

12-1-2015

# Carrying On Like a Madman: Insanity and Responsibility in *Strange Case of Dr. Jekyll and Mr. Hyde*

Melissa J. Ganz

Marquette University, [melissa.ganz@marquette.edu](mailto:melissa.ganz@marquette.edu)

---

Published version. *Nineteenth-Century Literature*, Vol. 70, No. 3 (December 2015): 363-397. DOI.  
Published in *Nineteenth-Century Literature*, Vol. 70, No. 3 (December 2015): 363-397. © 2015 by the  
Regents of the University of California/Sponsoring Society or Association. Copying and  
permissions notice: Authorization to copy this content beyond fair use (as specified in Sections 107  
and 108 of the U. S. Copyright Law) for internal or personal use, or the internal or personal use of  
specific clients, is granted by the Regents of the University of California/on behalf of the Sponsoring  
Society for libraries and other users, provided that they are registered with and pay the specified fee  
via Rightslink® on [JSTOR (<http://www.jstor.org/r/ucal>)] or directly with the Copyright Clearance  
Center, <http://www.copyright.com>  
Used with permission.

Carrying On Like  
a Madman: Insanity  
and Responsibility in  
*Strange Case of Dr. Jekyll  
and Mr. Hyde*

MELISSA J. GANZ

“*I* declare at least, before God, [that] no man morally sane could have been guilty of that crime upon so pitiful a provocation; and that I struck in no more reasonable spirit than that in which a sick child may break a plaything.”<sup>1</sup> Thus Henry Jekyll describes his inexplicable murder of Sir Danvers Carew in the statement that he leaves for his lawyer and friend, Gabriel Utterson, at the end of Robert Louis Stevenson’s *Strange Case of Dr. Jekyll and Mr. Hyde* (1886). In the statement, Jekyll refuses to accept responsibility for Carew’s death, insisting that he was in a “fit of . . . delirium” (*Jekyll and Hyde*, p. 64) throughout the attack and could not control his actions. At the time, he explains, he had assumed the identity of his “second and worse [self]” (p. 62), the savage

*Nineteenth-Century Literature*, Vol. 70, No. 3, pp. 363–397, ISSN: 0891-9356, online ISSN: 1067-8352, © 2015 by The Regents of the University of California. All rights reserved. Please direct all requests for permission to photocopy or reproduce article content through the University of California Press website, at <http://www.ucpress.edu/journals/rights.htm>. DOI: 10.1525/ncl.2015.70.3.363.

<sup>1</sup> Robert Louis Stevenson, *Strange Case of Dr. Jekyll and Mr. Hyde*, in *The Strange Case of Dr. Jekyll and Mr. Hyde and Other Tales of Terror*, ed. Robert Mighall (New York: Penguin, 2002), p. 64. Further references to this edition appear in the text as *Jekyll and Hyde*.

Edward Hyde. Although Jekyll's argument appears blatantly self-serving, his attempt to exonerate himself finds support elsewhere in the text. Friends and acquaintances routinely comment on his mental instability. In many ways, the novel invites us to read Jekyll's evil double as the manifestation of his madness.

The idea of exculpatory insanity sparked fierce debates between jurists and doctors throughout the nineteenth century. The cognitive test of insanity that emerged from the *M'Naghten* case of 1843 deemed a person legally irresponsible for his acts if, due to a defect of reason resulting from mental disease, he was unable to perceive the nature and quality of his acts or to know that they were wrong.<sup>2</sup> Early psychiatrists—"alienists," as they were known—like James Cowles Prichard and Henry Maudsley, however, argued that this test failed to acknowledge the existence of affective and volitional disorders such as moral and impulsive insanity. Prichard and Maudsley urged judges to adopt a more permissive standard—an "irresistible impulse" test—that deemed accused criminals "mad" if they were unable to control their actions, even if they knew what they were doing was wrong. In the 1870s and 1880s, this position gained ground, as scientists and social thinkers emphasized the role that biology and environment played in shaping human behavior and people became more skeptical about the idea of free will. The jurist and statutory draftsman James Fitzjames Stephen, in fact, reversed his opinion and joined Prichard and Maudsley in arguing for a broader definition of insanity. Other judges, though, vociferously opposed the idea on both moral and practical grounds. In their view, the broader standard threatened to undermine the goals of law enforcement by permitting those who deserved punishment to go free.<sup>3</sup> Published in the midst of this controversy, *Jekyll and Hyde* takes up

<sup>2</sup> See *Daniel M'Naghten's Case*, 8 Eng. Rep. 718 (1843), at 722.

<sup>3</sup> For an overview of the debates, see Thomas Maeder, *Crime and Madness: The Origins and Evolution of the Insanity Defense* (New York: Harper and Row, 1985), pp. 36–51; John R. Reed, *Victorian Will* (Athens: Ohio Univ. Press, 1989), pp. 133–52; Roger Smith, *Trial by Medicine: Insanity and Responsibility in Victorian Trials* (Edinburgh: Edinburgh Univ. Press, 1981), pp. 38–56, 75–89, 96–123; Martin J. Wiener, *Reconstructing the Criminal: Culture, Law, and Policy in England, 1830–1914* (Cambridge: Cambridge Univ. Press, 1990), pp. 166–71, 269–76; and Roger Smith, "The Boundary Between Insanity and Criminal Responsibility in Nineteenth-Century England," in *Madhouses*,

questions concerning criminal responsibility that preoccupied the Victorians and that continue to spark debate today.

Scholars have examined the novel's portrait of criminality as well as its engagement with developments in the mind sciences, but they have paid little attention to the legal questions raised by Jekyll's apparent madness.<sup>4</sup> Mary Rosner and Robert Mighall only briefly consider the issue of culpability. After reviewing the medico-legal debates, Rosner simply asserts that "Stevenson may have evoked [the] controversial diagnosis [of moral insanity] in order to highlight and undercut" the

---

*Mad-Doctors, and Madmen: The Social History of Psychiatry in the Victorian Era*, ed. Andrew Scull (Philadelphia: Univ. of Pennsylvania Press, 1981), pp. 363–84.

<sup>4</sup> On Stevenson's engagement with Victorian psychology, see Jill L. Matus, *Shock, Memory and the Unconscious in Victorian Fiction* (Cambridge: Cambridge Univ. Press, 2009), pp. 160–82; Julia Reid, *Robert Louis Stevenson, Science, and the "Fin de Siècle"* (New York: Palgrave, 2006), pp. 5–12, 92–105; Ann Stiles, *Popular Fiction and Brain Science in the Late Nineteenth Century* (Cambridge: Cambridge Univ. Press, 2012), pp. 27–49; Jason Daniel Tougaw, *Strange Cases: The Medical Case History and the British Novel* (New York: Routledge, 2006), pp. 139–75; Ed Block, Jr., "James Sully, Evolutionist Psychology, and Late Victorian Gothic Fiction," *Victorian Studies*, 25 (1982), 443–67; Michael Davis, "Incongruous Compounds: Re-reading *Jekyll and Hyde* and Late-Victorian Psychology," *Journal of Victorian Culture*, 11 (2006), 207–25; Richard Dury, "Crossing the Bounds of Single Identity: *Dr. Jekyll and Mr. Hyde* and a Paper in a French Scientific Journal," in *Robert Louis Stevenson, Writer of Boundaries*, ed. Richard Ambrosini and Richard Dury (Madison: Univ. of Wisconsin Press, 2006), pp. 237–51; Christine Persak, "Spencer's Doctrines and Mr. Hyde: Moral Evolution in Stevenson's 'Strange Case,'" *Victorian Newsletter*, no. 86 (1994), 13–17; and Martin Tropp, "Dr. *Jekyll and Mr. Hyde*, Schopenhauer, and the Power of the Will," *Midwest Quarterly*, 32 (1991), 141–55. On the novel's treatment of crime, see Stephen Arata, *Fictions of Loss in the Victorian Fin de Siècle* (Cambridge: Cambridge Univ. Press, 1996), pp. 33–53; Simon Joyce, *Capital Offenses: Geographies of Class and Crime in Victorian London* (Charlottesville: Univ. of Virginia Press, 2003), pp. 145–78; Beth Kalikoff, *Murder and Moral Decay in Victorian Popular Literature* (Ann Arbor: UMI Research Press, 1986), pp. 166–68; Marie-Christine Leps, *Apprehending the Criminal: The Production of Deviance in Nineteenth-Century Discourse* (Durham, N.C.: Duke Univ. Press, 1992), pp. 205–20; and Gordon Hirsch, "Frankenstein, Detective Fiction, and *Jekyll and Hyde*," in "Dr. *Jekyll and Mr. Hyde*" after One Hundred Years, ed. William Veeder and Gordon Hirsch (Chicago: Univ. of Chicago Press, 1988), pp. 223–46. Cathrine O. Frank and Scott Veitch read the novel in relation to developments in civil as opposed to criminal law (see Frank, "Privacy, Character, and the Jurisdiction of the Self: A 'Story of the Door' in *The Strange Case of Dr. Jekyll and Mr. Hyde*," *English Language Notes*, 48 [2010], 215–24; and Veitch, "Binding Precedent: Robert Louis Stevenson's *Strange Case of Dr Jekyll and Mr Hyde*," in *Reading the Legal Case: Cross-Currents between Law and the Humanities*, ed. Marco Wan [New York: Routledge, 2012], pp. 217–30). Lisa Rodensky offers an insightful analysis of Victorian novels' engagement with criminal responsibility more generally (see Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* [New York: Oxford Univ. Press, 2003]).

distinction between the “sane” and the “insane,” the “bad” and the “mad.”<sup>5</sup> Mighall similarly speculates that Jekyll “may very well be leaving his confession to be read by his medical colleagues so that they can judge Hyde/Jekyll’s responsibility, and perhaps allow him to escape the ‘scaffold.’”<sup>6</sup> Mighall observes that Jekyll’s “diagnosis of Hyde as morally insane might very well have been accepted [in the world outside the novel],” explaining that Jekyll “would have been incarcerated in a special prison instead” (“Diagnosing Jekyll,” p. 150).<sup>7</sup> Rosner’s and Mighall’s

<sup>5</sup> Mary Rosner, “‘A Total Subversion of Character’: Dr. Jekyll’s Moral Insanity,” *Victorian Newsletter*, no. 93 (1998), 30.

<sup>6</sup> Robert Mighall, “Diagnosing Jekyll: The Scientific Context to Dr Jekyll’s Experiment and Mr Hyde’s Embodiment,” in “*The Strange Case of Dr Jekyll and Mr Hyde*” and *Other Tales of Terror*, p. 150.

