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OF
HUMAN RESPONSIBILITY,

MORE ESPECIALLY

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BY THE

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THE DOGMA OF HUMAN RESPONSIBILITY.

The Universality of Law.

In every age and in every clime, under every divine dispensation and under every form of temporal government, the dogma of man's responsibility has invariably been recognized. The human family may be said to be divided into two classes, viz., *those who govern and those who are governed.*

Whatever the form of government, whether savage or sage, from democracy to despotism, the people are amenable to the powers that be.

This dogma of responsibility to law presupposes the existence of will power and the mental and physical capacity to render obedience.

All legislation, whether divine or temporal, is assumed to be restricted to the capacity of the human intellect, and also the physical ability of each individual amenable to authority.

The Antiquity of Natural Law.

The dogma of human responsibility is, indeed, older than all known temporal law and dates back to the first generation.

Blackstone, the standard jurist, says, "It is clear that the right of punishing crimes against the law of nature, as murder and the like, is, in a state of mere nature, vested in

every individual—for it must be vested in somebody; otherwise the laws of nature would be vain and fruitless, if none were empowered to put them in execution; and if that power is vested in any one, it must also be vested in all mankind, since all are by nature equal. Whereof the first murderer, Cain, was so sensible, that we find him expressing his apprehensions that *whoever* should find him would slay him.

The Sovereign Power of Law.

“In a state of society this right is transferred from individuals to the sovereign power; whereby men are prevented from being judges in their own causes, which is one of the evils that civil government was intended to remedy. Whatever power, therefore, individuals had of punishing offences against the law of nature, that is now vested in the magistrate alone, who bears the sword of justice by the consent of the whole community.”

Exemptional Provisions.

Inasmuch as general laws embrace within their provisions the whole community to which they relate, no persons can be excused from rendering obedience except those who are expressly exempted by said laws.

Blackstone defines the various pleas for exemption from the punishment of violated laws as follows:

“All the several pleas and excuses which protect the committer of a forbidden act from the punishment which is otherwise annexed thereto may be reduced to this single consideration—the *want or defect of will*. An involuntary act, as it has no claim to merit, so neither can it induce any guilt: the concurrence of the will, when it has its choice either to do or to avoid the fact in question, being the only thing that renders human actions either praiseworthy or culpable. Indeed, to make a complete crime cognizable by human laws there must be both a will and an act. * * * For which reason, in all temporal jurisdictions, an overt act, or some open evidence of an intended crime, is necessary in order to demonstrate the depravity of the will before the

man is liable to punishment. And, as a vicious will without a vicious act is no civil crime, so, on the other hand, an unwarrantable act without a vicious will is no crime at all. So that, to constitute a crime against human laws, there must be, first, a vicious will; and, secondly, an unlawful act consequent on such vicious will.”

Classification of Exemptional Cases.

The learned writer then proceeds to classify the cases which come under the exemptional provisions of law on the ground of “defect of will,” and since they are so clearly and tersely stated, we cannot do better in the consideration of this phase of the question than to further quote his illustration of these conditions of will-power. He observes:

“Now there are three cases in which the will does not join with the act. 1. Where there is a defect of the understanding. For where there is no discernment there is no choice, and where there is no choice there can be no act of the will, which is nothing else but a determination of one’s choice to do or to abstain from a particular action: he, therefore, that has no understanding can have no will to guide his conduct. 2. Where there is understanding and will sufficient residing in the party, but not called forth or exerted at the time of the action done, which is the case of all offences committed by chance or ignorance. Here the will sits neuter, and neither concurs with the act nor disagrees to it. 3. Where the action is constrained by some outward force and violence. Here the will counteracts the deed, and is so far from concurring with, that it loathes and disagrees to what the man is obliged to perform.”

He then proceeds to define the several species of defect of will and classifies them under the heads of “Infancy,” “Idiocy,” “Lunacy,” and “Intoxication.”

Infancy.

In reference to the first class, the question of responsibility is not to be regulated by age, but rather by the capacity

of the child to comprehend the requirements of law. It is a question of the measure of the understanding, judgment, and will power.

Idiots and Lunatics.

