theoretical niche for insanities that were not merely manifest symptoms, but the underlying degeneration that had given rise to them (a form of argument closely following Magnan’s notion of *syndromata*).

For Clevenger it was quite explicitly the insistence upon “moral mania” in older works of medical jurisprudence had served to make them outdated, with the conditions older writers had described as a ‘disease’ being reclassified merely the *symptom* of a multitude of other derangements. Clevenger’s approach here was clearly very close to that of Garnier and Colin (see chapter four), and indeed he went on to note that the sole justification for preserving the older language of homicidal mania was found in the class of degenerates that had been labelled ‘cerebral neurasthenics’ (“those who suffer from impulsive obsessions”) described in Garnier’s *Folie à Paris* as “the variety of impulse sometimes called homicidal monomania as a syndrome (collection of symptoms) ‘directly connected with hereditary moral degeneration, and essentially characterized by the desire to murder, without any intellectual disorder or passion.’”<sup>504</sup>

It was then the stability of the underlying degenerate condition that distinguished it from the older notion of moral insanity, and where before the ‘discovery’ of degeneration doctors had merely been struck by the existence of certain inexplicable acts in isolation, modern forensic examiners could point to the persistence of “nervous and mental debasement of degeneracy [and] physical stigmata with which it is so frequently associated”, signs that endured after the “maniacal, melancholic, or other insanity” had passed. It was in reference to the stability of these signs alone that psychiatrists were justified in explaining the seemingly inexplicable – whether in crimes of extreme brutality or baffling triviality – that psychiatrists were

---

<sup>504</sup> Clevenger, *Forensic Psychiatry* (Vol. I.), p.97.

able to isolate the true degenerate in the courtroom and “to distinguish apparent recovery from actual recovery” in the asylum.<sup>505</sup> On this basis, Clevenger advised psychiatrists to resist “grouping individuals as degenerates, or [using] the word ‘degeneracy’ as a pathological expression” to encompass “too many diverse conditions such as epilepsy, senility, organic brain disease or trauma”, conditions that were certainly “suggestive of a degenerate tendency”, though they lacked the “permanency in all cases that would be implied by the word ‘degenerate’ or ‘degeneracy’”, and while the utility of the term was suggested by its widespread acceptance, for “medico-legal purposes its boundaries must be plainly, if arbitrarily, marked.”<sup>506</sup>

Again, it was the M’Naughten Rules that served as the main target of this argument, and Clevenger argued that the “species found in Krafft-Ebing may know the distinction between right and wrong, but their responsibility is not thereby proved . . . Nothing short of being able to put one’s self in the place of the degenerate, mentally and otherwise, would enable one to form judgements as to what acts were insane and what sane, if any.” Hence, Clevenger advised, the court should dispense with any rigid test of responsibility and adopt a form of case-based reasoning in which psychiatric evidence of degeneracy was central to sentencing.<sup>507</sup> This new medico-legal reality was most clearly encountered in dipsomania, and since the 1870s lawyers had begun to recognise that an adequate definition of insanity must include “the diseased states caused by alcoholism and the modern doctrine that the addiction itself is often a disease”, a recognition necessitating “the revision of older methods of dealing with inebriates and holding them to a too rigid accountability.” It was in connection with this type of semi-responsibility, he noted, that “Degeneration as a special department of psychiatry has received a great amount of attention by French alienists, and the results of their researches are of immense value to both physicians and lawyers.”<sup>508</sup> Similarly Edward Cox Mann had noted in 1893 that “the known facts of science, and the current facts respecting the disease of inebriety” demonstrated that the inebriate criminal was suffering from “an inherited neuropathic condition, an

---

<sup>505</sup> Clevenger, *Forensic Psychiatry* (Vol. I.), pp. 66-69.

<sup>506</sup> Clevenger, *Forensic Psychiatry* (Vol. II), p.841.

<sup>507</sup> Clevenger, *Medical Jurisprudence of Insanity* (Vol. I.), p.120.

<sup>508</sup> Clevenger, *Medical Jurisprudence of Insanity* (Vol. I.) p.3.

abnormal state of the nutrition and circulation of the brain and nerve centres . . . all the signs and symptoms of an abnormal condition of the centric nervous system demanding stimulants which constitutes the disease – inebriety.”<sup>509</sup>

Support for the established tests of criminal responsibility did not however come only from High Court Judges and those theorists committed to the Historical and Metaphysical Schools of jurisprudence. There were those who lauded the elasticity of M’Naughten as a characteristically British refusal to reduce commonsense to dogma, as one student argued in a 1921 thesis claiming that the open-ended nature of British legal practice had allowed the same guidelines to endure for nearly a century, permitting such notions as “irresistible impulse to fall under its definition of ‘knowledge’” without submitting this to formal definition (the irony of course is that at True’s trial the following year the High Court explicitly reject this claim). Nonetheless, the author of this thesis believed that the British were right to be suspicious of the French ‘discovery’ of semi-responsibility, according to which the “the mattoids and eccentrics, the psychoneurotics, the victims of hysteria . . . the senile, the degenerate, and those who on account of accident or illness, are imagined to be prone to commit criminal acts.” Thus, while it had “been urged in this country and in France (by the representatives of the neo-classical school) that such individuals should never incur full responsibility for their actions”, the French notion of *demi-fous* (or its Scottish counterpart notion of diminished responsibility) was seen as a “meaningless concept”: one was either insane or not.<sup>510</sup>

---

<sup>509</sup> Edward Cox Mann, *A Treatise on the Medical Jurisprudence of Insanity*, Matthew Bender: Albany, 1893, pp. 234-36.

<sup>510</sup> Thomas MacNaughton Davie, *The Criterion of Responsibility in Insanity*, Unpublished Ph.D. Thesis, University of Edinburgh, 1921, p.17 & p.24.

