Correspondence.

LETTER FROM FRANCE.

PRESENT DAY QUESTIONS CONCERNING CRIMINAL RESPONSIBILITY.

The Congress of Alienists and Neurologists, held at Geneva in 1907, offered as its first subject for discussion a report of Prof. Gilbert Ballet on medicolegal expert testimony and the question of responsibility. The reporter's thesis, which aroused sharp discussion at the time, although finally adopted by a vote of the Congress, has since been the object of numerous articles both in the daily press and in scientific reviews. Recently, the most brilliant of the reporter's antagonists, Professor Grasset of Montpellier, has resumed the discussion in a book on the "Responsibility of Criminals." The problem raised is of paramount importance, in that it attacks the very foundations of the rôle of the expert and may call into question his *raison d'être*; it also has side issues which embrace judicial, penal, legislative and social questions. It is, therefore, of the highest importance to determine if the problem is really in order. The principal writers dealing with it have so considered it and have begun their work by framing definitions, to which we shall turn our attention here.

Professor Ballet, in requesting to be commissioned with this report, had stated specifically that he took the negative view on the question as to whether or not, in the matter of mental expert testimony, questions of responsibility come within the domain of the medical man. "I should like," said he, "to show in this report, à propos of the question of so-called responsibility, when the rôle of the expert ends and consequently that of the magistrate begins, at the risk of the latter's turning to the legislator rather than to the physician when the law does not place at his disposal practical means for handling certain situations which the expert should confine himself to pointing out and specifying."

The term "responsibility" has no significance, contends Dr. Ballet, and on this point his adversaries agree with him, unless there is attached to it some qualifying epithet which defines its meaning. In this way we speak of moral and social responsibility, what we term penal responsibility existing only subordinated to moral or social responsibility.

Questions of moral responsibility are limited to the notions one has of free will or determinism; they are of a metaphysical order and have nothing to do with the physician.

Social responsibility "does not refer to criminal faults or to actual crimes, but to wrongs. It does not demand punishments, but a reparation or an indemnity. It does not imply that the author of the wrong has committed it voluntarily, but simply that he has committed it."

The outcome of this is that without having to concern one's self with determining whether or not the guilty person was a free agent at the moment the deed was done, one has only to make known his potential harmfulness, that is to say how great a menace, present or future, he is to society, and to indicate measures suitable for safeguarding society from such a danger.

From this it follows that "one cannot speak of moral responsibility without encroaching upon the domain of metaphysics or of social responsibility without intruding upon judicial territory; it is the philosopher's function to determine whether or not the person in question is a free agent; the magistrate or the legislator must frame measures to cover the social responsibility of the various categories of delinquents or criminals."

Hence, the medical expert has nothing whatsoever to do with either the one or the other of these questions and his rôle is limited to a question of fact. No matter what may be his personal opinion upon a metaphysical question, no matter how great may be his desire to bring about a change in the criminal code or to revolutionize medical expert methods, "the medico-legist called upon to give his opinion on a question of what, for the most part, is clearly-cut fact, should confine himself strictly to enlightening Justice on such fact." This is the rôle assigned to him by article 6 of the Penal Code and the only one he ought to play. His function is really to determine if, at the moment of the act, the guilty

person was according to the terms of the code, in a condition of "mental alienation" or "impelled by an irresistible force."

In practice, however, the generality of experts talk about responsibility. Dr. Ballet emits the opinion that if the use of this term makes but little difference in clearly-defined cases where the guilty person is either completely unbalanced or absolutely sane, it is quite a different matter in the case of "deviates" adjudged of "limited responsibility"; this latter subject has given rise to contradictions, apparent it is true, but very prejudicial to the good standing of the experts; above all, the classification "delinquents of limited responsibility" is absolutely disastrous in that it leads to the meting out of short sentences. The question of short sentences and of the proper method of dealing with "deviates"—a really large and important class—will be discussed later on.

Dr. Gilbert Ballet considers it, then, an absolute principle that the question of responsibility is not within the domain of the medical expert. And yet, in spite of the categorical character of his opinion as to the limits of this domain, we should not follow the example of those who characterize this opinion as too rigid.

