“DRUNKENNESS IS NO EXCUSE FOR CRIME” – ALCOHOL, MURDER, AND MEDICAL JURISPRUDENCE IN NINETEENTH-CENTURY AMERICA

by

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ABSTRACT OF THE DISSERTATION

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Using a variety of court cases as evidence, this study focuses on several competing, and often unresolved, models of responsibility for crimes related to intoxication that emerged in nineteenth century America. Drunkenness truly was “no excuse” for crime in the early years of the nineteenth century; however, changes in the fields of medicine, the law, and society created the circumstances under which such a defense became more viable, and certainly more prevalent, if only intermittently successful, by mid-century. American courts began, in the 1820s, to accord an expanded exculpatory value to intoxication due to several factors: 1. The medicalization of alcohol use from delirium tremens to dipsomania to inebriety created categories of mental illness from which to argue for limited or even absent responsibility under the law. 2. American law, beginning in 1794, allowed for a greater recognition of the issue of intent in crimes, in particular, creating statutory degrees of violent crimes that were dependent on establishing appropriate mens rea. Evidence of intoxication could be used to disprove intent and thus lower the charge to second degree. 3. The cautionary tale of a good man ruined by the effects of alcohol was an important tool used by the early temperance movement as it sought to curb the pernicious effects of drinking in a nation rife with
alcohol. In much of the temperance literature, “demon rum” and the “rum-seller” often joined the drunkard as accomplices in crime. Somewhat ironically, the demonization of alcohol and those who sold it allowed for a narrative that mitigated the actions of the drunkard himself. By the post-bellum period, a backlash, led by medical professionals and buttressed by an influential temperance movement, materialized, but the groundwork had been laid for considering what today is more likely to be called a defense of “diminished capacity.”
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I would also like to thank my husband, Keith Delaney, who made up for the challenges of dealing with his unpredictable law enforcement schedule, by reading through various drafts of the paper and acting as my unofficial legal consultant. When I read the transcript of the James Graves trial that mentioned a diary used as evidence, my fellow historians assured me that the “source” must still exist. My husband looked at me as though I were insane, but he still called someone in the homicide division in Newark to see if there was any chance they held onto evidence from the 1880s. I think they’re still laughing.

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Introduction

On September 29, 1790, a Proclamation signed by Massachusetts Governor John Hancock offered a reward of one hundred dollars for the apprehension of Samuel Hadlock. The escaped prisoner had been convicted “of the horrid crime of Murdering Eliah Littlefield Gott,” reportedly beating him to death when he was “too much inflamed with strong drink.” Hadlock was captured a short time afterwards, and a date was set to carry out the sentence of execution. On the scaffold, the condemned man insisted “that he never had any malice afore-thought, or premeditated determination to kill any one,” but as the newspaper had assured its readers, “the law considers intoxication as an aggravation, rather than an excuse for murder.” Hadlock was executed on October 28.1 Had he committed his crime several decades later, Hadlock’s insistence that he had no intent to murder might have formed his defense rather than his last words.

Whatever opinions they may have held on this particular case, American citizens in the early republic knew that drunkenness provided no excuse for crime. As early as 1551, in the case of Reniger v. Forgossa, English common law proclaimed, “if a person that is drunk kill another, this shall be felony, and he shall be hanged for it…” The intoxicated state of the individual at the time of the crime was irrelevant inasmuch as it “was occasioned by his own act and folly, and he might have avoided it, he shall not be privileged thereby.” In other words, when the act of drinking is undertaken voluntarily, the resulting state of intoxication is predictable, thus the offender bears full responsibility.

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for his actions.² Writing on medical jurisprudence almost 300 years later, physician
Theodric Romeyn Beck validated this rule of law stating, “It is a well known and salutary
maxim in our laws, that crimes committed under the influence of intoxication, do not
excuse the perpetrator from punishment.” Yet he also noted that medical wisdom of the
time accepted habitual drunkenness as a cause of insanity. A staunch proponent of the
value of medical expertise in legal matters, Beck recognized the complexity of the issue
as he predicted that “The partition line between intoxication and insanity may hence
sometimes become a subject of discussion.”³ Here Beck is quite prescient if ultimately
understated.

Repeatedly from the pages of my research, figures from the past adamantly
declared that, “Drunkenness is no excuse for crime.” The seeming forthrightness of the
statement belies the reality of nineteenth century courtroom scenes in which heavy
drinking was often pled as a defense to a variety of heinous crimes, including murder.
Even as prosecuting attorneys attempted to convince juries that drunkenness was no
excuse according to the law, physicians and defense attorneys often relied on the very
same declaration with an important “but” that negated its relevance in the case of their
client. Arguments pointing out the lack of intent in an intoxicated defendant’s actions
were often supported by medical testimony for judges and juries to consider. The
defendant also may have attempted to shift some of the blame by proclaiming, “the

² Case of Reniger v. Forgossa cited in Mitchell Keiter, “Just Say No Excuse: The Rise and Fall of the
Intoxication Defense,” Journal of Criminal Law and Criminology 87 (1997): 484. Note that the law did
make a distinction between voluntary drunkenness and involuntary drunkenness – even as the former
condition was considered to be a rare event. For more on the early history of the insanity defense, see
Daniel N. Robinson, Wild Beasts and Idle Humours: The Insanity Defense from Antiquity to Present
³ Theodric Romeyn Beck, M.D., Elements of Medical Jurisprudence Vol. I, (Albany: Websters and
Skinners, 1823), 375.
Demon Rum” made him do it. The outcomes of these trials varied across time, place and circumstance. Juries were sometimes swayed by the argument that alcohol consumption did indeed affect the circumstances of crime. In other cases, juries who seemed to find no exculpatory significance in an offender’s intoxicated state set their hands to petitions calling for a reduced sentence after the close of what were often highly publicized trials. More often than not, the “drunkard” was convicted; justice, and the cause of temperance, seemingly served.