As regards the second and third classes, viz., idiots and lunatics, the above rule will to a considerable extent apply. Under the English law the idiocy must be passed upon by a jury as total, or the insanity as absolute, before the perpetrator of crime can be excused from the guilt and punishment of an illegal or criminal action. If the insane person have lucid intervals of the understanding, judgment, and will, he is, during those intervals, as much amenable to law as though he were a person of sound mind.

While temporal laws cannot take cognizance of the fact that lunacy is frequently induced by the voluntary action of the victims of this malady, nor that in many instances it is the sad result of indulgence in intemperate and vicious habits which at one time they had full physical and mental power to control or resist, the interest of good government and the protection of society from violence demand that all pleas of immunity from the punishment due to crime on the ground of the insanity of the perpetrator should be regarded with suspicion and should undergo the severest tests before they are allowed to prevail. In almost every case where physical disease is assumed the skillful physician can easily detect any attempt at fraud; but it is not uncommon for criminals to feign lunacy and frequently to deceive those who claim to be experts on all questions pertaining to mental diseases. On the other hand, though a person may de-

liberately commit a criminal act while in a sound condition of mind, and should subsequently lose the powers of memory and reason, and consequently not be able to plead when arraigned at the bar of justice, he ought not to be tried until the faculties of his mind are restored; if after conviction he become insane, the punishment due to the crime of which he has been found guilty should be suspended until the return of sanity.

Lunacy, when once established by competent authority, should be held to be a bar against all procedures of law which are framed on the basis of the responsibility of the party in question.

Inebriates.

The fourth and last class of persons for whom exemption from punishment is sometimes claimed on account of "defect of will" are those who commit crime while intoxicated. The police courts of all our cities bear daily testimony to the fact that violence, unnatural crimes, and even murder itself, are in the greatly preponderating majority of cases unmistakably traceable to the drunkenness of the perpetrators.

Blackstone defines intoxication as "artificial, voluntary contracted madness by drunkenness or intoxication, which, depriving men of their reason, puts them in a temporary frenzy." He adds: "Our law looks upon this as an aggravation of the offence rather than as an excuse for any criminal misbehavior." Sir Edward Coke says, "A drunkard, who is a *voluntarius daemon*, hath no privilege thereby; but what hurt or ill soever he doeth, his drunkenness doth aggravate it."

The views of these ancient jurists, as above stated, do,

with some modifications, continue to prevail in most of the nations of Europe and also in this country. The question as to how far they are correct, when viewed from the standpoint of advanced science, is one of grave consideration, and inasmuch as cases involving the same are constantly arising for adjudication in our criminal courts, a review of these doctrines must sooner or later force itself upon our several legislative assemblies. Those who have given the closest attention to the various phases of this question must, we think, be free to admit that the whole subject is surrounded with difficulties of no ordinary character. But the fact of the existence of these difficulties should impel thoughtful men to the further pursuit of their investigations rather than deter them from their consideration. If the question as to how far inebriates are *de facto* responsible for their actions is as yet undefined, seeing that we live in this nineteenth century, and in the centennial year of this great republican empire, does it not behoove us, in the light of science, to determine where and when that responsibility shall terminate, as we have already determined where and when it shall commence?

The laws of the State of New York have long since provided that "The Supreme Court shall have the care and custody of all idiots, lunatics, persons of unsound mind, and persons who shall be incapable of conducting their own affairs in consequence of habitual drunkenness, and of their real and personal estates, so that the same shall not be wasted or destroyed; and shall provide for their safe-keeping and maintenance, and for the maintenance of their families and