<sup>7</sup> In an earlier study, Mighall likewise notes the ways in which Stevenson draws upon the ideas of alienists such as Maudsley, but he argues that Jekyll’s case ultimately “demands an epistemological model other than that provided by either medicine or law” (Robert Mighall, *A Geography of Victorian Gothic Fiction: Mapping History’s Nightmares* [New York: Oxford Univ. Press, 1999], p. 188). The novel “evokes the practices and expectations of clinical or legal procedure,” Mighall concludes, “only to deny them in the interests of sensation or horror. . . . Whilst the case of Jekyll and Hyde touches on both medical and legalistic matters and invokes their explanatory models, it is a horror story, and therefore exceeds the epistemological limits of these discourses” (*Geography*, p. 192). Simon Petch and Julia Reid note Stevenson’s evocation of Jekyll’s moral insanity but they do not pursue the implications of this observation (see Petch, “The Sovereign Self: Identity and Responsibility in Victorian England,” in *Law and Literature*, ed. Michael Freeman and Andrew D. E. Lewis, vol. 2 of *Current Legal Issues* [New York: Oxford Univ. Press, 1999], pp. 401–5; and Reid, *Robert Louis Stevenson*, pp. 96–97). Simon Stern, too, observes that the novel can “usefully be approached . . . as a legal case” (Stern, rev. of *The Strange Case of Dr Jekyll and Mr Hyde*, ed. Martin A. Danahay, *Law and Politics Book Review*, 18 [2008], 356). “One of the questions that *Jekyll and Hyde* can be used to raise . . .,” he suggests, “involves the difference between the *M’Naghten* approach and an approach that focuses more generally on the defendant’s ability to adhere to legal requirements” (p. 358). Edward W. Mitchell considers whether Jekyll would be held responsible for causing his own disordered mental state according to contemporary U.S. law. Mitchell’s analysis, however, proceeds from the assumption that Jekyll does, in fact, suffer from mental disease; in Mitchell’s view, “a being [such as Jekyll] would easily satisfy a volitional- or cognitive-style insanity test (particularly because of an inability to distinguish right from wrong)” (Mitchell, “Culpability for Inducing Mental States: The Insanity Defense of Dr. Jekyll,” *Journal of the American Academy of Psychiatry and the Law*, 32 [2004], 63). Nicola Lacey reads the novel as showing the limits of both an older character-based notion of criminal responsibility and a newer “capacity-based, internal or subjective” model of responsibility (Lacey, “Psychologising Jekyll, Demonising Hyde: The Strange Case of Criminal Responsibility,” *Criminal Law and Philosophy*, 4 [2010], 119). The “terror” of the novel, she argues, “resides in its questioning of whether *either* scientific knowledge *or* moral evaluation of

assessments echo that of Stevenson's friend John Addington Symonds, who rebuked the novelist for depicting "a certain moral callousness, a want of sympathy, a shutting out of hope." "Physical and biological Science on a hundred lines is reducing individual freedom to zero, and weakening the sense of responsibility," Symonds complained. "I doubt whether the artist should lend his genius to this grim argument."<sup>8</sup> In this view, Stevenson exonerates Jekyll and affirms the idea of irresistible impulse.

Stevenson's treatment of criminal responsibility, however, is more complicated than these critics suggest. In this essay, I read the novel alongside the medico-legal debates swirling through Victorian culture as well as Stevenson's own brief but formative career in the law. Although Stevenson promptly abandoned work as an advocate to pursue a vocation as a writer, he maintained a life-long interest in criminal justice and an abiding faith in personal accountability. In *Jekyll and Hyde*, I argue, Stevenson presents Jekyll's case as one for jurists rather than alienists. While the text appears to be sympathetic to the position articulated by Maudsley and Stephen, it ultimately shows the moral and practical dangers of broadening the definition of insanity. To recognize the idea of irresistible impulse as the basis of an insanity defense, Stevenson shows, is to confound the distinctions between freedom and compulsion, deviance and disease. Stevenson's frightening message is that the wealthy and respected doctor is quite sane. The novel holds Jekyll responsible for his actions and asks readers to do the same.



Before we consider Jekyll's case, we need to review the controversy between jurists and alienists concerning the nature and consequences of mental disease. Since the

---

character can provide a stable basis for attributions of responsibility" ("Psychologising Jekyll," p. 111).

<sup>8</sup> J. A. Symonds, letter to Robert Louis Stevenson, 3 March 1886, in *The Letters of John Addington Symonds*, ed. Herbert M. Schueller and Robert L. Peters, 3 vols. (Detroit: Wayne State Univ. Press, 1967-69), III, 120-21.

thirteenth century, crimes in Anglo-American law have generally consisted of two elements: an unlawful act and a guilty mind. If a suspect lacks the requisite mental state (*mens rea*), he cannot be held responsible for committing the crime.<sup>9</sup> Judges held early on that madmen lacked the ability to form a criminal intent and, in the sixteenth century, they began formulating definitions of insanity. The most influential test to emerge was the “knowledge of good and evil” test, derived from ancient Hebrew law. As the seventeenth-century jurist Michael Dalton explained, “If one that is ‘*non compos mentis*,’ or an idiot, kill a man, this is no felony, for they have not knowledge of Good and Evil, nor can have a felonious intent, nor a will or mind to do harm.”<sup>10</sup> This test was difficult to satisfy, as judges held that any sign of rationality demonstrated the presence of a conscience and the ability to discern right from wrong. To qualify for exemption, the defendant needed to be “totally deprived of his understanding and memory, and . . . not know what he [was] doing, no more than an infant, . . . a brute, or a wild beast.”<sup>11</sup>

In a series of murder trials in the early 1840s, however, this approach came under attack. In the first case, a jury acquitted attempted regicide Edward Oxford after medical witnesses diagnosed him as suffering from hereditary moral insanity; the judge sent Oxford to Bethlem Asylum.<sup>12</sup> In the second case, a jury acquitted Daniel M’Naghten of murdering the Prime

<sup>9</sup> See William Blackstone, *Commentaries on the Laws of England*, 4 vols. (1765–69; Chicago: Univ. of Chicago Press, 1979), IV, 20–21; and Joel Peter Eigen, *Witnessing Insanity: Madness and Mad-Doctors in the English Court* (New Haven: Yale Univ. Press, 1995), p. 35. For an overview of this doctrine in contemporary U.S. law, see *Criminal Law: Cases and Materials*, ed. John Kaplan, Robert Weisberg, and Guyora Binder, 7th ed. (New York: Wolters Kluwer, 2012), pp. 191–93.

<sup>10</sup> Michael Dalton, *The Country Justice* (London, 1618), quoted in Maeder, *Crime and Madness*, p. 7. On the “good and evil” test, see also Nigel Walker, *Crime and Insanity in England*, 2 vols. (Edinburgh: Edinburgh Univ. Press, 1968–73), I, 40–41.

<sup>11</sup> *Rex v. Arnold* (1724), quoted in Maeder, *Crime and Madness*, pp. 10–11. See also Daniel N. Robinson, *Wild Beasts and Idle Humours: The Insanity Defense from Antiquity to the Present* (Cambridge, Mass.: Harvard Univ. Press, 1996), pp. 129–40. Despite this harsh rule, Walker shows that the insanity defense was a regular feature of Old Bailey trials in the second half of the eighteenth century (see Walker, *Crime and Insanity*, I, 57–72).

<sup>12</sup> See Maeder, *Crime and Madness*, pp. 19–22; and Wiener, *Reconstructing the Criminal*, pp. 86–87.

Minister's private secretary after nine medical men testified that M'Naghten was a victim of irresistible impulses. This verdict, like the earlier one, produced widespread alarm, as the judge's instructions to the jury deviated from the traditional formulation.<sup>13</sup> In response, the Queen summoned the fifteen common law judges to appear before the House of Lords and asked them to respond to a series of questions concerning the insanity defense. Their answers, which became known as the "M'Naghten Rules," restated the knowledge of right and wrong test, rejecting the broader formulations used in the Oxford and M'Naghten trials. On behalf of fourteen judges, Lord Chief Justice Tindal declared that "to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong."<sup>14</sup> While not formally binding on English courts, the rules established a clear principle that judges used well into the twentieth century and that many American jurisdictions continue to rely on today.<sup>15</sup>

<sup>13</sup> See Wiener, *Reconstructing the Criminal*, pp. 86–87. In 1800, the Scottish defense lawyer Thomas Erskine likewise challenged the traditional test when he argued for the acquittal of attempted regicide James Hadfield on the ground that a mental delusion had impelled Hadfield to discharge his pistol at the King. Erskine's argument succeeded: the jury found Hadfield not guilty due to insanity and the judge sent him to Bethlem Hospital (see Maeder, *Crime and Madness*, pp. 12–16). Shortly after the trial, Parliament passed the Criminal Lunatics Act of 1800, which created a special verdict of not guilty by reason of insanity; the law required those who were acquitted on such grounds "to be kept in strict custody, in such place and in such manner as to the court shall seem fit, until His Majesty's pleasure be known" (quoted in Wiener, *Reconstructing the Criminal*, p. 84). In 1883, Parliament changed the wording of the verdict to "guilty but insane," upsetting jurists by its finding of "both guilt and a lack of *mens rea*" (Smith, *Trial by Medicine*, p. 18).

<sup>14</sup> *Daniel M'Naghten's Case*, 8 Eng. Rep. 718 (1843), at 722. For discussions of the case, see Maeder, *Crime and Madness*, pp. 23–35; Robinson, *Wild Beasts*, pp. 163–76; Smith, *Trial by Medicine*, pp. 14–16; Walker, *Crime and Insanity*, I, 84–103; and Wiener, *Reconstructing the Criminal*, pp. 87–88. Anthony Platt and Bernard L. Diamond note that in the early nineteenth century, judges began using the phrases "good and evil" and "right and wrong" interchangeably (see Platt and Diamond, "The Origins of the Right and Wrong Test of Criminal Responsibility and Its Subsequent Development in the United States: An Historical Survey," *California Law Review*, 54 [1966], 1237).

<sup>15</sup> See Smith, *Trial by Medicine*, pp. 18–19; and Wiener, *Reconstructing the Criminal*, p. 88. In the United States, more than half of the states as well as the federal government

The narrow formulation of this test, however, worried medical professionals who insisted that the law ought to reflect the latest developments in mental science. Following the French physician and founder of psychological medicine, Philippe Pinel, alienists like Prichard in England and Isaac Ray in the United States maintained that insanity could affect not only cognitive or intellectual faculties but also the will and emotions. In their view, the rational and affective functions of the brain were located in different mental organs, and each one was susceptible to disease. For this reason, a person could suffer from “partial insanity,” meaning that the disease could come and go and that it could be limited to certain mental faculties.<sup>16</sup> In *On the Different Forms of Insanity, in Relation to Jurisprudence* (1842), Prichard identified two types of disease affecting the will and emotions: moral insanity and impulsive insanity. By “moral insanity” Prichard explained that he meant “a disorder which affects only the feelings and affections, or what are termed the moral powers of the mind, in contradistinction to the powers of the understanding or intellect.”<sup>17</sup> The disease, he noted, typically produced a profound alteration in the temper and habits of a person such that an individual who was esteemed for “probity and high respectability” would suddenly become “depraved, reckless, and devoid of all moral principle” (*On the Different Forms*, p. 59). Moral insanity overlapped with

---

use versions of the *M’Naghten* test. An additional seventeen states combine versions of the *M’Naghten* test with versions of the volitional incapacity (i.e., irresistible impulse) test. One state (New Hampshire) uses a broad “product-of-mental illness” test (see *Clark v. Arizona*, 548 U.S. 735 [2006], at 749–51, reprinted in *Criminal Law: Cases, Materials and Problems*, ed. Russell L. Weaver, et al., 3d ed. [St. Paul: West Publishing, 2009], p. 552). On the history of the insanity defense in America, see Abraham S. Goldstein, *The Insanity Defense* (New Haven: Yale Univ. Press, 1967), pp. 67–96; Maeder, *Crime and Madness*, pp. 39–47, 58–97; and Robinson, *Wild Beasts*, pp. 176–208. For an overview of the different tests used in American jurisdictions, see Joshua Dressler, *Understanding Criminal Law*, 6th ed. (San Francisco: Matthew Bender, 2012), pp. 340–50.

<sup>16</sup> See Eigen, *Witnessing Insanity*, pp. 76–81; Nicole Rafter, *The Criminal Brain: Understanding Biological Theories of Crime* (New York: New York Univ. Press, 2008), pp. 19–31; and Smith, *Trial by Medicine*, pp. 16, 36–37.