## 8. Conclusion

This thesis has explored the ways in which hereditary degeneration was discussed by Scottish psychiatrists and public health officials in the late nineteenth and early twentieth centuries by focusing on the anti-alcohol movement. It has examined the theoretical writings of both clinical and forensic psychiatry to show how the theory of degeneration was taken up in relation to four key medico-psychiatric questions: Prophylaxis and public hygiene; the relationship between moral, intellectual, and physical degeneration; the search for laws of heredity; and the place of psychiatry within the modern state. Taken at its most general level, the thesis has attempted to explain the reception, transformation, and diffusion of notions of heredity and degeneration in terms of the two most fundamental problems faced by psychiatry in the second half of the nineteenth century. First, there was the problem of psychiatry's taxonomical systems, which were already dated with respect to general medicine when they were initially proposed in the early nineteenth century. It is common knowledge that the first generation of psychiatrists – figures like Pinel and Tuke who had presided over the rise of the therapeutic asylum – drew on a system of disease classification that was simply incapable of replicating the diagnostic specificity of the emergent scientific medicine. I showed in the early chapters of this thesis how psychiatrists in Scotland were plagued by this problem throughout the nineteenth century: Constantly obliged to offer some new taxonomy of disease, novel nomenclature, or simply accept that the somatic basis of mental disease was an inference that could not be demonstrated in day to day asylum practice, psychiatrists were acutely aware that their knowledge of mental illness did not conform to the epistemological strictures of general medicine.

Of course this need not have presented a problem; as many psychiatrists observed, their subject was a skilled craft that could not be reduced to words. Yet, at the same time, many psychiatrists asked why it was necessary for the keeper of an asylum to be a medical officer. Was the knowledge they produced in this unique space more broadly applicable to society and could their classifications be used outside the asylum? Was their knowledge scientific in nature, or was their interest and training in medical science incidental to the routines of asylum life? It was the attempt to negotiate questions like these that accounted for degeneration theory's steady rise



from the 1860s onwards. I have shown throughout this thesis that psychiatrists were themselves conscious of these problems, and how, in their discussions of degeneration, they made direct reference to these professional questions and challenges. Returning to the opening lines of this thesis, we can see why the changing prerogatives of psychiatry in the 1860s became so important. From the mid 1860s onwards members of the learned profession would no longer be known as ‘Medical Officers of Asylums’ but members of the ‘Medico-Psychological Association’, a change explicitly intended to impress upon the public that psychiatry was not only a matter of governing asylums, but that the asylum was a site for the creation and dissemination of scientific knowledge concerning the mind. This knowledge, psychiatrists argued, was applicable to the normal and abnormal alike, and an increased focus on the “laws of *heredité*” would underwrite the truth of their claims. In this sense I showed that while hereditarianism and degenerationist thinking were not exactly the same thing, there were clear parallels in the attempt to ‘ground’ knowledge in some certain principle. As one student put it in a thesis submitted in 1865, knowledge of the “Hereditary laws” would provide the “key to medicine as Newton had provided the key to physics with his laws of gravitation”, and that the steady advance in knowledge of these unseen laws would show doctors the value of a “Prophylactic in preference to a curative process of treatment.”<sup>511</sup>

The argument of this thesis has therefore traced a rather singular story, rooted in the institutional peculiarities of Scotland, showing how psychiatrists attempted to use the problem of degeneration to mould their science into a branch of public health. However, as I have indicated throughout, these national debates were always situated in a wider discussion covering psychiatry and degeneration in Europe and America during the late nineteenth and early twentieth centuries. Indeed, it is in chapters six and seven – chapters devoted to Scotland’s unique legal and judicial culture in the late nineteenth century – that these connections are brought into the clearest light. I began in chapter two by outlining the major work in history and philosophy of science to have addressed the gradual emergence of heredity as an object of scientific discourse in the nineteenth century. Chapter three took up this theme with a detailed focus on

---

<sup>511</sup> W. Berkeley Murray, *On the Hereditary Transmission of Disease*, M.D. Thesis, University of Edinburgh, 1865, p.2 & p.5.

the work of Morel, the originator of degeneration theory in French psychiatry. I showed how Morel, Falret, and their colleagues proposed a taxonomy that was, in its promise to hold all known states of insanity under the single diagnostic heading of degeneracy, at once much broader and much narrower than previous systems. Although heredity was proclaimed to be the chief vector of degeneration in Morel's work, I argued that his turn to degeneration theory stemmed more from a desire to show that mental illness could be brought within the framework of popular science at the level of aetiology, even if the symptoms with which psychiatry dealt could not be clearly distinguished from one another at the level of nosology. Furthermore, I showed how alcohol was taken as a central problem in degeneration from the outset, and why investigations into the effects of alcohol on the race were one of the most important scientific testing grounds for the theory. This was particularly the case with the section discussing the career of Valentin Magnan, where we saw alcohol and heredity take centre stage in the theory of degeneration.

Chapter four began by addressing the early reception of degeneration theory in Britain, showing how discussions of the dangerous classes, inveterate drunkards, and career criminals had begun to coalesce around the notion of a single underlying pathology in the decades prior to Morel's treatise. I also showed how, quite apart from this broader social debate, the language of degeneration allowed doctors to address questions of individual bodily imbalance and the environmental conditions of disease with a theory that could simultaneously be applied to a medical framework emphasising isolated and specific pathological agents (a focus which found its clearest expression in the work of Lister and Pasteur). In this way the notion of degeneration was incredibly resilient to changing scientific models and allowed texts in European medicine and psychiatry to cross borders much more readily than they would otherwise have been able to. Indeed, it is of particular significance that Magnan's writings on alcoholic degeneration were able to elicit such interest from those British doctors who continued to dispute his theory that heredity was the ultimate cause of degeneration.

In chapter five I moved on to consider in detail the writings of Sir Thomas Clouston, Scotland's most famous psychiatrist. Here Clouston was used as a means of introducing three prominent topics in a British context. First, I looked at his early,

clinical writings, in which degeneration was appealed to as a means of distinguishing between simple pathological conditions – conditions of absolute insanity that unquestionably fell within the domain of psychiatry – and the more interesting species of semi-insanity that would allow psychiatrists to demonstrate their knowledge of pathological cause. Here I showed how Clouston’s work found parallels in the writings of Continental psychiatrists who were similarly attempting to move psychiatry away from the shadow the early nineteenth-century taxonomies. I then moved on to consider Clouston’s early participation in the development of a pan-European criminal anthropology, explaining how this nascent field allowed psychiatrists to install themselves as *scientific* examiners of the long established links between idlers, vagrants, drunkards, and criminals, particularly through their understanding of the ‘pathological nexus’ that was heredity. Finally, I showed how the desire to reform psychiatry’s relations with the law was behind both of these strategies in Clouston’s career: breaking with monomania served to indicate that the species of insanity the law recognised were outdated and represented moral, rather than scientific categorisations of conduct, while at the same time, through the emphasis on the pathological nexus of heredity, psychiatrists were able to suggest that their science might be useful in treating crime before it reached the courts. Thus, as moral insanity (a condition of absolute insanity rendering the sufferer utterly irresponsible) was removed from psychiatry, it was replaced with a notion of insane morality, a state in which the powers of control holding the normal citizen back from the brink of savagery were lost.