Dr. Ballet spoke before "La Société des Prisons" as follows: "I have been reproached for limiting the mission of the medical expert to such an extent as to annihilate his usefulness before the magistrate . . . but . . . the medical expert must still not only make a diagnosis but also show—and this is the very essence of his mission—the influence exercised upon the acts of the prisoner, and particularly upon the incriminating act, by the degenerative stigmata he presents. I would go farther and say that I see nothing objectionable in the expert's indicating such measures (it makes no difference if they be at present impracticable) as he considers best adapted for handling the situation in question. In so doing he still keeps within his functions as a physician."

The thesis upheld by Professor Ballet raised a sharp discussion at Geneva. We shall take up the arguments advanced, leaving aside for the moment all considerations bearing upon "limited responsibility." The opinion of Dr. Grasset will also receive attention later on.

Dr. Giraud (of Rouen) calls attention to the fact that the principle of responsibility underlies all legislative action; even in a civil

matter the insane may be declared irresponsible. It is therefore impossible, in making a diagnosis of mental alienation in a criminal or civil case, to avoid accepting all the consequences exacted by magistrates or by the administration.

Dr. Francotte (of Liège) believes that the question of responsibility is within the domain of the expert alienist. Responsibility should in effect be synonymous with punishability which disappears through the fact of the alienation. Now, why is it, he asks, that the alienist should be considered incompetent to pass upon the matter of responsibility, while the first-comer is often called upon to give a practical solution of it? If to conclude that a person in sound mental health is responsible and an insane person irresponsible is a simple pleonasm, "it is precisely when the expert's opinion becomes necessary for the court's enlightenment that Dr. Ballet recommends him to decline to give it. I mean by this in cases which stand midway between mental alienation and mental soundness; in other words, in the cases of the 'semi-insane' of Grasset or the 'mattoids' of Lombroso." And he adds: "If one were to be restricted to mere statements of fact, one would often wind up by merely putting a riddle to the judge instead of enlightening him." For this reason Dr. Francotte declares his intention to pursue the error of his way.

Professor Joffroy (of Paris) thinks the difficulties might be surmounted by changing the term responsibility: it is a question of words.

This opinion is shared by Professor Régis (of Bordeaux), who declares that the question raised must yield precedence to another which may thus be formulated: Has the expert completely fulfilled his mission in justice when he has made a medical diagnosis? The expert should draw the practical, the medicolegal conclusion from his diagnosis in indicating to the judge whether the mental state of the subject makes him answerable to the law for his misdeeds, and if so, to what extent, or unanswerable. However one may handle the problem there are necessarily three propositions to deal with successively: 1. The scientific diagnosis; 2. The medicolegal deduction; 3. The legal decision. The expert cannot be limited to the first; he must also formulate the second, else the magistrate's task would become impossible. The important thing is

that this deduction should be formulated ; terms are of only minor consequence ; the word " responsibility " has the advantage of being in present use ; if one should prefer the term " imputability " or " criminal capacity," Dr. Régis would adopt it with equal readiness.

Contrary to the preceding speakers, Professor Bard (of Geneva) agrees with Professor Ballet, since he considers that the term responsibility evokes the idea of free will and punishment, and he would like to see substituted for this term that of discernment.

Professor Bernheim (of Nancy) believes that the medical experts cannot always avoid the question of moral responsibility with regard to a criminal. He thinks that in cases of violent passion, of irresistible impulse, the physician has often to reply to a question concerning the moral liberty. But who would make so bold as to descend into the conscience of another and say that he acted under conditions which render him culpable. Let us admit it—in our heart of hearts we may not judge one of our kind. Society, judges or doctors, has no right to put itself the question : Has the accused committed an act, and should this act bring with it the punishment set down by law ? Is there a social interest in his undergoing punishment, in his being put out of harm's way, in his punishment's serving as an intimidation to others—that is to say, as a " coercive prophylactic suggestion ? " Society has only the right of defence, of protection, of social prophylaxis. Moral hygiene, social defence, this is all society may accomplish. Justice is not of this world.

Dr. Pâris (of Nancy) thinks that the expert, while still keeping on medical ground, should answer all questions on which his specialty gives him special light.

For Professor Dupré (of Paris) the notion of responsibility is not of a medical order. The expert should take a definite stand in his medical mission which, in his opinion, is made up of three parts : diagnosis, prognosis, and the indication of a treatment, the prognosis embracing, so to speak, the coefficient of harmfulness and the treatment the indication of protective measures useful to the individual and to society at large.