<sup>17</sup> James Cowles Prichard, *On the Different Forms of Insanity, in Relation to Jurisprudence, Designed for the Use of Persons Concerned in Legal Questions Regarding Unsoundness of Mind* (London: Hippolyte Baillière, 1842), p. 19. See also Prichard, *A Treatise on Insanity and Other Disorders Affecting the Mind* (London: Sherwood, Gilbert, and Piper, 1835), pp. 12–26.

the second “class of mental affections,” which, Prichard acknowledged, was “very important in a legal point of view, and of very difficult investigation”:

These are distinguished in the following treatise, by the name of Insane impulse, or Instinctive madness. The character of the disease is a liability to sudden impulses to commit acts which bespeak madness, or are not those of a sane person. Such acts are often of an appalling and atrocious kind. . . . (p. 20)

As this definition reveals, Prichard found it impossible to describe impulsive insanity without lapsing into tautology. He admitted that it was “often very difficult to determine whether . . . persons [liable to such impulses were] criminals or lunatics” (pp. 20–21). Similarly, he conceded that “it is often very difficult to pronounce, with certainty, as to the presence or absence of moral insanity, or to determine whether the appearances which are supposed to indicate its existence do not proceed from natural peculiarity or eccentricity of character” (p. 31). But he insisted on the validity of these diseases.<sup>18</sup>

Prichard’s disciple, Maudsley, also acknowledged the difficulty of diagnosing emotional insanity even as he insisted that jurists recognize the disorder. The leading psychologist of the 1870s and editor of the *Journal of Mental Science*, Maudsley combined Prichard’s theories with the latest developments in evolutionist thought.<sup>19</sup> In *Body and Mind* (1870), he emphasized the connection between physical and mental life, arguing that disordered minds stemmed from inherited defects in the brain. Such defects manifested themselves on the body, he explained, as those “persons who have a strong hereditary tendency to insanity . . . often . . . [carry] in their physiognomy, bodily habit,

<sup>18</sup> Ellen L. O’Brien reads Robert Browning’s dramatic monologues of the 1830s and 1840s alongside Prichard’s account of insanity, arguing that the poems challenge the distinctions Prichard draws between moral insanity and criminal malice. Her analysis shows how Browning exposes the paradoxes of the medico-legal debates, revealing “the simultaneity of madness and badness” (Ellen L. O’Brien, *Crime in Verse: The Poetics of Murder in the Victorian Era* [Columbus: Ohio State Univ. Press, 2008], p. 126).

<sup>19</sup> For an overview of Maudsley’s ideas, see Neil Davie, *Tracing the Criminal: The Rise of Scientific Criminology in Britain, 1860–1918* (Oxford: Bardwell Press, 2005), pp. 79–86; and Rafter, *Criminal Brain*, pp. 102–5.

and mental disposition the sure marks of their evil heritage.”<sup>20</sup> For Maudsley, there was little that one could do to resist such a destiny. “In consequence of evil ancestral influences,” Maudsley observed, “[some] individuals are born with such a flaw or warp of nature that all the care in the world will not prevent them from being vicious or criminal, or becoming insane” (*Body and Mind*, p. 75). “No one,” he insisted, “can escape the tyranny of his organization; no one can elude the destiny that is innate in him, and which unconsciously and irresistibly shapes his ends” (p. 75).

Maudsley developed these ideas in *Responsibility in Mental Disease* (1874), devoting more than fifty pages to the disorders that Prichard had identified. Maudsley noted that moral insanity “has so much the look of vice or crime that many persons regard it as an unfounded medical invention.”<sup>21</sup> But, he insisted,

there is a disorder of mind in which, without illusion, delusion, or hallucination, the symptoms are mainly exhibited in a perversion of those mental faculties which are usually called the active and moral powers—the feelings, affections, propensities, temper, habits, and conduct. The affective life of the individual is profoundly deranged, and his derangement shows itself in what he feels, desires, and does. He has no capacity of true moral feeling; all his impulses and desires, to which he yields without check, are egoistic; his conduct appears to be governed by immoral motives, which are cherished and obeyed without any evident desire to resist them. There is an amazing moral insensibility. (*Responsibility*, pp. 171–72)

Like Prichard, Maudsley admitted that “it may be said that this description is simply the description of a very wicked person, and that to accept it as a description of insanity would be to confound all distinction between vice or crime and madness” (p. 173). Indeed, he conceded, “so far as symptoms only are concerned, they are much the same whether they are the result

<sup>20</sup> Henry Maudsley, *Body and Mind: An Inquiry into Their Connection and Mutual Influence, Specially in Reference to Mental Disorders...* (London: Macmillan and Co., 1870), p. 61.

<sup>21</sup> Henry Maudsley, *Responsibility in Mental Disease* (New York: D. Appleton and Co., 1874), pp. 170–71.

of vice or of disease." But, he insisted, "there is considerable difference when we go on to inquire into the person's previous history—when we pass from psychological to medical observation" (p. 173). "In a person who has a distinct hereditary predisposition to insanity," he explained, "there . . . [is] a marked change of character; he becomes 'much different from the man he was' in feelings, temper, habits, and conduct" (p. 174). "We observe, in fact," he continued, "that after a sufficient and well-recognised cause of mental derangement—a combination of predisposing and exciting causes which are daily producing it—a person exhibits symptoms which are strangely inconsistent with his previous character, but which are consistent with moral insanity" (p. 174). Maudsley's reasoning here is, of course, circular; much as Prichard had done, Maudsley ultimately cites the symptoms of the disease as evidence of its existence. At the same time, he suggests that medical professionals like himself are uniquely qualified to diagnose the illness. Maudsley similarly defended the idea of impulsive insanity from reproaches by lawyers and writers. Critics of the disorder "have acted partly . . . out of a natural jealousy of its abuse," he charged, "but partly also . . . out of bad philosophy" (p. 150); "its impulsive character is of the very essence of insanity," he claimed, "for in all forms of the disease paroxysms of impulsive violence are common features" (p. 153).<sup>22</sup>

Given the existence of these disorders, Maudsley argued, the "narrow and ill-founded . . . criterion of responsibility in insanity" used by English courts resulted in gross injustice (*Responsibility*, p. 108). The crucial question that judges ought to ask in criminal cases, he explained, was whether or not the accused was capable of controlling his actions. If a person's reason was intact but he could not use it because his feelings or will were deranged, Maudsley insisted, the law ought to acknowledge that person as insane.<sup>23</sup> "How grossly unjust,"

<sup>22</sup> Maudsley considered moral and impulsive insanity to be the chief subdivisions of "Affective insanity—that is, Insanity without delusion, or Insanity of feeling and action" (*Responsibility*, p. 132). But he cautioned "against being supposed to propound [these divisions] as a [definitive] classification of insanity," noting that "insane impulses and moral alienation are met with in various forms of mental disease" (p. 132n).

<sup>23</sup> See Maudsley, *Responsibility*, pp. 105–11, 132–33.

he declared, “[that] . . . the judicial criterion of responsibility . . . dooms an insane person of this class to death if he knew what he was doing when he committed a murder!” (*Body and Mind*, p. 72). “There can be no doubt that in the capability of self-formation which each one has in greater or less degree,” Maudsley acknowledged, “there lies a power over himself to prevent insanity” (*Responsibility*, p. 270). “A practical experience of the insane,” he noted, “teaches us what a power of self-control even they sometimes evince when they have a sufficient motive to exert it” (pp. 270–71). But when, through a combination of heredity and habit, individuals succumbed to disease, he maintained, they deserved mercy and care instead of blame and punishment.<sup>24</sup>

Although Maudsley’s ideas received broad support from fellow alienists, some medical professionals disagreed with his views. The physiologist and London University Registrar William B. Carpenter, for one, advocated a different approach. In *Principles of Mental Physiology* (1874), Carpenter acknowledged the existence of moral and impulsive insanity but affirmed individuals’ ability to resist egoistic desires. “Whilst recognizing, as a fact of observation, the large share which congenital Constitution and external influences have in the formation of those tendencies of Thought and Feeling, which make up the Character of each individual,” he explained, “we must equally rely on the assurance of our own Consciousness, that we have within us a Power, which, if we use it aright, can in great measure control the excesses and supplement the deficiencies of these tendencies, and can direct them to good and useful instead of

<sup>24</sup> Maudsley avoided suggesting that “persons suffering from moral insanity should in every case be exempted from all responsibility for what they [did] wrong” (*Responsibility*, p. 181). In some cases, he conceded, the fear of punishment influenced such individuals beneficially, and the actual infliction of punishment did some good. “Perhaps . . . the truest justice,” he concluded, “would be the admission of a modified responsibility, the degree thereof, where it existed, being determined by the particular circumstances of each case” (p. 181). In *Body and Will* (1883), he reiterated his wish that, instead of seeking revenge on violent individuals exhibiting “an entire moral insensibility,” jurists would show “pity for these defective beings suffering . . . under an irremediably bad organisation” (Henry Maudsley, *Body and Will: Being an Essay Concerning Will in Its Metaphysical, Physiological, and Pathological Aspects* [New York: D. Appleton and Co., 1884], p. 279).

evil and injurious ends.”<sup>25</sup> “The strength of this Power, which we term *Will*,” Carpenter insisted, “mainly depends upon the *constancy with which it is exercised*; the ascendancy of *principles* of action determinately adopted by the Reason, over the strong *impulses* of passion or desire, being only possible . . . when that ascendancy has been *habitually* maintained” (*Principles*, p. 366). He cautioned that, over time, repeated voluntary behaviors would become automatic. “If a bad set of Habits have grown-up with the growth of the individual, or if a single bad tendency be allowed to become an habitual spring of action,” he explained, “a far stronger effort of Volition will be required to determine the conduct in opposition to them” (pp. 350–51). “This is especially the case,” he continued, “when the habitual idea possesses an Emotional character, and becomes the source of *desires*” (p. 351). Unlike Prichard and Maudsley, Carpenter maintained that individuals who yielded to such desires would be fully responsible for their actions. “The nursemaid who cuts the throat of a child to whom she is tenderly attached, because her mistress has rebuked her for wearing too fine a bonnet,” he observed, “may be really labouring under a ‘temporary insanity’ which drives her irresistibly to a great crime; yet, just as the man who commits a murder in a state of drunken frenzy is *responsible for his irresponsibility* . . . , so is the . . . murderess, in so far as she has habitually neglected to control the wayward feelings whose strong excitement has impelled her to the commission of her crime” (p. 323; see also pp. 671–72). In order to prevent such occurrences, Carpenter urged individuals to form good habits early in life.<sup>26</sup>

<sup>25</sup> William B. Carpenter, *Principles of Mental Physiology, With Their Applications to the Training and Discipline of the Mind, and the Study of Its Morbid Conditions*, 2d ed. (London: Henry S. King and Co., 1875), p. 366. Hereafter this edition will be cited as *Principles*.

<sup>26</sup> See Carpenter, *Principles*, pp. 245, 337–75. In the preface to the fourth edition of his treatise, Carpenter reiterated this point: “a man (or woman) may come at last so far to have lost the power of self-control, as to be unable to resist a temptation to what is known to be wrong, and to be therefore morally irresponsible for the particular act,” Carpenter explained; “but such an individual, like the drunkard in the commission of violence, is *responsible for his irresponsibility*, because he has wilfully abnegated his power of self-control, by habitually yielding to temptations which he knows that he ought to have resisted” (William B. Carpenter, *Principles of Mental Physiology* . . . , 4th ed. [New York: D. Appleton and Co., 1883], p. xlv). For discussions of Carpenter’s ideas, see O’Brien, *Crime in Verse*, p. 122; Reed, *Victorian Will*, pp. 143–44; and Smith, *Trial by Medicine*, pp. 50–51.