The second half of the thesis explored the historical interaction between science and the law by focusing on the role of forensic psychiatry in late nineteenth- and early twentieth-century Scottish High Court trials at which psychiatrists were called to give evidence. I also considered the texts of forensic psychiatry and the reception of psychiatric ideas in the field of legal commentary as a means of contextualising and clarifying these specific medico-legal interactions. The examination of court cases demonstrated that, from the 1860s to the end of the nineteenth century, psychiatrists were treated by the law as experts whose power was largely confined to confirming the presence of a legally recognised form of insanity, usually one manifest in the absence of discernible motive. While this situation generated a well documented anti-legal rhetoric among members of the Medico-

Psychological Association, I showed how psychiatry organised a far more interesting response to their legal impotence. This response consisted in publicising the notion, at first during the Quarterly Meetings of the MPA and later in the general press, that the law tended to treat criminals with too great a degree of leniency and that this leniency was the product of an outmoded and unscientific definition of insanity. Thus, psychiatrists argued, the judicial rejection of their science presented a grave danger to the public, for the law would fail to adequately punish the deeds of petty criminals who secretly harboured the seeds of degeneracy. This second move was of course a symbolic inversion of the old image of the mad doctor as one who sought to excuse any crime as insanity. It was, psychiatrists began to contend, the courts who were excusing too many dangerous criminals, and they were excusing them precisely because they failed to see the signs of grave danger embedded in the smallest criminal acts. In this way I showed how a quite precise and well defined set of documents, namely the trial transcripts of High Court cases where psychiatric witnesses were called to give evidence, can help illuminate a far more general historical question concerning the rise of psychiatric interest in criminal anthropology and degeneracy during the late nineteenth century. Furthermore, I showed how these ideas engage with hugely important historical developments in the Scottish legal system, not least the development of diminished responsibility.

The contribution made by psychiatric medicine to new notions of responsibility in the late nineteenth and early twentieth centuries seems then to be a very important yet scarcely understood phenomenon. Firstly, the theories of conduct psychiatry produced seemed to mesh with the social defence model developed around the same time by legal theorists. The underlying assumptions of this social defence school, exemplified by the *freie Rechtsfindung* movement in Germany, the work of Saleilles and Laurent in France, Lombroso and Ferri in Italy, and an amorphous though vocal contingent of lawyers in Britain, represented a break with the rational choice model of the Classical School of Penal Jurisprudence expounded by Bentham and Beccaria a century earlier. The arguments of the social defence school were shown to stand in an interesting relationship to debates taking place in Scottish psychiatry, particularly the notion that punishment could only be justified insofar as it minimised social risk. Furthermore, this group of theorists emphasised the criminal's discontinuity with the normal citizen, thereby rejecting the Classical School's

suggestion that crime was a conscious and rationally calculated response to opportunity (this latter assumption had, of course, much in common with the discourse on degeneration). Throughout Europe the debate over the shape of future legislation often referred to the insanity laws as a prominent test case. Since the law deals with responsibility, legal theorists asked, was this state of responsibility to be understood as a scientific fact or legal definition? In addressing this question some disregarded psychiatry outright, pointing out that it had no reliable test of insanity or means of measuring responsibility (a point which psychiatrists were themselves obliged to concede). Others saw psychiatry as a crucial frame for theorising legal responsibility and looked to this thoroughly progressive science of the mind as an important means of theorising the ‘man of the future’. Thus, toward the end of the nineteenth century, legal reformers began to draw upon and influence the debates that medical polemicists and psychiatrists had been developing since the 1860s.

While the reinvention of psychiatry as a branch of public health occurred in a number of European nations, and was well established in countries that had developed medical education in line with the principles of the Absolutist state, its British origins seemed to follow from Chadwick’s promotion of “social prophylaxis”, an early nineteenth-century notion that came to maturity in the last third of the century.<sup>512</sup> Yet, in chapter seven, I indicated how there was again a distinctly Scottish turn in these debates, signified by the opposition between those legal theorists who wished to maintain the common law tradition and those who wished to codify the laws of Scotland according to the new social defence school. This was, I argued, broadly a division between those who wished to preserve Scotland’s legal autonomy from England and those who associated greater union with progress. This explains the steady stream of articles which appeared in the Scottish legal press during the late nineteenth century discussing the state of psychiatric knowledge and its viability in underwriting new notions of responsibility, not to mention the changing rhetoric of psychiatrists who themselves submitted articles to the legal press arguing that their knowledge was key to producing a new scientifically credible system of laws.

---

<sup>512</sup> Chadwick, *London Review*, ‘Preventive Police’ 1829, 1: 252-308

In short, this thesis may be summarised as an investigation of the two key transformations psychiatry sought to produce through its focus on degeneration, the first clinical, the second forensic: from peculiar insanity to insane peculiarity, and from moral insanity to insane morality. In the first transformation, the notion that insanity was a condition of inherent peculiarity was rejected – a notion which had guided psychiatrists since the early nineteenth century) – and in its place was put a developmentalist notion that tended to focus on degrees of control. Here insanity became a matter of quantity rather than quality; the insane citizen was not inherently different, he or she simply lacked the normal (and evolved) powers of self-restraint. In the second, forensic, transformation, the focus on moral insanity and monomania was abandoned – even as it came to be established as a legal criterion for assessing responsibility – and replaced with a notion of conduct that acknowledged insanity could coexist with intelligible motives if the signs of degeneration were present. Psychiatrists began to argue quite explicitly that asylums were filled with ‘the most sane of men’ and that no sharp boundary line separated sanity and insanity in any case. The notion of a pathological continuum therefore took on a double meaning, addressing both the popular journalistic sense of the continuum stretching from vagrancy and inebriety to social unrest and murder, and the continuum that traced a line from the most respectable and law abiding citizens to the inhabitants of the prison or asylum.