Dr. Vallon (of Paris), in common with other speakers, considers the question to be one of terminology. For his part he uses the term responsibility in the Penal Code sense.

Professor Ballet in reply to the various speakers, asserts that he has simply demanded that whatever is of a medical order should fall to the physician, and that that which is not should be elided from his rôle as expert; he disclaims having urged that the expert give only a diagnosis; the expert should also call attention to the connection between the conduct of the guilty person and the mental state formulated in the diagnosis and at the same time indicate the proper measures to be taken. He ends up by offering the following motion: The Congress of Alienists and Neurologists of France and of French-speaking Countries, assembled at Geneva and Lausanne, in view of the facts—(1) that article 6 of the Penal Code, in virtue of which experts are commissioned to examine delinquents or accused persons suspected of mental troubles, says simply that there is neither crime nor delinquency when the person detained on the charge was in a mentally unbalanced state at the time of the act; and that the word responsibility nowhere appears; (2) that questions of responsibility, whether moral or social, are of a metaphysical or judicial, and not of a medical order; (3) that the physician, competent only to pronounce upon the reality and the nature of the mental troubles in the accused and the possible rôle played by these troubles in bringing about the criminal acts, has not to judge of these questions—offers this motion: That magistrates in their decrees, judgments and decisions restrict themselves to article 6 of the Penal Code and not require the medical expert to answer the aforesaid questions which are outside of his sphere.

This motion, put to the vote of the Congress, not at this session but subsequently, was carried by 26 yeas against 18 nays. (We would call attention, without comment, to the small number of those attending the Congress who took part in the voting and to the fact that the Congress not being an association, enrolment was open to all.)

Partisans of the negative side refused to admit defeat. The protagonist of the opposition was Professor Grasset (of Montpellier), who has resumed his campaign in a book on "The Responsibility of Criminals." We have purposely said nothing of his arguments up to this point in order to condense into a single résumé the analysis of his thesis.

His arguments, as he himself says, may be grouped under two headings: (1) responsibility and irresponsibility; (2) limited responsibility. Let us examine the first point.

Dr. Grasset is of the opinion that "the doctor is perfectly qualified and alone qualified to enlighten magistrates upon the responsibility, the irresponsibility or the degree of responsibility of a given individual." Still, he distinguishes between three kinds of responsibility; with the reporter and all the speakers of the Geneva Congress he eliminates from the debate moral responsibility, which hinges on the question of free will. We should term moral responsibility what was formerly termed simply responsibility and which is one with free will. "It is a sense in which magistrates or physicians never take the word responsibility when considering the responsibility of criminals."

Next comes social responsibility, of which he takes the same view as Dr. Ballet. It is on its account that the medical expert comes in and this intervention tends to bring out a third variety of responsibility, for the physician has in his hands but a single element of social responsibility. Social responsibility or culpability embraces in effect, with such elements as materiality of facts, provocation or legitimate defence, this element: was the individual, in the prevolitive battle which preceded the crime, under physiologic conditions sufficiently normal to enable him to weigh and decide upon this act? Was he or was he not in a condition of "mental alienation," and was he able by reason of his physiologic condition "to resist" the forces which impelled him to wrong-doing?

In the deliberation which precedes all voluntary action and in decision we have to do necessarily with the nervous system, and particularly with the highest centers, the neurones of the gray matter of the cortex, which preside over psychic functions. We have, therefore, to do with a third responsibility, Professor Grasset tells us, that which physicians have studied—physiologic responsibility or responsibility in a medical sense.

Physiologic responsibility is, then, the normal state of the psychic portion of the nervous system. Since, indeed, in order to be responsible one must not be alienated, it is necessary to the affirmation of social responsibility that the nervous elements should be sound. Physiologic or medical responsibility is distinct from

moral and social responsibility, and independent of all philosophical and religious doctrines. Whatever these latter may be, one may still judge of the normality of the psychic neurones. "I call responsible," declares Dr. Grasset, "from a biologic and medical point of view, the man who has sound nervous centers—centers which are in a condition to judge sanely of the comparative value of different incentives and motives." And the author calls attention to how well his opinion satisfies the requirements of the present penal code and how thoroughly it conforms with those of criminologists like Tarde and Saleilles, for whom the idea of normality is based in the matter of responsibility.

