

THE CRIMINAL RESPONSIBILITY OF THE ALCOHOLIC.*

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THE legal responsibility of the alcoholic has been discussed more than once in this Society, and its further debate may perhaps seem superfluous to those who have followed the earlier discussions, or who are acquainted with the able papers devoted to the subject by such authorities as Dr. Crothers and our founder and first president, Dr. Norman Kerr. Nevertheless, though we may not have much that is new to say about it, it is a question of such great practical importance that it seems desirable to give it a frequent place in our debates, and therefore we are, I think, well advised in selecting it as the subject of our discussion to-day, though I could have wished that the task of opening that discussion had been placed in more competent hands than mine.

In general, when we speak of alcoholic crime we have in mind homicidal offences, for, although alcohol leads to other forms of delinquency, it is in connection with homicide that its influence is most evident; in this country, at all events, it is by far the most important individual cause of that crime. In dealing with the legal responsibility of alcoholic criminals, it will be practically convenient to adopt the same point of view, and to limit our remarks to homicidal cases. In such cases the question of responsibility may arise in connection with three conditions—viz.: (1) Chronic alcoholic insanity, (2) delirium tremens, and (3) the dream-consciousness of morbid drunkenness.

In cases of chronic insanity due to alcohol, the question is decided by the same criteria that are accepted in insanity of other

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origin, and their consideration need not occupy us now. Similarly we may leave aside the cases of distinct delirium tremens, which rarely present much difficulty from the medico-legal point of view. It is when we come to cases of alcoholic automatism, to crimes committed in the dreamy states of pathological drunkenness, or to cases which are intermediate between this condition and pronounced delirium tremens, that we meet with differences in opinion and in practice. Sometimes, as Dr. Atkinson points out in his interesting paper published in the last number of our *Journal*, in cases of this sort the fact of drunkenness carries no weight at all; sometimes, on the other hand, it is allowed to reduce the crime to manslaughter; or, again, in other instances it is held equivalent to legal insanity, and excludes responsibility. This uncertainty in practice, which is made more remarkable by the fact that so large a proportion of alcoholic crimes belong to this category, gives a peculiar interest to the study of the alcoholic dream-state, and I would accordingly venture to suggest it as the special subject of our discussion to-day. In doing so, what I more particularly aim at would be to emphasize the very important point that this dream-state, far from being of the vague and nebulous character that is sometimes supposed, is in reality a very well-defined condition. It is worth while to insist on this point, since an unfounded belief to the contrary would seem to be the origin of the chief objection urged against admitting this condition as a bar to full legal responsibility—the fear is expressed that the effect of recognising such a plea would be to allow any criminal to secure immunity by getting drunk before he committed murder; and, of course, if there were no plain differences between the pathological drunkenness of the dream-state and what by contrast we may call “normal drunkenness,” this danger would undoubtedly exist, and full responsibility would rightly be imputed in both conditions alike: for responsibility, we have to remember, is, after all, not a medical question—it is a purely legal convention, whose limits must in the long-run be fixed by considerations of social utility, and therefore the criticisms that medical science may address to legal practice in this matter are only relevant in so far as they recognise the pre-eminence of these considerations. Accordingly, what we have to do is to show that this state of pathological drunkenness is so distinct in its symptoms and causation that its diagnosis does not present greater difficulty than is encountered in the case of other mental disorders of a transitory

character, and that therefore its recognition in forensic practice would not be attended with the risks to which we have referred.

Let us start from a typical instance of murder in the alcoholic dream-state: A man has been drinking for some years, and is suffering from evidences of chronic poisoning—from tremor, cramps, morning vomiting, and so forth; it has been noticed that he has gradually come to show a special susceptibility to alcohol, so that after a few glasses, instead of his old symptoms of drunkenness, he “loses himself,” and says and does things of which he has afterwards no memory—very likely threatens his wife, or makes an abortive attempt to commit suicide; then one day it happens that in this condition he kills his wife and family, and cuts his own throat. If he recovers he will say that he remembers nothing whatever about the affair, or he may have a more or less hazy notion of his crime, but be utterly at a loss to explain it. That is the ordinary history of alcoholic homicide.

Now, in a case of this sort, what are the characters on which we can rely in deciding whether the murderer’s assertion is true or false—whether we have to do with a genuinely unwitting agent or with a malingerer? The answer to this question is obviously to be sought in the study of actual cases of alcoholic automatism; not only criminal cases, but also, and perhaps more particularly, cases where the automatic conduct has been of a socially indifferent character, since in these circumstances we can largely discount the likelihood of wilful deception. It is accordingly on evidence of this wider scope that are based the following remarks touching the more important characters of the dream-state:

1. *Conditions that Predispose to Automatism in Alcoholic Intoxication.*

—An element of automatism belongs, of course, to the common phenomena of drunkenness. When, however, the symptom develops beyond the rudimentary stage to the prolonged dream-state that we have here in view, the cause is generally to be sought in some nervous abnormality in the intoxicated subject. Crothers lays it down in one of his earliest papers on the subject that “this trance condition will always be found associated with a peculiar neurotic state, either induced by alcohol or existing before alcohol was used,” and all subsequent experience confirms this view. When distinct automatism develops under the influence of alcohol, it may almost be taken for certain that we are dealing with a neuropathic subject. No man becomes mad when

drunk who was quite sane when sober. It is, of course, true that the quality of the intoxicant and the form in which it is taken also modify the character of drunkenness, the liquors that are contaminated by the higher alcohols tending to induce a more turbulent intoxication. But the influence of this factor in forensic practice is of relatively slight importance; it operates simply to reinforce or diminish, and that only in a small degree, the individual susceptibility. I am not, of course, to be taken as underestimating the great importance of securing the purity of alcoholic liquors, whereby I am satisfied the immediate and remote evils of excess would be materially lessened. What I mean is that I think we should be quite in error in supposing that differences in the character of conduct in drunkenness can be explained to any important extent by differences in the intoxicant; it is, in short, a matter mostly not of the whisky, but of the brain it acts on.