the education of their children, out of their personal estates and the rents and profits of their real estates, respectively." In the above-quoted provision we find drunkards classified with "idiots, lunatics, and persons of unsound mind," and the custody of their persons and estates is placed at the disposal of the Supreme Court. The reason assigned is because they are "incapable of conducting their own affairs by reason of habitual drunkenness." Does not this law virtually recognize that condition of mind which Blackstone defines as "*the want or defect of will?*" The Supreme Court, of course, performs these functions by proxy, and appoints a committee to take charge of the person and property of the inebriate. *That committee may, at its pleasure, dispose of the person, by placing him either in a lunatic or inebriate asylum, or even in a prison, or said committee may elect to permit the inebriate to roam abroad at his own discretion. If during the time of his incarceration in a lunatic asylum the inebriate, without imbibing intoxicating liquor, should kill a fellow inmate or one of his keepers, it is almost certain that he would be acquitted of the crime of murder on the ground of insanity. But suppose the committee allowed this same man the liberty of his person, and that while in a state of intoxication he should smite down a fellow passenger on the cars or a stranger on the streets, the chances are that he would suffer death as the penalty of his crime.* Take another view of this subject. According to the returns of the highest authorities on lunacy, the most prevalent cause of insanity is the excessive use of alcoholic liquors. Drunkards and their offspring throng

our lunatic asylums, and the probable outside candidates for admission are far in excess of the present occupants of those overcrowded abodes of madmen. Does it not therefore become a peculiarly interesting question to know how many of this outside class have arrived at that stage of the disease which would justify their incarceration? In the mean time should not the law define how far they ought to be held responsible for their actions?

The Majority of Inebriates Responsible to Law.

We are very far from assuming that all inebriates are irresponsible either for their excesses or for the crimes which they may commit when intoxicated. On the other hand, after many years of careful investigation, surrounded with facilities for inquiry and study which few men have been able to command, we are free to state, that while we are forced to regard drunkenness as a disease, at the same time we are fully convinced that in its preliminary stages it is in the large majority of cases avoidable, and therefore this class of inebriates are mentally and physically responsible for their debauches and for all the consequences resulting therefrom. There are, however, advanced stages of this disease which are only curable by skillful medical treatment; and since one of the symptoms is the entire suspension of will power; another, the loss of all appetite except for alcoholic liquors, and a third, a condition of sleeplessness which must soon culminate in *delirium-tremens* and probably death, it is therefore essential that the physician's remedial treatment should be supplemented by the care and restraints of the hospital. It becomes a serious question for the friends

of the inebriate to determine how far they are justified in permitting him to drift from stage to stage into this probably fatal condition without using the means at their disposal to restrain him before his property is wasted, his family impoverished, and he himself is found staggering on the threshold of the door of a lunatic asylum or on the verge of a drunkard's open grave.

But we must pursue this question of the responsibility of the inebriate still further. In the first place we will take the cases of

Inherited Appetite.

The victims of an inherited appetite for alcohol are considerably more numerous than the fragmentary records of published statistics would lead us to suppose. In the large majority of these cases the patient evades every question and tries to baffle every inquiry which would stamp the brand of drunkenness on either of his parents. It would be well for him if he could only blot out of the book of his remembrance the sad record that his father or his mother, or perchance both, were drunkards, and that he is only an inheritor of this vicious constitutional propensity. This man drinks because one or both of his parents drank before him! Is he responsible for his action? Let us see!

The celebrated Dr. Darwin says: "It is remarkable that all the diseases from drinking spirituous or fermented liquors are liable to become hereditary even to the third generation, gradually increasing, if the cause be continued, until the family becomes extinct."

Dr. Willard Parker, of New York, says; "The inheritance is a sad one: a tendency to the disease of the parent is

induced as strong as that of consumption, cancer or gout, and with the tendency he must wage perpetual war, or he becomes a drunkard. * * * There are nations or large communities with whom this fearful tendency to drink is an inheritance, as we have seen, to the perversion of their own character."

Dr. Parrish remarks that "this appetite is often an inheritance with which its possessor would gladly part if he could. It constitutes an element in his temperament. It is a part of his constitution. He did not create it—he does not cherish it—nay! he abhors it; but it clings to him like the poison of other forms of disease.

"Consumption is a terrible disease; and you see a young man lingering feebly along the avenues of life, wasting strength and energy, not by any physical indulgence, but because there is an insidious, invisible poison in his blood; you ask about his parentage, and he tells you, 'My mother died of consumption,' or his father, or one or all of their parents; and you say, 'Poor fellow! he is doomed; he has inherited that narrow chest, those feeble lungs, that impoverished blood, and he will soon bid farewell to all visible things.'