From the above it is obvious that Professor Grasset is strongly in favor of retaining in our codes and practices the determination of responsibility as at present required, and that he is a determined opponent of Dr. Ballet's thesis, although, doubtless, he is not wedded to the term responsibility if it leads to confusion. It may be necessary to define its meaning or find a better word, but the expert, as a result of his examination, must give his opinion as to whether the accused is responsible or not. "What I refuse to agree to is that the term be suppressed (unless we discover a good substitute for it) and that the physician be instructed to give simply his diagnosis, leaving the question to be settled by other means."

Dr. Grasset pursues his adversary vigorously. Citing Dr. Ballet, who said to *La Société des Prisons*: "The question of responsibility or irresponsibility is to me as medical expert, acting and speaking solely as a physician, absolutely indifferent. To me as biologist or psychologist, it is not indifferent; but as medical expert it is entirely foreign to my rôle, a question with which magistrates and judges from an altogether regrettable custom, continue to inflict us." To this Professor Grasset replies: "1. One cannot help being both biologist and psychologist if one is an expert. 2. The expert may not limit himself to the mere rendering of a diagnosis; he must go farther and specify as to responsibility, irresponsibility or limited responsibility. 3. By such a course of action the expert is not dabbling in metaphysics but dealing with the question of the normality of the neurones."

Finally, with regard to the crucial point in the Ballet motion,

that the Code does not speak of irresponsibility, he shows that the legal project governing alienists, voted in the Chamber in 1907, employs this term. And he regrets that the Geneva Congress did not vote for the consecration by law of this custom of asking physicians their opinion on the medical responsibility. He had in fact offered the following motion which did not come to a vote:

"The Congress offers the motion: (1) that the notion of *responsibility*, irresponsibility, and limited responsibility be expressly introduced into French law, specifying that such terms are employed in a strictly medical sense; (2) that the law allow the court, in certain cases, to supplement or replace sentence with a compulsory treatment in institutions specially designed for condemned persons whose responsibility has been recognized to be either diminished or abolished."

Dr. Grasset's entire book and his whole campaign are an attempt to gain from the law the acceptance of his motion.

Up to this point we have heard only from the biologists, men whose legal mind is only rudimentary, and who naturally look only at the letter of the law and jurisprudence when clamoring for a change. For them the future is a greater source of anxiety than the present. Messrs. A. and L. Antheaume, on the other hand, in an article in which their legal training naturally leads them to give great prominence to what is code, positive actual law, etc., criticise the views of the preceding authors; they consider that from the definitions of responsibility given by these authors, the present problem cannot be settled, and that, in actual law, penal and civil responsibility "are, in a way, combinations in different proportions of the elements constituting the current ideas relative to speculative philosophy, moral and social responsibility."

Having developed the preceding affirmation they say in conclusion: "Hence the meaning of the term responsibility should not be narrowed down to its moral or social bearings. To these—which are of a purely speculative order—we see added two others in actual law, the penal and the civil. And if we observe that in the analysis we have just tried to make of these two latter, one finds at one and the same time in each of them an element of moral and social responsibility, have we not the right to conclude that the last-named elements are probably merely distinct forms, with

different consequences, of one and the same philosophical notion—that of responsibility before the conscience—while penal and civil responsibility in turn are merely distinct forms of responsibility before the law.” Magistrates and experts should not transgress the limits of positive law ; so long as the law exists, they have only to apply it.

After all, even on the ground of positive law the question of responsibility which confronts the judge is not identically the same as that the expert has to face. For the judge there is the general question comprising all questions arising from the case in hand—materiality of the fact, criminal intent, aggravating circumstances (premeditation, repeated offence), mitigating circumstances (left to the decision of judges and juries), excuses provided by law, as for theft between parents or direct relatives, etc. For the expert there is a special question, that imposed by article 64 of the Penal Code—the question of alienation. From this it follows, say Messrs. Antheaume, that when the expert has replied to the two questions concerning the existence of alienation or of defects demanding the indulgence of the judges, not merely by setting up a diagnosis but by showing that the crime was the result of mental disease or that the criminal’s acts in general and the incriminating act in particular are to a certain extent the result of a mental defect, he has then fully performed his duty. They admit that the general question of responsibility must be faced, but by whom? By the judge alone and not by the expert. The expert is interrogated by the judge on only one element of responsibility—the psychophysiologic. If, then, the expert is not called upon to employ the expressions—responsibility, irresponsibility, limited responsibility—it is not, as was stated at Geneva, because the Penal Code does not raise the question of responsibility, but simply because the question is laid down for the judge and not for the expert.