Havelock Ellis, author of the first widely read scientific study of criminality in England, largely agreed with this view. “Suppose we accept the definition of insanity which . . . is now widely accepted by medical men . . . , that insanity is a loss of self-control, the giving way to an irresistible impulse,” Ellis explained in *The Criminal* (1890). “It cannot be unknown to any one that self-control may be educated, that it may be weakened or strengthened by the circumstances of life. If we define insanity as a loss of self-control and accept that as a ‘defence,’” he insisted, “we are directly encouraging every form of vice and crime, because we are removing the strongest influence in the formation of self-control.”<sup>27</sup> Ellis, who would later coauthor a treatise on homosexuality with Stevenson’s friend Symonds, seems to have shared some of Symonds’s anxieties about the diminishing role of human agency in Victorian society. Rather than excuse criminals for committing “irresistible” acts, Ellis felt, courts ought to encourage would-be offenders to rein in their passions.<sup>28</sup>

Not surprisingly, many jurists likewise objected to the idea of irresistible impulse. Baron Bramwell, for one, argued that, rather than excuse criminals, the appearance of an uncontrollable impulse warranted even stronger and more certain punishment. “The unhappy madman is a person who requires the threat more than anybody else,” he explained, “because, from the condition of his mind, he is more likely to have some temptation to commit the offence, and less intelligence to deter him

<sup>27</sup> Havelock Ellis, *The Criminal* (London: Walter Scott, 1890), p. 291. Ellis’s position is somewhat surprising, given the deterministic bent of his work. Like the Italian criminologist Cesare Lombroso, whose ideas he popularized, Ellis argued for the centrality of biology in the making of criminals. For discussions of Ellis’s and Lombroso’s ideas, see Davie, *Tracing the Criminal*, pp. 125–77; Rafter, *Criminal Brain*, pp. 65–88; and Wiener, *Reconstructing the Criminal*, pp. 235–40.

<sup>28</sup> Although Ellis opposed the idea of irresistible impulse, he did not entirely approve of jurists’ treatment of insanity. Objecting to the “divergent way in which somewhat similar cases were [handled by the courts]” (*The Criminal*, p. 292), Ellis proposed the addition of a commission of experts to decide points involving specialized knowledge or skill. He wanted the verdicts of the commission to be binding on courts, “subject to an appeal to a supreme medico-legal tribunal” (p. 294). On Ellis’s collaboration with Symonds, see *Oxford Dictionary of National Biography*, s.v. “Ellis, (Henry) Havelock,” accessed 28 May 2013, <<http://www.oxforddnb.com.libus.csd.mu.edu/view/article/33009>>.

from doing it.”<sup>29</sup> Like Carpenter and Ellis, Bramwell felt that many so-called “irresistible” impulses were actually resistible and that the law needed to teach individuals to bring those desires under control.<sup>30</sup> Other jurists mockingly proposed a “policeman at the elbow” test, according to which an impulse would be deemed truly irresistible if the defendant could not suppress it even when a policeman was by his side.<sup>31</sup>

In the last quarter of the century, as scientists and philosophers increasingly acknowledged the role of heredity and environment in shaping human behavior, alienists’ arguments gained ground. The influential judge and statutory draftsman James Fitzjames Stephen, in fact, reversed his position on this question. In 1855, he read a paper to the Juridical Society, affirming the *M’Naghten* Rules and rejecting the irresistible impulse test. Like Bramwell, he expressed concerns that the distinction between “irresistible” impulses and unresisted impulses could be easily confounded.<sup>32</sup> Eight years later, in *A General View of the Criminal Law of England* (1863), however, Stephen acknowledged that defects of will might be relevant to the criterion set out in *M’Naghten*.<sup>33</sup> And in the 1870s, he drafted a Homicide Law Amendment Bill and a Criminal Code that incorporated the broader standard.<sup>34</sup> “The proposition . . . which I have to

<sup>29</sup> Bramwell, B., in *Report of the Capital Punishment Commission*, P.P., vol. XXI (1866), minute 152, quoted in Smith, *Trial by Medicine*, p. 74. See also Wiener, *Reconstructing the Criminal*, pp. 88–89.

<sup>30</sup> Bramwell went farther than most judges did. He argued that he would “control [impulses] by the fear of hanging, mad or not mad” (*Special Report from the Select Committee on Homicide Law Amendment Bill*, P.P., vol. IX [1874], 27, quoted in Smith, *Trial by Medicine*, p. 105).

<sup>31</sup> See Maeder, *Crime and Madness*, p. 49.

<sup>32</sup> See James Fitzjames Stephen, “On the Policy of Maintaining the Limits at Present Imposed by Law on the Criminal Responsibility of Madmen,” in *Papers Read before the Juridical Society: 1855–1858*, 4 vols. (London: V. and R. Stevens and G. S. Norton, 1858), I, 67–94.

<sup>33</sup> See James Fitzjames Stephen, *A General View of the Criminal Law of England* (London: Macmillan, 1863), p. 95; and Wiener, *Reconstructing the Criminal*, p. 273.

<sup>34</sup> See Wiener, *Reconstructing the Criminal*, p. 273. Other European legal codes also incorporated the idea of irresistible impulse. The newly unified German nation, for example, adopted a criminal code in 1871 that was influenced by French law. It provided that there was “no punishable act, if, at the time of doing it, the actor was in a state of unconsciousness or of morbid disturbance of the mental faculties which excluded the free determination of his will” (German Penal Code, par. 51, quoted in Smith, *Trial by Medicine*, pp. 80–81).

maintain and explain,” Stephen avowed in *A History of the Criminal Law of England* (1883), “is that, if it is not, it ought to be the law of England that no act is a crime if the person who does it is at the time when it is done prevented either by defective mental power or by any disease affecting his mind from controlling his own conduct, unless the absence of the power of control has been produced by his own default.”<sup>35</sup> In Stephen’s view, “knowledge and power [were] the constituent elements of all voluntary action, and if either [was] seriously impaired the other [was] disabled” (*History*, II, 171).<sup>36</sup> He proposed the broader formulation in an attempt to make this idea explicit. Other judges and lawmakers remained skeptical. Not surprisingly, the Royal Commission on Indictable Offenses rejected his model code.<sup>37</sup>

While the *M’Naghten* test remained the legal standard, however, juries began to interpret and apply the rule in more flexible ways. Defendants from the professional classes, in particular, routinely invoked the idea of irresistible impulse, and juries increasingly acquitted individuals on this ground.<sup>38</sup> As *The Times* complained in 1882, the idea seemed to be that “there [had to] be something wrong in a man’s mental organization before he could . . . [commit] a certain crime in certain circumstances.”<sup>39</sup>

<sup>35</sup> James Fitzjames Stephen, *A History of the Criminal Law of England*, 3 vols. (London: Macmillan and Co., 1883), II, 168. As the caveat in his test suggests, he remained concerned about cases in which individuals caused their own loss of control. “I should be sorry to countenance the notion that the mere fact that an insane impulse is not resisted is to be taken as proof that it is irresistible,” he explained (*History*, II, 172).

<sup>36</sup> In Stephen’s view, the definition of insanity set forth in the *M’Naghten* Rules incorporated the idea of irresistible impulse. “It is as true,” he insisted, “that a man who cannot control himself does not know the nature of his acts as that a man who does not know the nature of his acts is incapable of self-control” (*History*, II, 171). In cases over which Stephen presided, he encouraged jurors to construe the *M’Naghten* test in this light (see John Hostettler, *Politics and Law in the Life of Sir James Fitzjames Stephen* [Chichester, England: Barry Rose, 1995], p. 71).

<sup>37</sup> The commission concluded that the “test proposed for distinguishing between . . . [an irresistible impulse] and a criminal motive, the offspring of revenge, hatred, or ungoverned passion, appears to us on the whole not to be practicable or safe, and we are unable to suggest one which would satisfy these requisites and obviate the risk of a jury being misled by considerations of so metaphysical a character” (*Report of the Royal Commission on Indictable Offences 1878–79*, P. P. vol. XX [1878–79], 18, quoted in Wiener, *Reconstructing the Criminal*, p. 274).

<sup>38</sup> See Wiener, *Reconstructing the Criminal*, p. 275.

<sup>39</sup> *Times*, 12 April 1882, quoted in Wiener, *Reconstructing the Criminal*, p. 275.

Alienists like Maudsley celebrated these acquittals, but jurists and laypeople worried about the ways in which such verdicts muddled the distinctions between freedom and compulsion, deviance and disease. The scope of the insanity defense and the implications of brain science for criminal responsibility continue to spark heated debates to this day.<sup>40</sup>



Stevenson began studying law at Edinburgh University in 1871 primarily to placate his father. He wished to pursue a literary career, but his father permitted him to give up

<sup>40</sup> Robert M. Sapolsky, for example, argues that contemporary neurobiology “argues against the retrenchment back towards a sole reliance on *M’Naghten* that has gone on in recent decades” (Sapolsky, “The Frontal Cortex and the Criminal Justice System,” in *Law and the Brain*, ed. Semir Zeki and Oliver Goodenough [New York: Oxford Univ. Press, 2006], p. 239). In particular, he contends, research on individuals with impairments to the prefrontal cortex—an area of the brain that plays a key role in cognition as well as emotional regulation and impulse control—supports a test of exculpatory insanity that includes impaired volition. “It is possible to know the difference between right and wrong,” he maintains, “but, for reasons of organic impairment, to not be able to do the right thing” (“Frontal Cortex,” p. 239). In *The Anatomy of Violence: The Biological Roots of Crime* (New York: Vintage, 2013), Adrian Raine exhaustively documents the biological basis of criminal behavior even as he acknowledges the human desire to seek retribution for such acts. He ultimately argues for a compromise position, suggesting that we use our knowledge of the neural basis of crime to prevent more violence (see *Anatomy of Violence*, pp. 329–40, 366–73). To do that, he maintains, we need to adopt a “clinical perspective”: we need to think of violence as a “disease that affects our society” and show more compassion and less retribution toward offenders (pp. 335, 336). Michael S. Gazzaniga, by contrast, argues that developments in neuroscience should not change legal conceptions of free will and individual responsibility. Responsibility, in his view, is best understood as “an interaction between people, a social contract” rather than a “property of the brain” (Gazzaniga, *Who’s in Charge? Free Will and the Science of the Brain* [New York: HarperCollins, 2011], pp. 193, 215). “Responsibility reflects a rule that emerges out of one or more agents interacting in a social context,” he argues, “and the hope that we share is that each person will follow certain rules. An abnormal brain does not mean that the person cannot follow rules” (*Who’s in Charge?* p. 193; see also Gazzaniga, “My Brain Made Me Do It,” in *Defining Right and Wrong in Brain Science: Essential Readings in Neuroethics*, ed. Walter Glannon [New York: Dana Press, 2007], pp. 183–94). Stephen J. Morse likewise rejects the idea that neuroscientific determinism undermines the legitimacy of criminal law (see Morse, “Lost in Translation? An Essay on Law and Neuroscience,” in *Law and Neuroscience*, ed. Michael Freeman, vol. 13 of *Current Legal Issues* [New York: Oxford Univ. Press, 2011], pp. 543–54). Walter Glannon underscores the limitations of brain imaging scans in assessing legal responsibility (see Glannon, “What Neuroscience Can [and Cannot] Tell Us about Criminal Responsibility,” in *Law and Neuroscience*, pp. 13–28).

engineering only if he took up law.<sup>41</sup> The aspiring writer found his legal training to be tedious. “Scots Law . . . is a burthen greater than I can bear,” Stevenson complained to a friend in November 1872.<sup>42</sup> In July 1875, less than two weeks after passing the bar examination and just three days after writing his first brief as a lawyer, he left for the Continent; for the next few months, he resided in an artists’ colony in France, where he devoted himself to fifteenth-century French poetry.<sup>43</sup>

Yet, in spite of his well-known objections to the study and practice of law, Stevenson showed an abiding interest in criminal justice. At his death, he owned more than twenty-eight volumes of trial reports, including George Borrow’s *Celebrated Trials, and Remarkable Cases of Criminal Jurisprudence* (1825) and three volumes of the *Old Bailey Sessions Papers*.<sup>44</sup> He consulted his collection even after he went abroad. In October 1881, for example, Stevenson asked his father to send him several books from his library, including Hugo Arnot’s *A Collection and Abridgement of Celebrated Criminal Trials in Scotland* (1785) and John Hill Burton’s *Narratives from Criminal Trials in Scotland* (1852), so that he could write an article about a 1752 murder case.<sup>45</sup> Also in

<sup>41</sup> See David Daiches, *Robert Louis Stevenson and His World* (London: Thames and Hudson, 1973), p. 26; and *The Letters of Robert Louis Stevenson*, ed. Bradford A. Booth and Ernest Mehew, 8 vols. (New Haven: Yale Univ. Press, 1994–95), I, 209. Hereafter this edition will be cited as *Letters*.