"You see a drunkard reeling through the streets. He is jolly and playful with the boys, or he is boisterous and insulting to you as you pass. A policeman arrests him, arraigns him before a magistrate, and he is committed to the lockup. Why? Because he is drunk. Why is he drunk? In many cases because his father was so before he was born, or his mother, or both. If they were not, they might have been good citizens and exemplary Christians; and yet, ten to one, when this drunkard, whom you have just committed by law to a jail, was a babe, his mother dosed him with some 'infant cordial,' 'soothing syrup,' 'teething drops,' or other nostrum, the base of which was alcohol, and thus created a taste against which nature revolted, but to establish which that kind and generous mother persisted by the continued use of such needless stimulants. This is one of the habits that is dooming thousands of people to lives of drunkenness—a very bad habit, growing out of the purest affection, but yet the fruit of sorrowful carelessness or ignorance."

Dr. Dugas, Professor of Surgery in the Medical College of Georgia, observes: "What is true with regard to the influence of intemperance upon the offspring of the first drunken parent becomes most painfully so if the son himself follow the example of his father, and becomes also a drunken parent. The issue of this second generation of drunkards will, in all probability, be few in number and their stamina be so much impaired that it will be with the utmost difficulty that any of them can reach maturity. Let us follow this third generation and see. If it also take to the bottle, it will be the last of the family. For I do not hesitate to proclaim it as a law of almost universal application that three successive generations of drunkards will leave no issue! The third generation may have children, but not one of these will be reared."

Morel, a French authority, records the following sequence as the result of his observation:

"First generation: Immorality, depravity, excess in the use of alcoholic liquors, moral debasement.

"Second generation: Hereditary drunkenness, paroxysms of mania, general paralysis.

"Third generation: Sobriety, hypochondria, melancholy, systematic ideas of being persecuted, homicidal tendencies.

"Fourth generation: Intelligence slightly developed, first accession of mania at sixteen years of age, stupidity, subsequent idiocy, and probable extinction of the family."

The apparent differences of sequence which appear on the surface as existing between the two last-quoted authorities do not involve a contradiction, especially in reference to the number of succeeding generations ere extinction ensues, but are reconcilable from the fact that their observations were respectively gathered in widely separated countries and differing climates, and more especially because of the essential difference in the character and quality of the liquors

consumed, the one being distilled from unmalted corn and rye and the other from malted grain or the fruit of the vine.

Dr. Forbes Winslow states that "a large percentage of frightful mental and brain disturbances can be traced to the drunkenness of parents, confirming the great physiological law, that 'like begets like.'"

Dr. Wood, of London, in his work on insanity, speaking on the subject of hereditary inebriety, says: "Instances are sufficiently familiar, and several have occurred within my own personal knowledge, where the father having died at an early age from the effects of intemperance, has left a son to be brought up by those who have severely suffered from his excesses, and have therefore the strongest motives to prevent, if possible, a repetition of such misery; every pains has been taken to enforce sobriety, and yet, notwithstanding all precaution, the habits of the father have become those of the son, who, never having seen him from infancy, could not have adopted them from imitation. Everything was done to encourage habits of temperance, but all to no purpose; the seeds of the disease had begun to germinate; a blind impulse led the doomed individual by successive and rapid stages along the same course which was fatal to the father, and which ere long terminated in his own destruction."

Dr. Howe, in his report on idiocy to the Legislature of Massachusetts, states that three-fourths of all idiots are born of intemperate parents.

Dr. Carpenter, of England, says: "It is scarcely necessary to accumulate further proof in support of the assertion that of all the single causes of insanity habitual intemperance is the most potent. * * * We should expect to find that the offspring of habitual drunkards would share with those of lunatics in the predisposition to insanity."

In numerous cases where the loss of reason has not overtaken the children of drunken parents, the impaired intellect and the various propensities which have been induced by

intemperance are transmitted from parents to their offspring.

Dr. W. A. S. Brown says: "They reproduce their perverted moral nature, as well as frames similar to those which have been enervated and ruined by indulgence. The genealogical tree of some families presents successive generations of drunkards."

Dr. George Burr, of Binghamton, observes that "the evidence in favor of the hereditary transmission of inebriety is no less strong than that upon which the fact that mental disease is inherited is admitted. In one case intellectual mania or dementia is developed; in another dipsomania."