This controversy made a great stir ; it has passed from the domain of science into the columns of the daily press. Into these we shall not pursue it, since too many extra-medical considerations have been raised there which are entirely beyond the limits of this letter.

Without going outside the question, the reported discussion arouses several reflections. The first of these springs from the

observation made by the majority of the disputants that the controversy hinges on a question of words, of definition. Granting this, it would seem as if a prime requisite for a proper appreciation of the merits of the debate must be a consideration of the meaning of the word responsibility and the use made of it; after that we may be able to say upon which side we stand.

The word responsibility is applicable to persons only. A man is responsible, he must answer for his doings, that is to say, give an account of them, and receive in return either reward or punishment. One is compelled to answer only to such as have the right to question, to set themselves up as judges—in other words, to a law. For each of us there are two laws, that whose existence we feel in our conscience, or in which we believe as coming to us from God—the moral law; and that to which we are subjected as living in an organized society—the social law, a *positive* and, for us, a written law.

There are, then, two sorts of responsibility, the moral and the social, and there is absolutely no other.

The term responsibility is however in practice joined with numerous epithets, but even a rapid examination of them shows that they add nothing new to the two forms just mentioned. For example, physiologic responsibility is not really a special form. One is not responsible before physiology. "Physiologic responsibility" is an element of responsibility. In all responsibility there are numerous elements, as Professor Grasset and the Messrs. Antheaume have clearly shown. Among these elements (materiality of the fact, intent, absolving circumstances, etc.) there is one that is always necessary but never all-sufficient, namely the state of health of the brain, the normality of the psychic neurones; and to our knowledge, there is no moral or positive law which, in our civilization, neglects to take it into consideration, at least in principle. This normal state is not an additional form of responsibility, it is simply an *element* of all responsibility.

Still other epithets are tacked onto the term responsibility. Does not responsibility enter into a diversity of affairs; isn't there a responsibility in penal and civil matters, as in professional, medical, etc., which is, according to the case, civil or penal? To speak of medical or professional, penal or civil responsibility is a simple abbreviation. To put the whole case, one should say, for example,

that such and such an accused person is irresponsible before the law in a penal affair for homicide, because by reason of his mental alienation he lacks a necessary element of responsibility, and that those who had the care of him are responsible for this same deed in a civil way for their neglect to keep him under proper surveillance.

Under the above conditions it readily appears that the physicians rôle is a subordinate one in the determination of responsibility. So much so that Professor Ballet's criticism is well-founded when, penal law in hand, he points out the abuse made by experts and the magistrates who employ them, of the word responsibility, and when, in harmony with the majority of the Geneva speakers, he denies to the physician the right to concern himself with anything other than the state of the nervous system, that is to say, with that element of responsibility which alone is of a medical order and with which the physician is alone able to cope.

On this same point, we can only regret that Professor Grasset does not employ sufficient clearness of expression to satisfy the very desire he has himself expressed apropos of the word mind: "It seems to me desirable that the meaning of words should not change with the individual doctrine. One should not be at liberty to denature and transform their traditional meaning under the pretext of modernizing the conception of them." Doubtlessly he would have more successfully defended an otherwise worthy thesis had he not improperly employed the term physiologic responsibility to signify the physiologic *element* of responsibility.

The Messrs. Antheaume make a legitimate use of the word responsibility when they declare that the physician cannot settle this question, and that the judge alone can and ought to do so. Further, that the judge, in order to fulfill this duty, needs to know all the elements of the responsibility he has to pass upon; he therefore turns to the medical expert for information concerning the physiologic element. He has no right to ask more of him.

It is in truth, easy to show that the authors who appear to be most at variance, are in reality in harmony on this fundamental aspect of the question. Even Professor Grasset himself says, "One may say, if one will that physiologic responsibility is one of the elements of social responsibility but it is still only an

element. Social responsibility is a synthetical matter, a collection of elements, of which the physician may furnish one but the magistrate alone can do the synthetizing." Obviously, then, there exists on this point, in spite of the divergence of language, a real harmony which a greater exactitude of expression would have more sharply brought out. Let us grant that the authors cited use the word responsibility in varying senses; it may even be that their differing expressions render their thoughts more clearly, but all, and at the Geneva Congress Drs. Giraud, Francotti, Régis, and Dupré in particular, are unanimous in according to the physician the right to pass upon but a single element—the psychophysiologic.