## **Bibliography**

### **Psychiatric and Medical Journals:**

*American Journal of Insanity*

*Brain*

*British Journal of Psychiatry*

*British Medical Journal*

*Chicago Journal of Nervous and mental Diseases*

*Journal of Mental Science*

*The Lancet*

*Medico Chirurgical Review*

*Mind*

### **Legal Journals:**

*Journal of Jurisprudence*

*Juridical Review*

### **Occasional Pieces & Periodical Articles:**

Adam, 'Consanguinity in Marriage', *Fortnightly Review*, **2**, 1865, 710 – 31 (Part I);  
**3**, 1865, 74-89

Anon, 'The Alleged Degeneration of Man', *Chambers's Edinburgh Journal*, 615, 1875, 655-56

'The Prospects of Our Descendants in Regard to Stature', *Chambers's*, 12, 609, 1895, 560

'Types of Men and How they Change', *Chambers's*, 933, 1881, 725-26

'Degeneration', *Chambers's*, 908, 1881, 321-23

'Review of Hereditary Genius', *The Spectator*, Nov. 27, 1869

'Review of Degeneracy: Its Causes, Signs, and Results', *The Athenaeum*, 3714, December 31, 1898, 933-34

'Degeneration and Pessimism', *Edinburgh Review*, 1911, July, 214:437

'The Degeneration of Race', *The Lancet*, Dec. 22, 1860: 619-20

'Alcohol: Its Place and Power', by James Miller, *The Scottish Review*, April, 1858, 97-114

'The Landscape in Painting and Modern Art Criticism', *Academy*, 1907, Mar. p.299

'Mere Nervous Degenerates' *Academy*, 1933 (1909:May) pp.125-26

'Review of M. Nordau's *The Drones Must Die*', *Academy*, 1415 1899,659

'The Hereditary Nature of Crime', *Journal of Jurisprudence*, 1864, 251-259

'Marriages of Consanguinity', *Westminster Review*, 24:1 (1863), p.88

'Medical', *Westminster Review*, 155:3 (1901),347-49



Argyll, 'Science Falsely So Called: A Reply', *The Nineteenth Century*, 123, 1887, 771-774

Barclay, J. 'The Race-Suicide Scare', *Nineteenth Century and After*, 60:358, 1906, 895-899

Bevan Lewis, W., 'The Origins of Crime', *Fortnightly Review*, 54:321, 1893, 329-44

Browne, J. Crichton, *The Lightning before Death*, *Gentleman's Magazine*, 8, 1872, Feb. pp.150-61

Browne, W. A. F. 'Address: on medico-psychology', *Journal of Mental Science*, xii, 1866

Carlyle, M, *The Birth Rate*, 1905, *Westminster Review*, 164:3 1905, Sept. p.291

Chambers, Robert W, *The Crimson Tide*, *Nash's and Pall Mall Magazine*, 64:319 (1919:.),180

Chesterton, G. K. 'On the Ways of the World', *The Pall Mall Magazine*, 27:109, 1902, 141-44

Corbet, W. J. 'How Insanity is Propagated', *Westminster Review*, 142 (1894) p.153

Craig, M. *Psychological Medicine: A Manual on Mental Diseases for Practitioners and Students*, London: J & A Churchill, 1912 (2<sup>nd</sup> ed.)

Dunn, 'Is Our Race Degenerating?', *The Nineteenth Century*, 36: 210, Aug, 1894, 301-14

Fairbairn, A. M. 'Review of Max Müller's Introduction to the Science of Religion', *Academy*, 4:75, 1873, 247-49

Foard, Isabel, 'The Criminal: Is He Produced by Environment or Atavism?' *Westminster Review*, vol. 150, July, 1898, 90-103

Foard, Isabel, 'The Power of Heredity', *Westminster Review*, 151:5 (1899) 538-53

Galton F, 'The Anthropometric Laboratory', *Fortnightly Review*, 31:183, 1882, 332-38

– 'Good and Bad Temper in English Families', *Fortnightly Review*, 42:247, 1887, 21-30

– 'Medical Family Registers', *Fortnightly Review*, 34, 1883, 244-50

Garnett, E. 'Nordau Reconsidered', *Academy*, 139, 4 1899, Jan. p.96

Geddes P. 'In an Old Scots City', *Contemporary Review*, 83, 1903, 559-68

Grant. 'Review of Lankester's Degeneration: A Chapter in Darwinism', *Academy*, 429, 1880, Jul, pp.65-6

The Degeneration of Race, *The Lancet*, Dec.22, 1860, 619-20

The Degeneration of Race, *The Lancet*, August 17, 1861, p.170

Geffcken, 'The War-Chests of Europe', *The Nineteenth Century*, 36:210, 1894, pp.230-243

Giffard-Ruffe, H, 'A Plea for Posterity', *Westminster Review*, 156:1, 1901:July, pp.26-35

Herbert S, 'The Discovery of the Fittest: A Eugenic Problem', *Westminster Review*, 175:1 (1911.),39-45

Hogarth J. 'Literary Degenerates', *Fortnightly Review*, 57:340, 586-92

Hunt, Arthur R, 'The Physique of the Present and the Evolution of the Future', *Westminster Review*, 160:5 (1903), 563-68

James, G. Lewis, 'A Study in Religious Evolution', *Westminster Review*, 128:1 (1887:.)467-483

Jones, 'Physical and Mental Degeneration', *Journal of the Society of Arts*, March 4<sup>th</sup>, 1904, pp.327-332

Kemble, E. W., 'Degeneration', *The Century*, 51, 3, Jan, 1869

Ramsay, W. M., Sir, 'St. Paul's Philosophy of History', *Contemporary Review*, 92

Le Pelly, 'Psychiatry', *Economics Review*, Jan. 1913, 23:1. 24-35

McNeill, 'The Scottish School of Jurisprudence', *The Journal of Jurisprudence*, 1883,393-404