<sup>42</sup> Robert Louis Stevenson, letter to James Walter Ferrier, 23 November 1872, in *Letters*, I, 258.

<sup>43</sup> Stevenson passed his final examination for the Scottish Bar on 14 July 1875 and wrote his first brief on 23 July (see J. R. Hammond, *A Robert Louis Stevenson Chronology* [New York: St. Martin’s Press, 1997], p. 17; and *Letters*, II, 153). That fall, he returned to Scotland and attempted to work as an advocate, but after a few months, he abandoned the effort and devoted himself to his chosen profession of letters (*Letters*, II, 153).

<sup>44</sup> Stevenson owned at least 17 volumes of collected trials and 11 volumes of individual trial reports (see Stevenson’s Library Database, The New Edinburgh Edition of the Collected Works of Robert Louis Stevenson, accessed 1 June 2014 <<https://spreadsheets.google.com/pub?key=ppfchUIR5vJFJKjS8rKqIWA&output=html>>).

<sup>45</sup> See Robert Louis Stevenson, letter to Thomas Stevenson, Early November 1881, in *Letters*, III, 246. On Stevenson’s use of the case in *Kidnapped* (1886), see *Letters*, III, 246, n. 1. In letters to his friend Charles Baxter, Stevenson would later request copies of the *Old Bailey Session Papers* as well as Robert Pitcairn’s *Ancient Criminal Trials in Scotland* (1883) and Sir John Lauder of Fountainhall’s *Decisions* (1759–61) (see Robert Louis Stevenson, letter to Charles Baxter, 19 May 1891, in *Letters*, VII, 128; and Robert Louis Stevenson, letter to Charles Baxter, 16 April 1893, in *Letters*, VIII, 53). According to J. P. Mahaffy, Stevenson kept a copy of *Lives of the Most Remarkable Criminals Who Have*

1881, he began collaborating with Edmund Gosse on a series of papers recounting famous murder trials for the *Century Magazine*.<sup>46</sup> In addition to reading and writing about true crime, Stevenson enjoyed William Harrison Ainsworth's Newgate novels and Wilkie Collins's sensation and detective fiction.<sup>47</sup> He likewise esteemed Fyodor Dostoevsky's *Crime and Punishment* (1866), which, he told Symonds in the spring of 1886, was "the greatest book [he had] read easily in ten years."<sup>48</sup>

Not surprisingly, Stevenson's interest in criminal justice found its way into his own fiction. In stories such as "The Suicide Club" (1882), "Markheim" (1885), and "Olalla" (1885), Stevenson probes the workings of the deviant mind, contributing to the popular taste for tales of illicit behavior.<sup>49</sup> In *Jekyll and*

---

*Been Condemned and Executed for Murder, Highway Robberies, . . . or other Offences* (1874) in a small bookcase over the head of his bed, along with his copy of Shakespeare (see Stevenson's Library Database).

<sup>46</sup> See Robert Louis Stevenson, letter to Edmund Gosse, 26 December 1881, in *Letters*, III, 271. Gosse and Stevenson were still thinking about the series in March of the following year, though they did not end up going through with the plan (see Robert Louis Stevenson, letter to Edmund Gosse, 28 March 1882, in *Letters*, III, 307). On Stevenson's and Gosse's arrangement with R. W. Gilder of the *Century Magazine*, see *The Letters of Robert Louis Stevenson*, ed. Sidney Colvin, 4 vols. (New York: Charles Scribner's Sons, 1911), II, 75, 88–89. Earlier in 1881, Stevenson applied for the position of Chair of History and Constitutional Law at Edinburgh (see Robert Louis Stevenson, letter to Sidney Colvin, c. 24 June 1881, in *Letters*, III, 196–97). Stevenson did not obtain the position, which he sought chiefly for the sake of a steady income; he viewed his application as the "crown" of a "career of imposition" (Stevenson, letter to Alexander Whyte, late October 1881, in *Letters*, III, 242; see also Robert Louis Stevenson, letter to Thomas Stevenson, early November 1881, in *Letters*, III, 246, n. 4).

<sup>47</sup> On Ainsworth's fiction, see Robert Louis Stevenson, letter to Edmund Gosse, 9 November 1881, in *Letters*, III, 248. On Collins's novels, see Robert Louis Stevenson, letter to Margaret Stevenson, 8 September 1868, in *Letters*, I, 144–45; and Robert Louis Stevenson, letter to W. E. Henley, 17 or 18 July 1883, in *Letters*, IV, 143.

<sup>48</sup> Robert Louis Stevenson, letter to John Addington Symonds, early March 1886, in *Letters*, V, 220. On Stevenson's reaction to the novel, see also Robert Louis Stevenson, letter to W. E. Henley, early November 1885, in *Letters*, V, 151.

<sup>49</sup> Stevenson examines issues of criminality, too, in *Deacon Brodie, or the Double Life* (1880), which he cowrote with William Ernest Henley, and in *The Hanging Judge* (1887), which he cowrote with his wife, Fanny. *Deacon Brodie* focuses on an eighteenth-century Scottish town councilor who leads a secret life of crime; *The Hanging Judge* examines the hypocrisy of another legal official—the eponymous jurist—who has a secret, criminal past (see Stevenson, *Deacon Brodie, or the Double Life*, in *Plays*, vol. 9 of *The Works of Robert Louis Stevenson*, South Seas ed. [New York: Charles Scribner's Sons, 1925], pp. 1–84; and Stevenson, *The Hanging Judge*, in *Plays*, pp. 231–303). On Stevenson's contributions to—and anxieties about—the popular appetite for sensational

Hyde, however, he takes up new questions about criminality, intervening in the debates about insanity that preoccupied jurists, alienists, and social observers. Stevenson would have been well aware of the controversy, for his essays and reviews of the 1870s and early 1880s appeared in journals such as *The Spectator*, *The Academy*, and *The Fortnightly Review*, which featured articles by Maudsley and Carpenter as well as discussions about their work.<sup>50</sup> As Ed Block, Jr. has shown, Stevenson's friendship

---

literature, see Patrick Brantlinger, *The Reading Lesson: The Threat of Mass Literacy in Nineteenth-Century British Fiction* (Bloomington and Indianapolis: Indiana Univ. Press, 1998), pp. 166–81.

<sup>50</sup> The 18 July 1874 issue of *The Spectator*, for example, included a review of Carpenter's *Principles of Mental Physiology*, and the 5 December 1874 issue included a debate about free will to which Carpenter contributed (see "Dr. Carpenter's Mental Physiology," *Spectator*, 18 July 1874, pp. 917–18; and William B. Carpenter, "To the Editor of the 'Spectator,'" *Spectator*, 5 December 1874, p. 1530). In August 1879, the journal included an article responding to Maudsley's materialism; in November 1879, it published a review of Maudsley's *Pathology of Mind*; and in July 1883, the journal included a review of his *Body and Will* (see "Materialism, and its Lessons," *Spectator*, 9 August 1879, pp. 1006–7; "Dr. Maudsley's Pathology of Mind," *Spectator*, 22 November 1879, pp. 1481–83; and "Dr. Maudsley on Body and Will," *Spectator*, 28 July 1883, pp. 964–65). Reviews of Stevenson's *Edinburgh: Picturesque Notes and Travels with a Donkey in the Cévennes* meanwhile appeared in December 1878 and September 1879; a review of *Virginibus Puerisque* appeared in June 1881; and a review of *New Arabian Nights* appeared in November 1882 (see "Current Literature," *Spectator*, 21 December 1878, p. 1607; [Anon.], rev. of *Travels with a Donkey in the Cévennes*, by Robert Louis Stevenson, *Spectator*, 27 September 1879, pp. 1224–25; "Life at Twenty-Five," *Spectator*, 11 June 1881, pp. 775–76; and "Mr. Stevenson's Stories," *Spectator*, 11 November 1882, pp. 1450–52). Stevenson seems to have read the journal on a fairly regular basis; in addition to the 8 August 1874 issue, he owned two issues from August 1876 and one each from May and September 1879 (see Stevenson's Library Database). *The Academy* likewise featured discussions of mental physiology as well as writing by Stevenson. A review of Maudsley's *Responsibility in Mental Disease* appeared in the April 1874 issue of the journal (see C. Lockhart Robertson, rev. of *Responsibility in Mental Disease*, by Henry Maudsley, *Academy*, 18 April 1874, pp. 434–35). That same year, Stevenson began contributing his own reviews to the publication; his piece on Edgar Allan Poe appeared the following January (see Stevenson, rev. of *The Works of Edgar Allan Poe, Vols. I and II*, edited by John H. Ingram, *Academy*, 2 January 1875, pp. 1–2). Articles by Maudsley also appeared in *The Fortnightly Review* in the late 1870s; one of these pieces nearly overlapped with Grant Allen's review of Stevenson's *Travels with a Donkey in the Cévennes* (see Maudsley, "Hallucinations of the Senses," *Fortnightly Review*, 24 [1878], 370–86; Maudsley, "Materialism and its Lessons," *Fortnightly Review*, 26 [1879], 244–60; and Grant Allen, "Some New Books," *Fortnightly Review*, 26 [1879], 153–54). Stevenson's essay "The Morality of the Profession of Letters" appeared in the journal in January 1881 ("The Morality of the Profession of Letters," *Fortnightly Review*, 29 [1881], 513–20). Stevenson may also have seen a review of Carpenter's *Principles of Mental Physiology* and Maudsley's *Physiology of Mind* in the January 1879 issue of *The Edinburgh Review*, as he mentions reading an

with the psychologist James Sully likewise exposed him to the work of evolutionist thinkers such as Maudsley.<sup>51</sup> (Sully was a frequent visitor at Skerryvore during the period in which Stevenson wrote *Jekyll and Hyde*.)<sup>52</sup> Stevenson may, in fact, have read Sully's essay "Genius and Insanity," which appeared in *Popular Science Monthly* in August 1885; Sully discusses the idea of moral insanity and cites Maudsley's *Responsibility in Mental Disease* in this piece.<sup>53</sup> Stevenson also owned a copy of Charles Darwin's *The Expression of the Emotions in Man and Animals* (1872), which references Maudsley's account of the "reappearance of primitive instincts" in the degenerated brains of insane patients.<sup>54</sup> Stevenson may have encountered Carpenter's ideas at Edinburgh, moreover, for the University granted the physiologist an honorary Doctor of Civil Law in 1871, when Stevenson was a student there.<sup>55</sup> In early 1875, less than a year after the publication of Maudsley's and Carpenter's treatises on mental physiology, Stevenson signaled his interest in disordered mental

---

article in the journal by his friend Sidney Colvin later that year (see "Mental Physiology," *Edinburgh Review*, 1 January 1879, pp. 58–83; and Robert Louis Stevenson, letter to Sidney Colvin, 28 July 1879, in *Letters*, II, 330–31).

<sup>51</sup> See Block, "James Sully," pp. 443–52. Beginning about 1876, Sully and Stevenson were both members of the Savile Club, and their work overlapped in the *Cornhill Magazine* between 1876 and 1882 (Block, "James Sully," pp. 446–47). Sully's essays in the journal provided "popularized evolutionist explanations of duality, primitive consciousness, illusions, and madness" (p. 447). In his autobiography, Sully emphasized the mutual influence that he and Stevenson had on each other (p. 446).

<sup>52</sup> See Block, "James Sully," p. 446.

<sup>53</sup> See Sully, "Genius and Insanity," *Popular Science Monthly*, 27 (1885), 450, 454, 461. The essay first appeared in *Nineteenth Century*, 10 (1881), 573–87.