The important fact to be brought out, however, is that the restriction of the power of the medical expert to the examination of but one element of responsibility in nowise modifies the general problem, which is a moral and social one; criminologists may study it as it actually exists in the Code, or in its futurity, from the point of view of abstract justice; the legislator may perhaps modify it, but in existing legislation there is a responsibility which is implicitly, though clearly intended by the Penal Code which holds every adult responsible for his acts. In view of this, if the expert has not to establish the existence or non-existence of responsibility in an accused person, "if the expert is not called upon to employ the expressions—responsibility, irresponsibility, limited responsibility,—it is not as was said at Geneva because the Penal Code does not put the question of responsibility at all, but simply because it puts it only to the judge, and not to the physician" (Antheaume). The physician has no more need to ignore the existence of responsibility than he has to ignore the fact that there is a civil or a penal code. Aware of the limits of his commission, he nevertheless knows what place considerations of justice other than his own occupy. He must not ignore them, for it is his duty to enlighten the magistrates who must consider this very problem. Far from following the counsel of Dr. Ballet and repudiating the term responsibility, he may well conclude from expert examination (as we have more than once done since the Geneva Congress) that a certain accused person coming within the scope of article 64 of the Penal Code is by reason of this fact irresponsible, whereas another, although mentally defective, does not come under the scope of this article, but is still entitled to benefit by extenuating circumstances of a pathologic order.

The controversy set on foot by the report of Dr. Ballet has given the various authors involved in it a chance to air their views on another subject also—the limits of the medical expert's rôle. All agree that it should be confined to a medical appreciation of a given case, but it seems to be Dr. Ballet's idea to go considerably farther and limit the rôle to diagnosis exclusively. "To resume," said he, "the medico-legist will have fulfilled his commission when, in the case of an insane criminal, he has shown the pathologic nature of the motives of an act (that is to say that these motives spring from a delusion, an irresistible impulse or an hallucination) or demonstrates the enfeeblement of judgment and memory which renders the alienated person incapable of appreciating the moral value of his acts. "It appears, however, that the author has here simplified his ideas to an extraordinary degree, for we have already read his expressed opinion that the expert should indicate the connections between the disease diagnosticated and the incriminating acts and also what measures, possible or at present unrealisable, would be most adaptable to the situation in hand.

This is exactly what Professor Dupré has shown when he declares that the medical mission of the expert comprises diagnosis, prognosis, and treatment. It is what Professor Régis particularly emphasized when, in the passage already cited, he says that those propositions necessarily and successively present themselves: (1) the scientific diagnosis, (2) the medico-legal deduction, (3) the legal conclusion. The expert should not limit himself to the first; he should also formulate the second, else the task of the magistrate would be rendered impossible.

Such, however, is not the opinion of Messrs. Antheaume who refuse to the expert all share in the passing of sentence. If, say they, the physician, just as any citizen, has the right to find the position of certain delinquents, those characterized as of limited responsibility for example, regrettable in that it is not better established by present legislation, "as expert the matter is none of his concern. When he has determined whether or not the accused person comes under the class to which the penal law may apply, when he has told all that concerns the insanity in the legal sense of the word or when, having determined, if not the condition of insanity, at least the pathologic defects, he has established the

relation between the defects and the crime committed, he has fully performed his duty."

We cannot share such an absolute opinion, and one which, however defensible from the point of view of strict procedure, can never satisfy the conscience of the expert. The latter, it is true, merely gives an opinion; he does not render a judgment and his appreciation of a case cannot possibly bind a judge to any serious extent. On the other hand, however, the expert must not forget that he speaks as a representative of science, which is his sole *raison d'être*, and that he cannot of and by himself make the division of the various branches of his medical science. If he must lay aside all that is not of the scientific domain, if, even on this his own ground, he must indicate with care the difference between what is conjectural and what may be accepted as proved, he must not forget that the duty of the physician, and of the expert physician like every other, is to give with the diagnosis its consequences and to suggest the measures to be taken both in the interest of society and of the patient, if patient there be. Assuredly in practice there may be *nuances* to observe at the hearing and in the report, but that does not suppress any of the parts of the expert's mission. Moreover, where would he be now if our predecessors had made no step in this very direction! To-day our reports and depositions are heard almost without protest. Certainly it would not have been so if the experts who went before had not assumed the painful task of making heard the voice of science at a time when its very existence was called in doubt, and ventured to uphold its importance before many a magistrate who sought to confine its field of inquiry within narrow limits.