Mumford A. 'Some Considerations on the Alleged Degeneration of the British Race', *Fortnightly Review*, 76:452, 1904. pp.324-38

Munro, R. 'The Founder of Modern Pessimism', *Scottish Review*, Edinburgh, 1888, April, p.244-66

Nordau, 'Degeneration and Evolution: A Reply to My Critics', *North American Review*, 161 (i), July, 1895, pp.80-93

Pearson, 'The Causes of Pessimism', *Fortnightly Review*, 54:322, 1893, 441-53

Purcell, E. 'Review of Nordau's Degeneration' *Academy*, 1205, 1895, June pp.475-6

Rippon-Seymour, H, 'The Royal Commission on Physical Training (Scotland, 1902) *Westminster Review*, 160:3 (1903.), 306-12

Robertson J M. 'Mr. Lang on the Origin of Religion', *Fortnightly Review*, 64:383, pp.726-40

Saleeby, C W, 'Marriage in the Future', *Quiver*, 55:1 (1919), 41

Saleeby, C. W. 'Science: Racial Decay', *Academy*, 1625, 1903, June, p.641

Sherard, R. H. 'Dr. Max Nordau, The Author of "Degeneration"', *Idler*: 9:1, 1896, 14-20

Sparrow, Walter Shaw. 'Has Our Race Degenerated?', *The Idler*, 12:5, 1897, 678-81

Spiers, W. 'The Age of the Human Race', *Wesleyan-Methodist Magazine*, 1883 676-685

Strahan, S A K, 'Consanguineous Marriages', *Westminster Review*, 135:1 (1891.), 258-64

Thomson, J. A. *Heredity*, London: John Murray, 1908

Vines, J H, 'The Physique of Scottish Children', *Westminster Review*, 160:3 (1903.) 319-22

Wallace, W, 'The Works of Friedrich Nietzsche', *Academy*, 1265, 1896: Aug. p.75

Watson, W. Review of 'Essays Speculative and Suggestive', *Academy*, 956

Williams, M, 'Science Notes', *Gentleman's Magazine*, 263, Dec. 1887

Wilson, A. 'Degeneration', *Gentleman's Magazine*, 250, 1881, 470-494

Zangwill, I. 'Without Prejudice', *The Pall Mall Magazine*, 8:34, 1896, 327-36 & 3:14, 1894, June, 344-52

### **Books and Articles:**

Ackroyd et al., *Advancing with the Army: Medicine, the Professions, and Social Mobility in the British Isles, 1790 – 1850*, Oxford University Press, 2006

Adams, M. (ed.), *The Wellborn Science. Eugenics in Germany, France, Brazil, and Russia*, Oxford UP, 1990

Adriaens and De Block, 'The Evolutionary Turn in Psychiatry: A Historical Overview', *History of Psychiatry*, **21** (2), 2010: 131–143

Altholz, R. 'A Tale of Two Controversies: Darwinism in the Debate over "Essays and Reviews"', *Church History*, **63** (1) 1994, pp.50-59

Andrews, J. and Smith, I. '*Let there be light again.*' *A History of Gartnavel Royal Hospital from its beginnings to the present day*, Glasgow: Gartnavel Press, 1992

Andrews, J, *Madness, Architecture and the Built Environment: Psychiatric Spaces in Historical Context*, Routledge, 2007

– "*They're in the Trade . . . of Lunacy, They 'cannot interfere' – they say*", Wellcome Institute for the History of Medicine Occasional Publications, 1998

Ashworth, W. 'The Late Victorian Economy', *Economica*, **33** (129), 1966:17-33

Baldwin, P. 'Liberalism, Nationalism, and Degeneration: The Case of Max Nordau', *Central European History*, (13), June, 1980

Barfoot, M. 'The 1815 Act to Regulate Madhouses in Scotland: A Reinterpretation', *Medical History*, 2009, **53**, 57 – 76 (58)

– 'David Skae: Resident Asylum Physician; Scientific General Practitioner of Insanity', *Medical History*, 2009. **53**, pp.469-88

Barfoot, M. & Beveridge, A., “‘Our Most Notable Inmate’: John Willis Mason at the Royal Edinburgh Asylum, 1864 – 1901’, *History of Psychiatry*, 1993, **4**, pp. 159 – 20

Barrie, D. *Police in the Age of Improvement: Police development and the civic tradition in Scotland, 1775-1865*, Willan Publishing, 2008

Bartlett P and Wright D (eds.), *Outside the Walls of the Asylum: The History of Care in the Community 17500 – 2000*, The Athlone Press: London, 1999

– *The Poor Law of Lunacy: The Administration of Pauper Lunatics in Nineteenth-Century England*, Leicester University Press, 1999

Berrios, G. E. & Freeman, H. (eds.), *150 Years of Psychiatry 1841 – 1991*, Gaskell: London, 1991

– *150 Years of Psychiatry: The Aftermath, Volume II*, London: Athlone Press, 1996

Basalla, G. et al. (eds.), *Victorian Science: A self-portrait from the Presidential Address of the British Association for the Advancement of Science*, Anchor Books, New York, 1970

Becker, P. & Wetzell, R (eds.), *Criminals and Their Scientists: The History of Criminology in international Perspective*, Cambridge University Press, 2006

Beveridge, A. ‘Voices of the Mad: Patients’ Letters from the Royal Edinburgh Asylum, 1873 – 1908’, *Psychological Medicine*, 1997, **27**, 899 – 908

– ‘Life in the Asylum: Patients’ Letters from Morningside, 1873 – 1908, *History of Psychiatry*, 1998, **9**, 431 - 469

– ‘Madness in Victorian Edinburgh: a study of patients admitted to the Royal Edinburgh Asylum under Thomas Clouston, 1873 – 1908 Part I’, *History of Psychiatry*, 1995, **6**, 21 – 54 (23 – 24)

Bing, F. 'La Théorie de la dégénérescence', in J Postel and C Quérel (eds.), *Nouvelle histoire de la psychiatrie*, Toulouse, 1983, pp. 351 – 356

