

metaphysical and theoretical. The medical diagnosis is based on pathology and experience: the legal ignores any physical condition which does not affect the moral attributes. The legal cares nothing for impulse, loss of will power, or sudden change of character and conduct without motive or from childish incentives: medicine takes in the whole man in all his multifarious interests. The former tests by the ambiguous notion of *right* and *wrong*, but the latter by the *will not* or *can not* of each individual. The one deals with an abstract idea: the other in what is found every day in the wards of any lunatic asylum. Law adheres to tradition and the fiat of statutes: medicine points to the facts of clinical experience and practical knowledge. Legal *dicta* permit a counsel and judge to instruct a jury both as to law and facts, both as to responsibility and insanity; but a medical witness—whatever his experience and skill may be—is not allowed to relate them to the jury, although they may be of intrinsic value in teaching and enlightening those in whose verdict lies the destiny of a prisoner. The man, of all others, who should know whereof he asserts, must be “a dumb dog,” while the man whose experience may be of the most crude kind is legally allowed to appeal, to instruct and direct a jury in the most abstruse of all medico-legal subjects. The writer, not long since, heard at a state trial a well-known Canadian barrister and Queen’s counsel instruct a jury that any ordinary man was as able to detect any form of insanity as could an expert. The absurdity of such a statement might be seen any day by turning loose into the wards of a strange asylum this counsel, a jury, and asylum medical officers, to select the sane from the insane as they were presented. A short experience in this discriminating work might not convince, but it would certainly give ground for legal reflection and possibly prevent a repetition of such a silly statement, unless “our learned friend” had passed the age of conversion. Perhaps he should not be blamed too much, as his text-books make the same assertion. It would be rank heresy for him to fly in the face of accepted authority, even were he convinced of its absurdity.

In reading the history of jurisprudence, it is satisfactory to