We claim then, that if the medical expert may not speak except as a physician, he yet may express any opinion that is scientifically certain and within the limits of this certitude.

This will continue to be true so long as one considers the man in the criminal and so long as the theory of social defence as the sole motive and sole rule of penalization shall have failed to triumph, leaving then as the only question to settle the degree of harmfulness of the criminal. This theory has again been upheld apropos of the present controversy, as may be seen in the book of Professor Grasset who properly stigmatizes the antihuman character of a doctrine which takes us back to the most monstrous

paganism and might very well suppress the rôle of the expert entirely.

A last point, which was gone into exhaustively by the Geneva Congress, claims our attention—the treatment to be administered to criminals of limited responsibility so-called. We cannot do better here than to follow step by step the manner in which Professor Grasset handles the question in his work, *Responsabilité des Criminels*.

There is no doubt that between the individuals whose psychic neurones are absolutely healthy and normal and those with neurones absolutely unsound and abnormal there exists a class in whom these neurones are partially or slightly diseased. This idea is very generally admitted by competent physicians, although certain authors contest it. According to Professor Grasset, those afflicted with partially diseased psychic neurones ought to be classified by the expert as semi-responsible; or rather the expert should state that in such individuals the physiologic element of responsibility is incomplete; hence the judge cannot hold them fully responsible.

Although generally admitted, the notion of limited responsibility continues to arouse protest on the part of certain criminologists or physicians. The reason for this is that sufficient account has not been taken of the necessary distinctions between the medical question of the existence of a category of patients whose mental state permits the affirmation of a limitation of responsibility and the social question of the proper attitude to maintain toward these subjects.

It happens unfortunately, that the declaration by the expert of limited responsibility is followed by the passing of mild sentences by the courts. Now, it is well recognized that mild sentences are to be deplored in the case of these mentally sick delinquents. This "sketchy" type of punishment fulfills neither the curative nor the repressive function of penalization; it "has no social or individual utility; it does not preserve order and does not punish the guilty."

Because the result of the declaration of limited responsibility is habitually bad it does not follow that the term should be suppressed as certain authors demand. It is necessary, however, as Professor Grasset has very well shown, to find another social or legal application of this conception.

Society should concern itself with two interests equally sacred: its own protection and the care and treatment of him whom Professor Grasset calls "semi-insane." Such a person, for whom law and repression have an indubitable importance, must be punished, but punishment is not all-sufficient; society's only mission is not to protect itself against the harmful semi-insane person, it must care for and treat him. Such an individual is not only a criminal but a sick person, and while society has the right to protect itself against his misdeeds, it is its duty to care for and treat him after as well as before his criminal act; hence this treatment should be made obligatory by incorporation in the Code.

One may leave to jurists the task of deciding whether or not one should shorten the punishment, which, after all, is not the only means of social defence, and of determining whether or not it is advisable to establish for these delinquents a special penitentiary régime, in which scheme the physician would play a necessary part. In any case, on the expiration of the sentence, there ought to be established a medical surveillance and a medical treatment of a certain duration. In this way, doubtlessly, limited responsibility would receive longer sentences. The necessary result for delinquents of limited responsibility would be not to modify the duration but the character of the merited punishment. Let no one cry out against the injustice of it; society is often compelled to condemn the lunatic to a perpetual privation of his liberty. The medical surveillance and this obligatory treatment should be carried out in special institutions or quarters, hospitals for the criminal insane, for example, as in the scheme recently proposed by the chamber of deputies and pending before the Senate, and for a period of time which Professor Grasset thus determines—"One should detain these subjects so long as one is disposed to palliate their responsibility if they committed some new misdeed. To determine this limitation of responsibility is the duty of the physician, to pass upon it the rôle of the judge." This harmonizes, obviously, with what we have said of every degree of responsibility.

As may be seen from our analysis, the discussion of the Geneva Congress has raised theoretical and practical problems of paramount interest. Let us hope that it will make for an increase in the (general) clearness of the point of view and especially that it

will aid those who hold the reins of government in effecting in the legislature those useful reforms for which alienists have long been clamoring.

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