Borges D. 'Puffy, Ugly, Slothful and Inert': Degeneration in Brazilian Social Thought, 1880-1940, *Journal of Latin American Studies*, Vol. 25, No. 2 1993, pp. 235-256

Bynum, W. F. 'Rationales for therapy in British psychiatry: 1780-1835', *Medical History*, 18, 1974, pp.317-333

Canguilhem, G. 'The Living and its Milieu', *Grey Room*, 3, 2001: 7 – 31

Cartron, L 'Degeneration and "Alienism" in Early Nineteenth-Century France', in Müller-Wille S. & Rheinberger H. J, *Heredity Produced*, pp.155-174

Chertok L. and Stengers I., *A Critique of Psychoanalytic Reason, Hypnosis as a Scientific Problem from Lavoisier to Lacan*, Stanford University Press, 1992,

Clark, M. and C Crawford, C. (eds.), *Legal Medicine in History*, Cambridge University Press, 1994

Clark, M. J. 'The Rejection of Psychological approaches to mental Disease in Late Nineteenth-Century British Psychiatry', in Scull (ed.), *Madhouses, Mad-Doctors, and Madmen*, pp.271-312;

Coffin, J.C. 'Heredity, Milieu and Sin: the works of Bénédict Augustin Morel (1809-1873), in *A Cultural History of Heredity II: 18<sup>th</sup> and 19<sup>th</sup> Centuries*, Max Plank-Institut für Wissenschaftsgeschichte, 1993 Conference, Preprint 247: 153-164

– 'Le Theme de la Degenerescence de la Race Autour de 1860', *History of European Ideas*, 15, (4-6), 1992 : 727-732

– *La Transmission de la Folie: 1850-1914*, L'Harmattan, Paris, 2003

Cohen, S. & Scull, A. (eds.), *Social Control and the State: Historical and Comparative Essays*, New York, 1983

Coppock D J 'British Industrial Growth during the "Great Depression" (1873-96): A Pessimist's View, *The Economic History Review*, 17 (2), 1964, pp.389-96

Dargelos, B. 'Une spécialisation impossible: L'émergence et les limites de la médicalisation de la lutte antialcoolique en France (1850 – 1940)', *Actes de la recherche en sciences sociales*, 156-157, March 200: La spécialisation de la médecine XIXe-XXe siècles, pp. 53- 71

Davidson A. (ed.) *Foucault and his Interlocutors*, University of Chicago Press, 1997

Davie N, 'Guilty Before the Fact? The Deviant Body and the Chimera of "Precrime", 1877-1939', Unpublished Conference Paper: Herten State University, Saint Petersburg, May, 2009

Davis, G. '*Lovers and Madmen Have Such Seething Brains*': *Historical Aspects of Neurosyphilis in Four Scottish Asylums, c.1880-1930*. Ph.D. Thesis, University of Edinburgh, 2001

Decker, R. *The Victorian Conscience*, New York: Twayne Publishers, 1952

Dowbiggin I, 'Degeneration and Hereditarianism in French Mental Medicine 1840-90: Psychiatric Theory as Ideological Adaptation', in W. F. Bynum, R. Porter, & M. Shepherd (eds.) *The Anatomy of Madness: Essays in the History of Psychiatry, Volume 1*, London, Tavistock, 1985, 188-232

– *Inheriting Madness*, Berkeley, University of California Press, 1991, 93-115

– *Keeping America Sane: Psychiatry and Eugenics in the United States and Canada, 1880-1940*, Cornell Studies in the History of Psychiatry, Cornell University Press, 1997



Engstrom, E J. *Clinical Psychiatry in Imperial Germany: A History of Psychiatric Practice*, Cornell University Press, 2004

Farrall, L. *The Origins and Growth of the English Eugenics Movement*, New York: Garland Press, 1985

Foucault, M. *Abnormal: Lectures at the Collège de France, 1974-1975*, Picador, 2003

– *The Birth of Biopolitics: Lectures at the Collège de France, 1978 – 79*, Palgrave Macmillan, 2008

– *Discipline and Punish*, Penguin, 1991

– *History of Madness*, Routledge, 2006

– *History of Sexuality, Volume I: The Will to Knowledge*, Penguin, 1998

– *The Order of Things*, Routledge Classics, 2002

– *Psychiatric Power: Lectures at the Collège De France, 1973-1974*, Palgrave, 2006

– *Society Must be Defended*, Palgrave, 2003

Foucault (ed.) *I, Pierre Riviere, Having Slaughtered My Mother, My Sister, My Brother*, Penguin: 1978

French, R. and Wear, A. (eds.), *British Medicine in the Age of Reform*, Routledge, 1991

Genil-Perrin, G. *Histoire des origines et de l'évolution de l'idée de dégénérescence en médecine mentale*, Paris: Alfred Leclerc, 1913

Glick, T. (ed.), *The Comparative Reception of Darwinism*, University of Chicago Press, 1988

Goldfarb, R. M. 'Late Victorian Decadence', *The Journal of Aesthetics and Art Criticism*, Vol. 20, No. 4, 1962, pp. 369- 373

Goldstein, J. *Console and Classify: The French Psychiatric Profession in the Nineteenth Century*, Cambridge University Press, 1987

– 'Foucault Among the Sociologists: The 'Disciplines' and the History of the Professions,' *History and Theory*, **23**, 1984: 170-92

– 'The Hysteria Diagnosis and the Politics of Clericalism in late nineteenth-century France', *Journal of Modern History*, 1982, **54**, 209-39

– "'Moral Contagion": A Professional Ideology of Medicine and Psychiatry in Eighteenth- and Nineteenth-Century France', in G. L. Geison (ed.), *Professions and the French State, 1700 – 1900*, University of Pennsylvania Press: Philadelphia, 1984, pp. 181 – 222

Gordon, C. (ed.) *Power/Knowledge: Selected Interviews and Other Writings, 1972-77*, Pantheon Books: New York, 1980

Gordon, G. *The Criminal Law of Scotland*, Michael Christie, Edinburgh 2000.