<sup>54</sup> Charles Darwin, *The Expression of the Emotions in Man and Animals*, ed. Paul Ekman, 3d ed. (New York: Oxford Univ. Press, 1998), p. 241; for Maudsley's account, see *Body and Mind*, pp. 52–53. On Stevenson's reaction to Darwin's treatise, see Robert Louis Stevenson, letter to Frances Sitwell, 1 September 1873, in *Letters*, I, 287. As Stevenson owned a copy of Prichard's *The Natural History of Man*, 3d ed. (London: Hippolyte Baillière, 1848), he would also have been familiar with some of Prichard's ideas (see Stevenson's Library Database).

<sup>55</sup> See E. Ray Lankester, "Obituary: William Benjamin Carpenter," *Academy*, 21 November 1885, p. 344. Stevenson would also have encountered a reference to Carpenter's ideas in *The Moonstone*—which he read in September 1868—as the doctor's assistant, Ezra Jennings, cites Carpenter's account of the "perceptive consciousness" when he explains his plan to induce Franklin Blake to steal the eponymous diamond a second time (see Wilkie Collins, *The Moonstone*, ed. John Sutherland [New York: Oxford Univ. Press, 1999], pp. 385–86; and Robert Louis Stevenson, letter to Margaret Stevenson, 8 September 1868, in *Letters*, I, 144–45).

states. In a review of Edgar Allan Poe's collected tales, he praised the writer's "almost incredible insight into the debateable region between sanity and madness" (Stevenson, rev. of *The Works of Edgar Allan Poe*, p. 1).<sup>56</sup>

In *Jekyll and Hyde*, Stevenson offers his own analysis of the nature and scope of insanity and its implications for criminal law. Drawing upon while moving beyond the process of legal justice, Stevenson imaginatively places the doctor on trial.<sup>57</sup> Jekyll seems to be the prototype of the respectable, professional man who succumbs to bouts of madness. The disease does not affect his cognitive faculties; he is well aware of the difference between right and wrong. When he first gives way to his illicit desires, Jekyll confesses to being "conscious of a heady recklessness": "I knew myself, at the first breath of this new life," he explains, "to be more wicked, tenfold more wicked, sold a slave to my original evil" (*Jekyll and Hyde*, p. 57). The fact that Jekyll flees after killing Carew also suggests that he knows he has done wrong, at least according to positive law. Upon assuming the identity of his "better self" (p. 62), he is filled with shame and "remorse" (p. 64) for Hyde's actions. Thus, by his own testimony, Jekyll would be found legally sane and fully responsible for Carew's death under the *M'Naghten* test.

<sup>56</sup> Stevenson mentions, in particular, stories such as "The Tell-Tale Heart" and "The Imp of the Perverse," which—as John Cleman astutely argues—hold the idea of irresistible impulse up to critique (see Cleman, "Irresistible Impulses: Edgar Allan Poe and the Insanity Defense," *American Literature*, 63 [1991], 623–40). Stevenson would have encountered the "right and wrong" test of insanity during his legal studies, as Scottish courts adopted a cognitive test that was identical to *M'Naghten* (see John H. A. MacDonald, *A Practical Treatise of the Criminal Law of Scotland* [Edinburgh: William Paterson, 1867], pp. 14–16). Stevenson had long been attuned to questions of free will and responsibility, as he was raised in a rigidly Calvinist family. During his early childhood, his father and his nurse, Alison Cunningham, instilled in him a heightened awareness of sin. In his late teens, however, Stevenson rejected his parents' Christian beliefs and, in January 1873, he announced to his father that he was an atheist (see Jenni Calder, *Robert Louis Stevenson: A Life Study* [New York: Oxford Univ. Press, 1980], pp. 32–34; William Gray, *Robert Louis Stevenson: A Literary Life* [New York: Palgrave, 2004], pp. 3–4; and Robert Louis Stevenson, letter to Charles Baxter, 2 February 1873, in *Letters*, I, 273–74).

<sup>57</sup> On the centrality of the law courts to Victorian fiction and the role of novels as forums for moral and legal judgment, see Jonathan H. Grossman, *The Art of Alibi: English Law Courts and the Novel* (Baltimore: Johns Hopkins Univ. Press, 2002).

As we have seen, however, in the statement that he prepares for Utterson, Jekyll suggests that he suffers from moral and impulsive insanity. Lacing his “confession” with the language of disease, he describes his first experiment with vice as an attack of “a great sickness”: he experiences “racking pangs” and “a grinding in the bones, deadly nausea, and a horror of the spirit that cannot be exceeded at the hour of birth or death” (*Jekyll and Hyde*, pp. 56, 57). Later on, he observes that “the powers of Hyde seemed to have grown with the sickliness of Jekyll” (pp. 68–69). At the end of his statement, he describes his desperate efforts to obtain a certain “drug”—a “medicine”—that would heal his psychic division (p. 68). Coming from a man who possesses not only a Doctor of Medicine but also a Doctor of Civil Law and a Doctor of Laws, his statements are hardly surprising. Jekyll is in a position to know the latest developments in medical jurisprudence and to craft the strongest possible case in his defense.<sup>58</sup> But his friends and acquaintances likewise suggest that he suffers from mental disease. The young woman who witnesses Carew’s murder describes Hyde as “carrying on . . . like a madman” (*Jekyll and Hyde*, p. 21). When Utterson’s clerk hears of the incident, he, too, promptly declares that “the man, of course, was mad” (p. 29). Upon learning of Jekyll’s strange testamentary disposition and inexplicable association with Hyde, even the skeptical lawyer Utterson denounces his friend’s “mad will” (p. 33). Utterson feels that “so great and unprepared a change” in Jekyll “point[s] to madness,” though he believes that “there must lie for it some deeper ground” (p. 33). Dr. Lanyon, for his part, explains that, more than ten years earlier, Jekyll “began to go wrong, wrong in [his] mind” (p. 12). After he receives a letter from Jekyll, asking

<sup>58</sup> Jekyll’s credentials are noted in his will; the document refers to “Henry Jekyll, MD, DCL, LL.D., FRS, &c.” (*Jekyll and Hyde*, p. 11). Jekyll’s degrees indicate that he studied civil law at the university level and is entitled to practice as an advocate. The Doctor of Civil Law degree was abbreviated D.C.L. at Oxford and LL.D. at Cambridge (see J. H. Baker, *An Introduction to English Legal History*, 3d ed. [London: Butterworths, 1990], pp. 193–94). Civil law countries such as France and Germany, as we have seen, recognized the idea of irresistible impulse. Although alienists distinguished between moral and impulsive insanity, the two forms of insanity overlapped in practice, as defense arguments for irresistible impulse merged into general claims about offenders’ emotional and volitional impairment (see Smith, *Trial by Medicine*, p. 114). Jekyll likewise blurs the distinctions between these disorders when he crafts his defense.

him to break into Jekyll's cabinet to obtain certain chemicals locked therein, Dr. Lanyon feels certain that his colleague is "insane" (p. 49). "The more I reflected," he explains to Utterson, "the more convinced I grew that I was dealing with a case of cerebral disease" (p. 51). When Jekyll goes to Dr. Lanyon's house to obtain the mixture, the doctor describes him as "wrestling against the approaches of the hysteria" (p. 52).

There is other evidence, too, suggesting that Jekyll suffers from disordered emotional and volitional faculties. Jekyll, "the very pink of the proprieties, celebrated too" (*Jekyll and Hyde*, p. 9), shows an inexplicable delight in committing violent acts—a sign, according to Prichard and Maudsley, of moral insanity. Jekyll experiences a profound change in character when his "lower elements" (p. 57) take control of his will, again in accordance with Prichard's and Maudsley's accounts of the disease. During these periods, it is as if Jekyll becomes a different person—an utter "stranger" (p. 58). In his "second and worse [self]" he has—as Maudsley put it—"no capacity of true moral feeling; all his impulses and desires, to which he yields without check, are egoistic; his conduct appears to be governed by immoral motives" (*Responsibility*, p. 172). Indeed, Jekyll then engages in acts that show a complete "moral insensibility and insensate readiness to evil" (*Jekyll and Hyde*, p. 64)—exactly the reverse of his normal behavior. As critics have noted, the deterioration of Jekyll's mind is reflected in the transformation of his body, in accordance with evolutionist thought.<sup>59</sup> Utterson recoils in horror when he meets the doctor's evil double, for Hyde has a "dwarfish" stature, "a displeasing smile," and "a savage laugh" (pp. 16, 15). Hyde's voice, too, is "husky, whispering and somewhat broken" (p. 16); overall, he conveys a "haunting sense of unexpressed deformity" (p. 25). To Utterson, Hyde "seems hardly human" (p. 16). Poole refers to Hyde as a "thing" (pp. 39, 41)—a "masked thing like a monkey" (p. 42). Jekyll, too, alludes to "the animal" and "brute that [sleeps] within" (pp. 66, 68). Through the vicious behavior and shocking demeanor

<sup>59</sup> On Stevenson's portrait of Hyde's atavism, see Arata, *Fictions of Loss*, pp. 33–53; Mighall, *Geography*, pp. 145–53, 187–95; Reid, *Robert Louis Stevenson*, pp. 92–105; Block, "James Sully"; Mighall, "Diagnosing Jekyll"; Persak, "Spencer's Doctrines"; and Tropp, "Schopenhauer," pp. 144–47.

of Jekyll's alter ego, Stevenson presents Jekyll as a victim of hereditary disease. The beast that sleeps within, Stevenson suggests, is a throwback to an earlier era of human development; Jekyll has little control over—and thus little responsibility for—the savage acts that he commits.

The spontaneous transformations that Jekyll experiences further evoke his powerlessness in the face of mental disease. At first, indulging in vice is a conscious choice; Jekyll decides when and where to satisfy his sadistic appetite. Over time, however, he loses control of his impulses when he least expects and wishes to do so. Two months before he murders Carew, for example, he goes to sleep as Jekyll and awakens as Hyde. The nocturnal setting suggests the role that his unconscious desires play in this transformation. Dr. Lanyon later comes to Jekyll's rescue when Jekyll unexpectedly turns into his evil double; the scientist, as we have seen, brings Jekyll the drug that restores him to his "original and better self" (*Jekyll and Hyde*, p. 62). But by the end of the novel, Jekyll can no longer maintain this identity. If he sleeps or even dozes for a moment, he turns into Hyde. At this point, his impulses have become truly irresistible. Neither the weight of his conscience nor his "terrors of the scaffold" (p. 65) has any effect on his behavior. The changes to his body and character and the loss of his self-control accord with Prichard's and Maudsley's accounts. Jekyll's physical and moral deterioration seem neatly to track the progress of emotional and volitional disease, thereby excusing him for Carew's murder.

The novel, however, refuses to accept this defense. Far from weakening the idea of individual responsibility, the text holds Jekyll fully accountable for his actions. Like Carpenter and Bramwell in his day and Michael Gazzaniga and Stephen Morse in our own, Stevenson affirms the existence of free will in spite of biological and environmental influences on human behavior. To broaden the scope of insanity, Stevenson shows, is to blur the distinctions between deviance and disease, making it easy for educated, respected men like Jekyll to evade responsibility for murder. The problem with acquitting Jekyll on the ground of moral or impulsive insanity, Stevenson shows, is that he exercises control over his actions until late in the text.