In the large majority of cases, the mental abnormality which creates this special susceptibility is due to the cause indicated in our schematic case—namely, to chronic intoxication. Next in importance to this condition as predisposing to automatism come epilepsy, head injuries, and insane or alcoholic hereditary degenerescence.

2. *History of Special Cerebral Reaction to Alcohol.*—This is closely connected with the first point. As the neuropathic conditions that predispose to automatism are nearly all of them of a permanent nature, it is to be expected that the patient will already have shown repeatedly his special susceptibility to the drug. In the absence of such a history and of a clearly sufficient neuropathic cause, one must hesitate to entertain the theory of automatism in a criminal case.

3. *The Character of the Memory-defect in the Automatic Phase.*—An obscuration of memory is the special characteristic of cerebral automatism of whatever origin. In the case of alcoholic automatism, however, it has certain peculiarities which are very liable to mislead, and notably to give a false impression of malingering. Thus the automatic phase is, as a rule, gradual and not abrupt in onset and termination, and the break in memory shows corresponding gradations. Moreover, some recollection, though more or less hazy, of events deep in the automatic phase is much more frequent in alcoholic cases than it is in epileptic. This fact,

however, is perhaps rather helpful than confusing in diagnosis, for the impressions that are retained in these conditions seem to be always those with intense emotional agitation. A man who commits a murder in the dream-state, if he remembers anything, will remember the emotional storm and the impulsive act arising out of it; he will not, as the malingerer will often do, profess total amnesia of his crime, while able to recall trivial incidents deep in the supposed automatic phase. This is a point which may at times be of some moment.

Another matter of considerable importance is that impressions may be recalled very soon after the automatic phase, or may be revivable in consciousness towards the end of the phase, but may subsequently lapse totally from memory. This fact one can repeatedly verify in non-criminal cases, and, judging by analogy from them, one is forced to admit that the same thing may happen in criminal cases, as when, for instance, the murderer immediately after the crime makes some remark which apparently implies premeditation and conscious motive, but subsequently alleges total amnesia. The same thing, of course, has been observed in connection with epilepsy.

4. *Character of the Act.*—Very often the crime of the alcoholic is characterized by the same incoherence, the same lack of apparent motive, the same savage violence, and the same inconsistency with the individual's normal feelings that mark so frequently the crime of the epileptic. But instances to the contrary are extremely frequent. In regard to the last point more particularly—the relation of the act to the individual's conscious feelings—it is to be noted that in cases of chronic intoxication, which, of course, form the largest category, the homicidal impulse takes its origin in the general organic disorder, and, since this morbid condition is of relative fixity, there is likely to be a continuity of conduct and feeling from the waking consciousness to the automatic phase which might easily be construed into evidence of premeditation. In the alcoholic, evidence of malice before murder does not in the least tell against automatism.

5. *Demeanour of the Criminal.*—Like the character of his conduct, the general demeanour of a man in the dream-state of morbid drunkenness may vary widely from that suggestive of extreme mental confusion to a degree of co-ordination hardly to be dis-

tinguished from that of the waking state. In cases of the latter sort some information might be gained from a phenomenon to which Von Gudden has recently drawn attention. He has pointed out that in more than half the cases of pathological drunkenness, with excitement and irritability of temper, there is more or less diminution of the pupillary reaction to light, which usually passes off after sleep, but persists in cases where the irritability continues. This observation one can frequently verify, and it seems likely that fuller experience may give it considerable value as a medico-legal test.

Of these different points, which I have necessarily treated in a very sketchy manner, I think we may specially emphasize the first two—namely, the constant association of the alcoholic dream-state with a pathological predisposition, and the evidence of that predisposition in the drinker's past history. These are the facts that will best warrant us in suggesting that pathological drunkenness can be recognised with safety in forensic practice as a condition similar to other transitory disorders of mind which it is in the interest of society to regard as excluding responsibility. Such a recognition, it may be noted, is especially desirable in order to further the tendency of popular opinion to adopt rational methods of treating the alcoholic. I do not, of course, mean to suggest that a strict regard for logic is at all likely to guide the community in these matters; but there is, none the less, a rough sense of fairness and consistency which works to the same end, and which will not allow limits to be set to the drunkard's liberty without corresponding limits to his responsibility. Liberty and responsibility are in this way rightly felt to be connected attributes of the citizen, and if by reason of disease of mind he is to suffer abatement of his liberty, he will also benefit in restricted responsibility; and conversely, so long as he is held fully responsible, it will be very hard to curtail his freedom. And, of course, it is only by curtailment of the drunkard's freedom that you can do anything to check alcoholic crime; in point of fact, the main *raison d'être* of the institutional treatment of the inebriate is its influence in preventing crime through the temporary elimination of potential criminals and fathers of criminals. And therefore, I repeat, in enlarging the limits of irresponsibility to include this condition, society, so far from weakening its defences against crime, would, on the contrary, materially strengthen them.