Greenlade, W. P. *Degeneration, Culture, and the Novel, 1880-1940*, Cambridge University Press, 1994

Grob, G. 'Marxian Analysis and Mental Illness', *History of Psychiatry*, **1**, 1990, 223-232

Hacking, I. 'The Looping Effect of Human Kinds.' in D. Sperber ed. et al. (eds.) *Causal Cognition: An Interdisciplinary Approach*, Oxford University Press, 1995: pp. 351-383

– *Mad Travellers*, Free Association Books, 1999

- Harris, J. *Private Lives, Public Spirit: Britain 1870 – 1914*, Penguin, 1994
- Harris, R. *Murderers and Madness: medicine, law, and society in the Fin de Siècle*, Oxford: Clarendon, 1989
- Hay, 'Property, Authority, and the Criminal Law' in Hay (ed.) *Albion's Fatal Tree: Crime and Society in Eighteenth-Century England*, Random House, 1976, pp.17 – 63
- Heggie, V. 'Lies, Damn Lies, and Manchester's Recruiting Statistics: Degeneration as an "Urban Legend" in Victorian and Edwardian Britain', *Journal of the History of Medicine and the Allied Sciences*, 63, 2008, pp.178-216
- Houston, R. A. *Madness and Society in Eighteenth-Century Scotland*, Oxford University Press, 1999
- 'Poor Relief and the Dangerous and Criminal Insane in Scotland, c.1740 – 1840', *Journal of Social History*, 40, 2006, 453 -76 (466)
- Hudson, N. 'From "Nation" to "Race": The Origin of Racial Classification in Eighteenth-Century Thought', *Eighteenth Century Studies*, 29, 3, 1996, pp.247-64
- Huertas, R. 'Madness and Degeneration: I, From 'Fallen Angel' to mentally ill' *History of Psychiatry*, 3, 1992, 391-411
- Hunter, R, and Macalpine, I, *Three Hundred Years of Psychiatry 1535-1860*, Oxford University Press, 1963, p.911
- Jacob, F. *The Logic of Life (The Logic of Life: A History of Heredity and The Possible and the Actual*, Penguin, 1989, orig. 1976)
- Jacyna, L. S. *Philosophic Whigs: Medicine, science, and citizenship in Edinburgh, 1789 – 1848*, London: Routledge, 1994
- 'Science and Social Order in the Thought of A. J. Balfour', *Isis*, 71 (1), 1980, pp.11-34

– ‘Somatic Theories of Mind and the Interests of Medicine in Britain 1850-1879’  
*Medical History*, 26, 1982, pp.233-258

Jones, K. *Asylums and After: A Revised History of the Mental health Services*,  
London: Athlone, 1993.

Kevles, D. *In the Name of Eugenics: Genetics and the Uses of Human Heredity*,  
Berkeley: University of California Press, 1985

Lawrence, C. ‘Incommunicable Knowledge: Science, Technology and the Clinical Art  
in Britain 1850-1914’, *Journal of Contemporary History*, b20 (4) 1985: pp.503-20

López-Beltrán, C. ‘In the Cradle of Heredity; French Physicians and *L’Hérédité  
Naturelle* in the Early 19<sup>th</sup> Century’, *Journal of the History of Biology*, 37, 2004:39-  
72

– ‘The Medical Origins of Heredity’, in Müller-Wille & Rheinberger (eds.)

– ‘Forging Heredity: From Metaphor to Cause, a Reification Story’, *Studies in the  
History and Philosophy of Science*, 25, (2) 1994: 211-35

Lorimer, D. ‘Theoretical Racism in Late-Victorian anthropology’, *Victorian Studies*,  
31, 3, 1988: 405-430

Luckin W, ‘Revisiting the Idea of Urban Degeneration in Urban Britain, 1830-1900’,  
*Urban History*, 33, 2, 2006, 234-52, (252)

MacDonald, M. *Mystical Bedlam: Madness, anxiety, and healing in eighteenth-  
century England*, Cambridge University Press, 1983

MacKenzie, D. ‘Eugenics in Britain’, *Social Studies of Science*, 6 (3) 1976: 499-532

MacLeod, K, *Fictions of British Decadence: High Art, Popular Writing, and the Fin de Siècle*, Palgrave Macmillan, 2006

MacLeod, 'The Edge of Hope: Social Policy and Chronic Alcoholism 1870 – 1900', *J. Hist. Med.*, July, 1967: 215–45

Matsumura J. 'Mental Health as Public Peace: Kaneko Junji and the Promotion of Psychiatry in Modern Japan', *Modern Asian Studies*, vol.38, no. 4, 2004, pp. 899–930

Micale, M. 'On the "Disappearance" of Hysteria: A Study in the Clinical Deconstruction of a Diagnosis', *Isis*, 1993, **84**: 496-526

Mitchison, R. 'The Making of the Old Scottish Poor Law', *Past & Present*, 1974, **63**, 58 – 93

Müller-Wille S. & Rheinberger H. J. (eds.), *Heredity Produced: At the Crossroads of Biology, Politics, and Culture, 1500-1870*, MIT Press, Cambridge, Massachusetts, 2007

– *A Cultural History of Heredity I: The 17<sup>th</sup> and 18<sup>th</sup> Centuries*; Conference Preprint 222; *A Cultural History of Heredity II: The 18<sup>th</sup> and 19<sup>th</sup> Centuries*, 2003: Conference Preprint 247; *A Cultural History of Heredity III: The 19<sup>th</sup> and Early 20<sup>th</sup> Centuries*, 2005, Conference Preprint 294 [Max Plank-Institut für Wissenschaftsgeschichte]

Neve M., 'The Influence of Degenerationist Categories in Nineteenth-Century Psychiatry, with Special Reference to Great Britain', in Yosio Kawakita et al (eds.) *History of Psychiatric Diagnoses, Tokyo*, 1997

– 'Public views of neurasthenia: Britain 1880-1930,' in Gijswijt-Hofstra M & Porter R, *Cultures of Neurasthenia: From Beard to the First World War*, Rodolpi, Amsterdam, 2001

Nye, *Crime, Madness, and Politics in Modern France: The Medical concept of National Decline*, Princeton university Press, 1984

Pick D, *Faces of Degeneration: A European Disorder c. 1848 – 1918*, Cambridge University Press, 1993

Porter, R. *Mind-Forg'd Manacles: A History of Madness in England from the Restoration to the Regency*, Cambridge: Harvard University Press, 1995

– ‘The Patient’s View: Doing Medical History from Below’, *Theory and Society*, **14**, 2, 1985: 175 – 198.