Although the novel suggests that Jekyll's evil impulses are, to some extent, inherited and innate, it emphasizes that Jekyll makes a conscious choice to embrace this inheritance.<sup>60</sup> His agency is evident in his account of his initial transformation:

There was something strange in my sensations, something indescribably new and, from its very novelty, incredibly sweet. I felt younger, lighter, happier in body; within I was conscious of a heady recklessness, a current of disordered sensual images running like a mill race in my fancy, a solution of the bonds of obligation, an unknown but not an innocent freedom of the soul. I knew myself, at the first breath of this new life, to be more wicked, tenfold more wicked, sold a slave to my original evil; and the thought, in that moment, braced and delighted me like wine. (*Jekyll and Hyde*, p. 57)

As Jekyll readily admits, he is thrilled by the changes that he experiences. He feels not only "younger" but "happier," elated by his newfound freedom (p. 57). Hitherto, his life has been one of "effort, virtue and control" (p. 58); now he is released from all social constraints. Jekyll knows what he is doing: he takes and furnishes a second residence in Soho, making his "preparations with the most studious care" (p. 59); he announces to his servants that Hyde will have "full liberty and power about [his] house in the square" (p. 59); and he draws up a will, leaving his fortune to his alter ego. The document marks the voluntary relinquishing of his self-control; through this instrument, he attempts to give free rein and legal sanction to his violent impulses. Thus "fortified," he "[begins] to profit by the strange immunities of [his] position" (pp. 59–60). He has no incentive to rein in his desires because he believes that he is free—legally, if not morally—from the consequences of his actions:

<sup>60</sup> Most critics emphasize Stevenson's alignment with—rather than resistance to—the evolutionist psychology of his day. Reid stands apart in arguing that the novel "question[s] the power of heredity" even as it draws upon degenerationist thought (*Robert Louis Stevenson*, p. 97). In her reading, though, Stevenson shows that degeneration stems not so much from "biological inheritance" as "from the *denial* of savage instincts" (p. 11). Stevenson, she maintains, explains devolution in terms of environmental influence—in particular, overcivilization (pp. 97–98).

Think of it—I did not even exist! Let me but escape into my laboratory door, give me but a second or two to mix and swallow the draught that I had always standing ready; and whatever he had done, Edward Hyde would pass away like the stain of breath upon a mirror; and there in his stead, quietly at home, trimming the midnight lamp in his study, a man who could afford to laugh at suspicion, would be Henry Jekyll. (p. 60)

Jekyll here expresses a fantasy of freedom—a desire to make the responsible agent simply disappear. He admits that he “stood at times aghast before the acts of Edward Hyde” but insists that “the situation was apart from ordinary laws, and insidiously relaxed the grasp of conscience” (p. 60). “It was Hyde, after all, and Hyde alone,” he explains, “that was guilty. Jekyll was no worse; he woke again to his good qualities seemingly unimpaired” (p. 60). Even as Jekyll acknowledges the failure of his efforts, he attempts to conceal his culpability, manipulating language and law to serve his ends. The novel suggests that to excuse Jekyll’s violence by deeming it “irresistible” is to allow calculating criminals to elude responsibility for their actions. A broad definition of insanity, the novel shows, encourages offenders to indulge, rather than to suppress, their illicit desires.

The analogy between insanity and intoxication that Jekyll introduces reinforces this point. “I do not suppose,” Jekyll observes before relating his brutal murder, “that, when a drunkard reasons with himself upon his vice, he is once out of five hundred times affected by the dangers that he runs through his brutish, physical insensibility” (*Jekyll and Hyde*, pp. 63–64). “Neither had I,” he continues, “long as I had considered my position, made enough allowance for the complete moral insensibility and insensate readiness to evil, which were the leading characters of Edward Hyde” (p. 64). Taking their cue from such statements, critics have read the novel as a meditation on addiction and a contribution to the Victorian alcohol debate.<sup>61</sup> Jekyll’s references to drink, though, also shed light on

<sup>61</sup> See Thomas L. Reed, Jr., *The Transforming Draught: “Jekyll and Hyde,” Robert Louis Stevenson and the Victorian Alcohol Debate* (Jefferson, N.C.: McFarland and Co., 2006); Susan Zieger, *Inventing the Addict: Drugs, Race, and Sexuality in Nineteenth-Century British and American Literature* (Amherst: Univ. of Massachusetts Press, 2008), pp. 155–95; Susan Heseltine Jagoda, “A Psychiatric Interpretation of Dr. Jekyll’s ‘Case,’” *Victorian*

the controversy over insanity. The discourses of insanity and intoxication overlapped in this period, as many doctors believed that these conditions both resulted from a diseased will. In *Inebriety: Its Etiology, Pathology, Treatment and Jurisprudence* (1882), for example, the physician Norman Kerr observed that “men and women of the highest culture, the purest life, the most exalted aims, have become reckless drunkards.”<sup>62</sup> They did so, he maintained, “not from a determination to become drunken . . . [or] any innate love of the inebriating agent, but from a want of power to resist the overwhelming weight of a well-nigh irresistible impulse within them, which, especially when awakened to action on the contact of a narcotic with the nervous system, hurled them away in spite of their vain efforts at escape in a whirlwind of excessive indulgence” (*Inebriety*, p. 4). In this protracted account, Kerr syntactically strips drunkards of agency, evoking the plight of those who succumb to alcohol’s allure. In Kerr’s view, inebriety was not a choice but a disease whose “nearest ally [was] ‘insanity’” (p. 14); the physical basis of the disease, he argued, had serious implications for criminal law.<sup>63</sup> Maudsley likewise conflated the conditions, explaining that the “great exaltation of ideas and feelings and will” that resulted from the deterioration of the moral sense was like that experienced in the early stages of alcoholic intoxication. In his view, the physical basis of intoxication illuminated “the physical nature of the initial process of a moral derangement” (*Body and Will*, p. 267). For Maudsley, as for Kerr, the connection went further, too: Maudsley claimed that intemperance was itself a chief *cause* of insanity, and, as we have seen, he insisted that those who suffered from such illness

---

*Newsletter*, no. 89 (1996), 31–33; and Daniel L. Wright, “‘The Prisonhouse of My Disposition’: A Study of the Psychology of Addiction in *Dr. Jekyll and Mr. Hyde*,” *Studies in the Novel*, 26 (1994), 254–67. Zieger reads the diseased will as a metaphor for both alcohol addiction and homosexuality; the two discourses, she notes, were linked in the world outside the novel.

<sup>62</sup> Norman Kerr, *Inebriety: Its Etiology, Pathology, Treatment and Jurisprudence*, 2d ed. (London: H. K. Lewis, 1889), p. 4.

<sup>63</sup> In many cases, Kerr argued, intoxicated individuals ought to be exempt from criminal responsibility; in others, they ought to receive a reduction in punishment (see *Inebriety*, pp. 390–417). In his view, cases involving “the inebriety of insanity” and “the insanity of inebriety” both warranted complete exemptions (p. 400).

deserved compassion and care instead of blame and punishment.<sup>64</sup> Jurists, however, viewed intoxication in a different light. Then, as today, courts were reluctant to excuse individuals who committed crimes while voluntarily inebriated. Judges deemed such individuals culpable for getting drunk in the first place.<sup>65</sup> Carpenter, as we have seen, endorsed this idea. The criminal who acted from an overpowering impulse was, in Carpenter's view, "remotely responsible (like the drunkard . . .), because he . . . allowed himself to become thus possessed, when the means of escape lay in his own power" (*Principles*, p. 672).<sup>66</sup>

In *Jekyll and Hyde*, Stevenson affirms this approach. Much as Carpenter does, Stevenson presents addiction to vice as a habit that can—and should—be controlled. After Jekyll unexpectedly wakes up in the body of Hyde, he admits: "I began to spy a danger that, if this were much prolonged, the balance of my nature might be permanently overthrown, the power of voluntary change [might] be forfeited, and the character of Edward Hyde [might] become irrevocably mine" (*Jekyll and Hyde*, p. 62). But, even as he bids "a resolute farewell to the liberty, the comparative youth, the light step, leaping pulses and secret pleasures, that [he] . . . enjoy[s] in the disguise of Hyde" (p. 63), he neither gives up his house in Soho nor destroys Hyde's clothes. His vivid description of these pleasures suggests that he is not, in fact, willing to let go of them. As Jekyll explains, using a tellingly passive formulation, "I chose the better part and was found wanting in the strength to keep to it" (p. 63). When Jekyll brutally beats Carew to death two months later, he still has

<sup>64</sup> On intemperance as a cause of insanity, see Maudsley, *Body and Mind*, pp. 67–68; Maudsley, *Body and Will*, pp. 273–75; and Maudsley, *Responsibility*, pp. 43, 283–87.

<sup>65</sup> See K.J.M. Smith, *Lawyers, Legislators and Theorists: Developments in English Criminal Jurisprudence 1800–1957* (New York: Oxford Univ. Press, 1998), pp. 100–102, 239–45; and Walker, *Crime and Insanity*, I, 177–81. The courts did accept the idea that alcoholism could give rise to involuntary intoxication, and they permitted evidence of a defendant's intoxicated condition to be used to establish other defenses (see Smith, *Lawyers*, pp. 101–2, 240–41). Today, some states permit evidence of voluntary intoxication to negate the *mens rea* requirement for "specific intent" crimes. But the principle is controversial and some states have begun to narrow or abolish it (see *Cases and Materials on Criminal Law*, ed. Joshua Dressler and Stephen P. Garvey, 6th ed. [St. Paul: Thomson Reuters, 2012], pp. 587–89).

<sup>66</sup> On the analogy between insanity and intoxication, see also W. B. Carpenter, "The Physiology of the Will," *Contemporary Review*, 17 (1871), 215–16.

control over his impulses. (Only later does he find himself repeatedly and unexpectedly turning into Hyde.) After leading an upright and quiet life for a time, Jekyll becomes “tortured with throes and longings, as of Hyde struggling after freedom; and at last, in an hour of moral weakness,” he again indulges his longings (p. 63). He is susceptible to these feelings because, as he acknowledges, he has “voluntarily stripped [him]self of all those balancing instincts, by which even the worst of us continues to walk with some degree of steadiness among temptations” (p. 64). It is difficult but still possible for him to resist his illicit desires at this point. Jekyll is responsible, the novel shows, for failing to bring his addiction under control before it is too late.

The law does, in fact, deter Jekyll from indulging his desires at several points in the text. After he kills Carew, Jekyll’s impulses are checked for a time by his “terrors of the scaffold”; “had it not been for his fear of death,” Jekyll later observes, “[Hyde] would long ago have ruined himself in order to involve me in the ruin” (*Jekyll and Hyde*, pp. 65, 69). Several months after the murder, Jekyll unexpectedly turns into Hyde while sitting on a bench in the park. Angry and desperate, Hyde “lust[s] to inflict pain”; even then, though, he manages to “[master] his fury with a great effort of the will” (p. 67). As Lanyon reports, when Hyde arrives at Lanyon’s house to obtain the drug later that night, a policeman standing nearby “advanc[es] with his bull’s eye open” (p. 51). “At the sight,” Lanyon explains, “I thought my visitor started and made greater haste” (p. 51). These reactions reveal that Jekyll is capable of reining in his violent desires when he wishes to do so. Like Bramwell in his day and Gazzaniga in our own, Stevenson shows that the idea of irresistible impulse provides a ready excuse for criminals who are able—but unwilling—to control their actions.

The motif of role-play that runs through the text further underscores Jekyll’s responsibility for Carew’s murder. In his statement, Jekyll likens his transformations to that of an actor who dons a “disguise” (*Jekyll and Hyde*, pp. 60, 63). “When I wore the semblance of Edward Hyde,” he relates, “none could come near to me at first without a visible misgiving of the flesh” (p. 58). He is nonetheless attracted to this role, eager to escape “the dryness of a life of study” (p. 59). “I had but to . . . doff at

once the body of the noted professor," he explains, "and to assume, like a thick cloak, that of Edward Hyde" (p. 59). Later on, he again describes himself as being "in [his] second character" (p. 66) when he assumes the identity of his "worse [self]" (p. 62). And, until late in the novel, his transformations all take place in a "cabinet" located above an old "anatomical theatre" that functions as Jekyll's laboratory (p. 62; see also p. 47). Through the motif of the mad doctor as actor, Stevenson emphasizes the voluntary nature of the changes that Jekyll experiences. The theatrical imagery undercuts the idea that his crimes are biologically determined; Stevenson suggests that Jekyll's behavior is the effect of design rather than disease.