The Downward Sliding Scale.

The above-mentioned conditions represent a downward sliding scale, commencing at excessive indulgence in intoxicating liquors, and descending, step by step, unto the fourth generation, until the dark, impenetrable gulf of extinction mercifully blots out of existence forever this race of hereditary drunkards. During the interval recurring from the first to the last generation the successive inheritors of this disease continue to live on and are divided up between the lunatic and inebriate asylums, the prisons, and the outside world. Some have passed over the line of demarcation, and the power of will having lapsed, they are no longer regarded as amenable to law; others are, justly or unjustly, suffering the penalties due to crime. Comparatively a few, impressed with the conviction that they have lost the power of self-restraint, have sought refuge in inebriate institutions, but the vast majority of this class are continuing to struggle on against all odds in this world of probation. Here is a man who must either stop drinking or else he will shortly be stricken with paralysis. There is another man fast drifting into a con-

dition of chronic melancholy, and that because he is the descendant of one or more generations of drunkards. He must rouse himself and awake from this sleep—arise from this living death, or he will shortly become a lunatic or a suicide, or both. Yonder stands a woman whose father was a drunkard, and already the incipient symptoms of mania are slowly but surely developing. She must be divested of care and surrounded by circumstances of cheer, or else her loving friends will find it imperatively necessary to place her under restraint. Behold that nervous, excitable creature; watch the motions of his ever-restless, wandering eye, sometimes sparkling with a degree of intelligence, but turning aside the moment that you exchange glances. He talks like a rational being, and somehow makes his way in the busy world, but he has a hang-dog countenance and a twitching motion in his limbs. He is alternately kind and cruel, devout and profane. He loves or he hates as the barometer rises or falls, or as the moon changes. Strong drink maddens his brain and he becomes a raving maniac for the time being. What are his antecedents? His father and his father's father were confirmed drunkards, and the taint flows through his blood, unstrings his nerves, and alternately stupefies or intensifies the functions of his brain. Nobody regards him as a fit subject for a lunatic asylum, but when intoxicated the homicidal tendency dangerously predominates, and unless he can be kept sober he will probably ere long become a subject for the gallows. Then again, there is that dreamy, drivelling idiot, who wanders harmlessly through the streets, the sport of the

boys and the butt of ridicule for the fools of the village. His ancestors were a generation of drunkards, and he is the last relic of his degenerate stock.

These are the generations of hereditary drinkers, and yet they live and move and have their being in our midst and are held to be amenable to law and responsible for their actions; and, moreover, many even of this class give proof of their responsibility by their good behavior.

By a wise arrangement of the physiological laws, as they relate to the human structure, there are to be found in most constitutions counterbalancing powers, both physical and mental, which enable men successfully to struggle against the inroads of the diseases of both body and mind. There are a host of living men and women to be found who never drank, and who dare not drink, intoxicating liquors or beverages, because one or both of their parents were inebriates before they were born into the world; and, besides, a number of these have brothers or sisters who, having given way to the inherited appetite, are now passing downward on this descending sliding scale. The greater portion of them have already passed over the bounds of self-control, and the varied preliminary symptoms, of melancholy, mania, paralysis, ideas of persecution, etc., etc., are developing. As to the question of responsibility, each case is either more or less doubtful and can only be tested on its separate merits. There is, however, abundant evidence to prove that this predisposition to inebriety, even after long indulgence, can, by a skillful process of medication, accompanied by either voluntary or compulsory restraint, be subdued; and the counterbalancing physical and mental powers can at the same time be so strengthened and invigorated as in the future to enable the person to resist the temptations by which he may be surrounded. Yea, though the powers of reason may for the time being be dethroned, and lunacy be developed, these

cases, in most instances, will yield to medical treatment where the surrounding conditions of restraint and careful nursing are supplemental.

We have observed that in many instances the fact of the patient being convinced that he is an hereditary inebriate has produced beneficial results. Summoning to his aid all the latent counterbalancing energies which he has at command, and clothing himself with this armor, he goes forth to war; throws up the fortifications of physical and mental restraint; repairs the breaches and inroads of diseased appetite; regains control of the citadel of the brain, and then, with shouts of triumph, he unfurls the banner of "VICTORY."