Parnes, O ‘On the Shoulders of Generations: The New Epistemology of Heredity in the Nineteenth Century’, in Müller-Wille S. & Rheinberger H. J. *Heredity Produced*

Perkin H, *The Rise of Professional Society: England Since 1800*, London, Routledge, 1989

Pichot, A. *The Pure Society: From Darwin to Hitler*, Verso Books, 2009

Pinell P, ‘Degeneration Theory and Heredity Patterns between 1850 and 1900’, in Gaudillière & Löwy (eds.) *Heredity and Infection: The History of Disease Transmission*, Routledge (London), 2001

Rabinow, P. *French Modern: Norms and Forms of the Social Environment*, MIT Press, 1989

Richard. A, ‘American Literary Naturalism: The French Connection’, *Nineteenth-Century Fiction*, **38**, (4) 1984, 529 – 57

Richardson, H. W., ‘Retardation in Britain’s Industrial Growth, 1870-1913’, *Scottish Journal of Political Economy*, **12**, 1965: 125-149

– ‘Hardy and Biology’, in Mallet P (ed.), *Thomas Hardy: Texts and Contexts*, Palgrave, 2000, 156–179

– “‘Some Science underlies all Art’: The Dramatization of Sexual Selection and Racial Biology in Thomas Hardy’s *A Pair of Blue Eyes* and *The Well-Beloved*”, *Journal of Victorian Culture*, **3** (2) 1998, 302–338;

Rivera-Garza C. ‘Dangerous Minds: Changing Psychiatric Views of the Mentally-Ill in Porfirian Mexico, 1876-1911’, *Journal of the History of Medicine*, vol.56, 2001, pp.36-67

Rosen, G. ‘Hospitals, medical care and social policy in the French Revolution’, *Bull. Hist. Med.*, **30** (1) 1956: 124-49

– ‘Problems in the application of statistical knowledge analysis to questions of health (1711-1880)’, *Bull. Hist. Med.* **29**, (1) 1955: 27-45

Scull, A. *The Asylum As Utopia: W. A.. F. Browne and the Mid-Nineteenth Century Consolidation of Psychiatry*, Tavistock/Routledge: London & New York, 1991

– *Museums of Madness: The Social Organization of Insanity in Nineteenth-Century England*, London: Allen Lane, 1979

– *The Insanity of Place/The Place of Insanity: Essays on the History of Psychiatry*, Routledge, 2006

– *Madhouses, Mad-Doctors, and Madmen*, London: Athlone, 1989

– *The Most Solitary of Afflictions: Madness and Society in Britain, 1700-1900*, Yale University Press, 1993

Searle, R. *Eugenics and Politics in Britain: 1900-1914*, Leyden: Noordhoff International, 1976

Sirotkina, I. *Diagnosing Literary Genius: A Cultural History of Psychiatry in Russia, 1880-1930*, Johns Hopkins University Press, Baltimore & London, 2002

Smith, R. 'Legal Frameworks for Psychiatry', in G Berrios and H. Freeman (eds.), *150 Years of British Psychiatry, 1841-1991* (Vol.2.,1996), pp.137-51.

Söder H. P. 'Disease and Health as Contexts of Modernity: Max Nordau as a critic of Fin-de-Siècle Modernism', *German Studies Review*, **14** 93), 1991, pp. 473-487

Soloway, R. 'Counting the Degenerates: The Statistics of Race Deterioration in Edwardian England', *Journal of Contemporary History*, **17**, 1982, pp.137-64

– *Demography and Degeneration*, 1995, The University of North Carolina Press

Still, A. & Velody, I. *Rewriting the History of Madness: Studies in Foucault's Histoire de la folie*, Routledge, 1992

Stocking., G. W. *Victorian Anthropology*, The Free Press: New York and London, 1987

– *Race, Culture, and Evolution*, The Free Press: New York, 1968

Stove D. *Darwinian Fairytales: selfish Genes, Errors of Heredity, and Other Fables of Evolution*, Encounter Books, 2009

Sturdy, H. and Parry-Jones, W. 'Boarding-out insane patients: the significance of the Scottish system 1857 – 1913', in Peter Bartlett and David Wright (eds.), *Outside the Walls of the Asylum: The History of Care in the Community 1750-2000*. London: The Athlone Press 1999

Suzuki, A. *Madness at Home: The Psychiatrist, the Patient, and the Family in England, 1820 – 1860*, University of California Press, 2006



Taylor, E. B. *Primitive Culture: Researches into the Development of Mythology, Philosophy, Religion, Art, and Custom*, Murray, 1871

Thompson, E. P. *Whigs and Hunters: The Origins of the Black Act*, Pantheon Books, 1976

Thornton, R. *The Decadent Dilemma*, London, Arnold, 1983

Valverde M. *Diseases of the Will: Alcohol and the Dilemmas of Freedom*, Cambridge Studies in Law and Society, 1998

Waller, J. C. 'Ideas of Heredity, Reproduction and Eugenics in Britain, 1800-1875', *Studies in the History and Philosophy of Biology and the Biomedical Sciences*, 2001, 32, 3, pp.457-489

– 'The Illusion of an Explanation: The Concept of Hereditary Disease, 1770-1870', *Journal of the History of Medicine and Allied Sciences*, vol.57, 2002, pp.410-48

Ward, J. 'Le malade mental étranger durant l'entre-deux-guerres: une double aliénation médico-administrative', *Actes de l'Histoire de l'Immigration*, 2002, 1-14.

– 'Poor Old Ancestors: The Popularity of Medical Hereditarianism, 1770-1870', in *A Cultural History of Heredity II*

White, 'Training medical policemen: forensic medicine and public health in nineteenth-century Scotland', in M Clark and C Crawford (eds.), *Legal Medicine in History*

Woiak, J. *Drunkness, Degeneration, and Eugenics in Britain, 1900-1914*, Unpublished Ph.D. Thesis, University of Toronto, 1998

Wood, Roger J. 'The Sheep Breeders' View of Heredity Before and After 1800', in Müller-Wille & Rheinberger (eds.)