The metaphor of the actor, like that of the alcoholic, moreover, underscores the loss of freedom that results from repeatedly indulging in vice. Jekyll's life becomes incoherent when he attempts to maintain "two characters as well as two appearances" (*Jekyll and Hyde*, p. 59). By the end of the text, it is "only under the immediate stimulation of the drug that [he is] able to wear the countenance of Jekyll" (p. 68). Stevenson uses the theatrical metaphor to show the dangers of repeatedly assuming a deviant disguise: over time, Jekyll loses his "original and better self" in the part that he plays.<sup>67</sup> Utterson, of course, goes to the other extreme: he shuns all role-play; though he "enjoy[s] the theatre, [he has] not crossed the doors of one for twenty years" (*Jekyll and Hyde*, p. 5). The problem, Stevenson shows, is that Jekyll does not feed his appetite in moderation; rather, he repeatedly indulges his passions until he utterly confounds the distinctions between his nighttime fantasies and his waking

<sup>67</sup> Stevenson is drawing here on a well-known critique of the theater. Anxieties about self-estrangement and self-forgetting, as David Marshall shows, underlie Jean-Jacques Rousseau's influential account of actors and acting in *Letter to M. d'Alembert on the Theatre* (1758) (see Rousseau, *Politics and the Arts: Letter to M. d'Alembert on the Theatre*, trans. Allan Bloom [Ithaca: Cornell Univ. Press, 1968], pp. 79–81; and Marshall, "Rousseau and the State of Theater," *Representations*, no. 13 [1986], 90–92). Stevenson was himself attracted to the theater. In 1872, he took part in a number of amateur theatricals; in 1875, he played Duke Orsino in a performance of *Twelfth Night*; and two years later, he acted in a play based on *Masks and Faces* by Charles Reade (see Hammond, *Chronology*, pp. 9, 17, 21). Between 1880 and 1885, he also cowrote four plays and planned several others (see Hammond, *Chronology*, pp. 25, 29, 37, 43, 45; and Stevenson, *Plays*). As an avid actor and playwright, Stevenson would have been keenly aware of the possibilities and dangers of theatricality and disguise.

actions. Through the metaphor of the theater, Stevenson emphasizes Jekyll's responsibility for Carew's murder, while demonstrating the need to regulate one's passions before it is too late.

The defense of emotional insanity, the novel shows, is ultimately founded on little more than a desire to avoid responsibility for one's actions. As we have seen, after Jekyll attacks Carew, he insists that "no man morally sane could have been guilty of that crime upon so pitiful a provocation" (*Jekyll and Hyde*, p. 64). He suggests, in short, that it is not possible for him to have been sane at the time because he committed such an appalling and inexplicable act. Following Prichard and Maudsley, Jekyll uses his supposed insanity to excuse his crime—but the crime itself provides the evidence of his insanity. At other points, he refers to his "moral weakness" (p. 63) and "moral insensibility" (p. 64) but offers no proof of his madness other than the vicious and seemingly uncontrollable nature of his acts. His circular reasoning undermines his defense, undoing the association between his inner beast and mental disease.

The novel likewise undermines the diagnoses offered by Jekyll's friends and acquaintances. Much as Jekyll does, they conflate "madness" with behavior that is disagreeable, shocking, and strange. As we have seen, Utterson—"a lover of the sane and customary sides of life"—thinks that it is "madness" for Jekyll to change his will to leave his property to Hyde (*Jekyll and Hyde*, p. 11). When Hyde disappears following Carew's murder, Utterson asks Jekyll, "You have not been mad enough to hide this fellow?" (p. 26). Dr. Lanyon's own charges of Jekyll's mental instability stem from a disagreement about science; Lanyon cannot understand how a man of Jekyll's stature could reject the views of the scientific establishment. Through these careless diagnoses, Stevenson shows how easy it is to elide the distinctions between illness and vice.<sup>68</sup> Far from signaling mental disease, "madness" becomes synonymous with

<sup>68</sup> Rosner similarly observes that Jekyll's "self-serving diagnosis is undercut by the excess of references to insanity in the novel" ("Total Subversion," p. 30). In her view, "almost everyone is seen as 'insane' in one way or another—suggesting perhaps that insanity may be a norm in the world of the novel or that medical terms like insanity may be almost meaningless" (p. 30). Jekyll, though, is the only one who is described as insane; madness is hardly a norm in the world of the text.

folly, stupidity, and eccentricity. The woman who witnesses Carew's murder likewise invokes the idea of insanity when she describes the attack. (Hyde, she reports, was "carrying on . . . like a madman.") And Utterson's clerk, Mr. Guest, as we have seen, instinctively quips that "the man, of course, was mad." These verdicts are no more substantiated than are Utterson's and Lanyon's judgments, but the young woman and the clerk display a similar assurance about them. For nothing seems more shocking and strange, in the world of respectable Victorian society, than a vicious attack on an elderly M.P. Through these instinctive responses to Carew's brutal murder, Stevenson shows the danger of conflating criminality and madness, while contesting the growing distortion of the idea of insanity in Victorian culture.

The novel ultimately substitutes the language of moral and legal judgment for that of illness, reaffirming the distinctions between deviance and disease. Jekyll repeatedly refers to Hyde's evil nature, emphasizing his "wicked[ness]," "cruelty," and "infamy" (*Jekyll and Hyde*, pp. 57, 58, 59, 60). Invoking a theological understanding of crime as sin, Jekyll likens Hyde to Satan, denouncing his evil double as a "child of Hell" (p. 67). Although Jekyll attempts to distance himself from his alter ego ("He, I say—I cannot say I," the doctor famously insists [p. 67]), the novel undermines his efforts, highlighting his guilt, shame, and "remorse" (pp. 64, 65). Indeed, the specter of legal punishment looms large in his consciousness. After beating Carew to death, he declares that he "was glad to have [his] better impulses thus buttressed and guarded by the terrors of the scaffold" (p. 65). Later, he alludes to Hyde's "terror of the gallows," which drives Hyde "continually to commit temporary suicide, and return to his subordinate station of a part instead of a person" (p. 69). Although here again Jekyll attempts to separate his "original and better self" from his evil double, the novel shows that they are one and the same. Through the language of guilt and the specter of the scaffold, Stevenson presents Jekyll as a villain rather than a victim, a criminal who needs punishing rather than a patient who deserves treatment and care.

In the end, the novel metes out its own justice. Jekyll is "punished," as he observes, by Hyde's "moral insensibility and

insensate readiness to evil" (*Jekyll and Hyde*, p. 64). After the murder, he becomes a "prisoner" in his own house (p. 35). "I have brought on myself a punishment and a danger that I cannot name," he cryptically explains to Utterson: "If I am the chief of sinners, I am the chief of sufferers also. I could not think that this earth contained a place for sufferings and terrors so unmanning" (p. 33). Later on, after he loses control of his impulses, he becomes "a creature eaten up and emptied by fever, languidly weak both in body and mind, and solely occupied by one thought: the horror of [his] other self" (p. 68). When Utterson and Poole eventually discover Jekyll's dead body, Poole declares that they have come "too late . . . [either] to save or punish" (p. 45). Jekyll, though, does not need the legal authorities to discipline him; his loss of willpower is itself an unbearable torture. Previously, he sought to escape "the prisonhouse of [his] disposition" (p. 59); now he becomes a prisoner in his own body. He paces back and forth in the cabinet over the laboratory, weeping and wringing his hands, locked in a cell of his own making. Before Utterson can break down the door, of course, Jekyll takes his own life. His suicide may be an act of cowardice—an attempt to avoid legal punishment—or an acknowledgment of guilt. But while Jekyll avoids the gallows, he does not escape death; although he eludes a formal indictment, he does not escape moral judgment.<sup>69</sup> Stevenson technically gives Jekyll the last word, but he undermines Jekyll's defense at

<sup>69</sup> Most critics overlook the closure that Stevenson provides. For Hirsch, the "psychological focus and epistemological skepticism of the gothic deconstructs the detective genre as Stevenson explores it"; the text "ends in puns and ambiguities—its mysteries (dis)solved" ("*Frankenstein*, Detective Fiction, and *Jekyll and Hyde*," pp. 241, 242). For Peter K. Garrett, "the tale's greatest power and interest derive less from any high philosophic intention we may ascribe to it than from its fictional irresponsibility, its refusal or failure to offer any secure position for its reader or to establish any fixed relation between its voices" (Garrett, "Cries and Voices: Reading *Jekyll and Hyde*," in "*Dr Jekyll and Mr Hyde*" after *One Hundred Years*, p. 70). John R. Reed, too, contends that "the issue of freedom is left unresolved as the story ends with the posthumous voice of Henry Jekyll" (*Victorian Will*, p. 389). Persak likewise claims that the novel "fails to provide a moral resolution by having either Utterson or the omniscient 'narrator' place into perspective Jekyll's moral dilemma, his experiment, and his death" ("Spencer's Doctrines," p. 17). Carol Margaret Davison, by contrast, argues that Stevenson shows Utterson to be the true criminal; the lawyer is responsible for Jekyll's death, she claims, because he knows that when he breaks down the door, Jekyll will commit suicide (see Davison, "A Battle of Wills: Solving *The Strange Case of Dr Jekyll and Mr Hyde*," in *Troubled*

every turn. The inclusion of Jekyll's posthumous statement itself underscores the futility of his efforts: Stevenson appends the doctor's remarks to a case that is—for all intents and purposes—already closed. Much as D. A. Miller argues of classic detective fiction, Stevenson's novel becomes an agent of discipline, a substitute for the police.<sup>70</sup> Criminals like Jekyll routinely escaped justice in the world outside the novel, but in Stevenson's hands, Jekyll's violent impulses work finally to punish rather than to excuse the offender. Contesting the use of emotional insanity to acquit educated professionals like Jekyll, Stevenson holds the respected doctor guilty of murder.

*Marquette University*

ABSTRACT

Melissa J. Ganz, "Carrying On Like a Madman: Insanity and Responsibility in *Strange Case of Dr. Jekyll and Mr. Hyde*" (pp. 363–397)

This essay reads Robert Louis Stevenson's *Strange Case of Dr. Jekyll and Mr. Hyde* (1886) alongside medico-legal debates about the nature and scope of insanity, arguing that the novel seeks to shore up the idea of individual responsibility in Victorian society. The cognitive test of insanity that emerged from the *M'Naghten* case of 1843 deemed a person legally irresponsible for his acts if, due to a defect of reason resulting from mental disease, he was unable to perceive the nature and quality of his acts or to know that they were wrong. Alienists such as James Cowles Prichard and Henry Maudsley, however, argued that this test failed to acknowledge the existence of affective and volitional disorders such as moral and impulsive insanity. In their treatises, they urged judges to adopt a more permissive standard—an "irresistible impulse" test—that deemed accused criminals "mad" if they could not control their actions, even if they knew what they were doing was wrong. While the novel appears to be sympathetic to the position articulated by Prichard and Maudsley, I argue, it ultimately shows the dangers of broadening the definition of insanity. To recognize the idea of irresistible impulse as the basis of an insanity defense, Stevenson suggests, is to confound the distinctions between freedom and compulsion, deviance and disease. Contesting the use of emotional insanity to acquit educated professionals like Jekyll, Stevenson holds the doctor guilty of murder.

Keywords: Robert Louis Stevenson; *Strange Case of Dr. Jekyll and Mr. Hyde*; insanity; responsibility; free will

---

*Legacies: Narrative and Inheritance*, ed. Allan Hepburn [Toronto: Univ. of Toronto Press, 2007], pp. 155–57).

<sup>70</sup> For Miller's reading of Dickens and Collins, see D. A. Miller, *The Novel and the Police* (Berkeley and Los Angeles: Univ. of California Press, 1988), pp. 33–106.