There is another class of drinkers, who may be designated

Inebriates from Choice.

Some weak-minded men regard it impolite to refuse an invitation to drink with a friend or in company when invited to do so. The great bulk of this silly class of people drift into habits of intoxication.

Some men drink for stimulation. This is frequently the case in literary circles. This class work and sweat the brain until drowsiness ensues, but the work being partially unaccomplished, the fountains of thought must be stimulated with alcohol. As the dram must necessarily be increased from time to time, intoxication ensues, and the mighty men are brought low.

Some men drink in order to drown sorrow. These are the veriest cowards on the face of the earth. Even the suicide is brave when compared with them, for he does venture to take a leap in the dark. In trying to drown sorrow this class of men very soon succeed in drowning the little brain power once possessed.

Some men drink for the purpose of forwarding business.

They cannot buy or sell without ratifying the bargain with a debauch.

Notorious criminals drink for the purpose of nerving themselves for the perpetration of premeditated crime. They first charge the revolver with powder and bullet and then fire the brain and stimulate the nerves with alcohol, so that they may be prepared for the perpetration of any deed which may be found necessary for the accomplishment of their object.

In this last class of cases which we have presented all the parties concerned are obviously responsible for their conduct, and they ought not to be allowed to plead intoxication as an excuse for the crimes which they may commit while under the influence of liquor.

Thus far we have treated of responsibility to human law, but we cannot close this paper without referring to the obedience we owe to

The Law of God.

Temporal laws are not always based upon justice and equity. On the contrary, they are frequently at variance with the fundamental principles of righteousness and conflict with those of civil and religious liberty. Hence it has not unfrequently happened that the commission of certain acts may constitute crime against the laws of the state, but may at the same time be right in the sight of God.

According to the laws of most civilized nations drunkenness is constituted a crime; but there are States where it is not so regarded.

The divine law is full and explicit in its denunciations against this sin, and, moreover, the penalty is exclusion from the "Kingdom of Heaven."

Both in the Old and New Testament drunkards are ranked with the abominable of the earth. The Bible does not throw any garb of respectability over them, neither does it

offer any apology for their sin. In Holy Writ they are held to be responsible for their inebriety just in the same manner as other sinners are for their offences when committed with the concurrence of the will but in opposition to the dictates of the understanding and judgment of the offenders.

Neither will it avail the drunkard to plead that he has acquired a diseased appetite which he cannot control. That may be, and doubtless is, a good ground why the physician ought to aid him and why inebriate institutions should be established for the purpose of restraining his class until the disease is removed.

It forms no part of the duty of the physician to upbraid his patient because he has acquired this disease; but, finding him to be sick, it therefore becomes his business to exercise his healing skill in behalf of this afflicted man.

But the sin against God antedated the disease and was continually indulged in at a period when the inebriate could have arrested the progress of the growing evil by the exercise of his own will and without the aid of the physician. Hence he stands convicted by the divine law.

Does the inebriate inquire, "Is the physician more merciful than God?" The answer is, "No, in no wise," for He explicitly declares, "When the wicked man turneth away from his wickedness that he hath committed and doeth that which is lawful and right, he shall save his soul alive. * * * For I have no pleasure in the death of him that dieth, saith the Lord God, wherefore turn yourselves and live ye."

"Yes," the inebriate replies, "that is all very well for those who can turn away from their wickedness, but as for me, the generation of my fathers were drunkards, and they transmitted this diseased appetite; I inherit it from them and have no power to control it." If that be indeed so, God

will not hold you accountable for their sins,—for He further declares that "the son shall not bear the iniquity of the father, neither shall the father bear the iniquity of the son."

The sin was your father's, the affliction is yours; but, at the same time, you need to be very careful how you urge this plea, for, though you may have no power to resist the temptation so long as you roam abroad, you can place yourself under restraint, and thus forcibly separate yourself from this accursed thing.

It may, indeed, be like cutting off the right hand or plucking out the right eye, but if it prove to be the only door into the Kingdom of Heaven, then we say, trusting in God's mercy through Christ, enter in thereat and be saved.