Using a variety of court cases as evidence, this study will focus on several competing, and often unresolved, models of responsibility for crimes related to intoxication that emerged in nineteenth century America. Like much of history, it is a story that does not follow a straight path. Drunkenness truly was “no excuse” for crime in the early years of the nineteenth century; however, changes in the fields of medicine, the law, and society created the circumstances under which such a defense became more viable, and certainly more prevalent, if only intermittently successful, by mid-century. Generally it was a defense of last resort: to claim drunkenness as an excuse likely meant there was little reasonable doubt as to the details of the crime. By the post-bellum period, a backlash, led by medical professionals and buttressed by an influential temperance movement, materialized, but the groundwork had been laid for considering what today is more likely to be called a defense of “diminished capacity.” Broadly, this project connects two fields of historical research that too often remain disparate – the history of the insanity defense and a social and cultural history of alcohol consumption in the United States. On the one hand, the story told here follows a similar trajectory to that of the insanity defense which gained ground, linked to medical professionalization, in the
early part of the century and suffered a backlash by the century’s end. However, by focusing on the part of this history related to intoxication, I hope to contribute to a broader insight into America’s complicated relationship with alcohol.

Intoxication, as far as it is understood to be a temporary and voluntary condition, does not fit easily into medical or legal definitions of insanity. Crimes committed while under the influence of alcohol, or some other drug, have alternately evoked sympathy for a perceived lack of intent on the part of the perpetrator, or anger at the inability to foresee the consequences of one’s actions. Yet the suggestion that the choice to imbibe or refrain from alcohol does not come as easily to some as to others has been widely accepted, to admittedly varying degrees, within the past two centuries. Medical men and legal minds, as well as current and former drinkers themselves, have grappled with the question of how much control certain individuals have over their desire to drink and subsequently how to define their level of responsibility under the law for acts committed while under the influence. Numerous scholars have written extensively on the insanity defense and the medico-legal question of responsibility. Yet despite a meaningful overlap with the issue of insanity, the question of intoxication has too often been ignored or subsumed in such histories.


I approached this project sure that there was a great deal more to be studied and written about the intersection of medical theories of alcohol use and the significant cultural impact of alcohol in American society. An impressive array of literature exists already on the development of ideas of addiction and particularly alcoholism in this period. The primary literature reflects the ways in which the moral and medical sense of heavy drinking overlapped from the very beginning. The “hybrid” nature of excessive drinking, “part vice, part disease,” as characterized by one historian, made it a particularly fruitful means for physicians to comment on physiological characteristics and broader social phenomena. The historiography on alcoholism notes the process of incomplete medicalization that remains with us into the present day. More specifically, recent historians have demonstrated the ways in which ideas of individual agency have influenced medical models. Other historians have demonstrated the ways in which the cultural function of alcohol has impacted views on alcohol in American society.

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7 Valverde, Diseases of the Will, 51. This was not limited to drinking. For example, Tighe states, “Psychiatric etiologies came to include such factors as excessive drinking, overindulgence of the passions, masturbation, and gambling. Such behaviors were seen by many as vices and sins for which the individual was morally if not legally accountable”: Tighe, “A Question of Responsibility,” 9.

8 Sarah Tracy’s work examines the way in which the classification of alcoholism as a disease provides a means for social negotiation between patients, families, doctors, government and reform groups: Sarah W. Tracy, Alcoholism in America: From Reconstruction to Prohibition (Baltimore: The Johns Hopkins University Press, 2005). Both the Oxford Group and AA recognized the utility of metaphorically characterizing alcoholism as an “allergy.” Albert Wilkerson characterized the “disease” of alcoholism as a “social metaphor”: Albert Ernest Wilkerson, “A History of the Concept of Alcoholism as a Disease” (Ph.D. diss., University of Pennsylvania, 1966): 291.

9 See especially, Madelon Powers, Faces along the Bar: Lore and Order in the Workingman’s Saloon, 1870 – 1920 (Chicago: The University of Chicago Press, 1998); Catherine Gilbert Murdock, Domesticating Drink: Women, Men and Alcohol in America, 1870-1940, (Baltimore: Johns Hopkins University Press, 1998); Nicholas O. Warner,; Spirits of America: Intoxication in Nineteenth-Century American Literature (Norman, Oklahoma: University of Oklahoma Press, 1997); Andrew Barr, Drink: A Social History of America (New York: Caroll and Graf Publishers, 1999); For an early history of drinking in America, see
this intersection of medical knowledge and cultural understanding that I approached my research.

This period in American history was one in which physicians worked to solidify their professional status by formalizing education, creating specialties, forming associations, and establishing medical institutions. Historian James Mohr describes how many turned to the growing field of medical jurisprudence as “a rapid rout to fame; a dashing and dramatic, yet altogether appropriate and legitimate, avenue of professional advancement.” The spectacle of a trial offered an arena for the doctor to publicly use his knowledge and skills to act as a “hero” to the community. And while many physicians did obtain just such a role, for example, confirming the insanity of deceased family members who had left inequitable wills, the relationship between medicine and criminal law took place in a much murkier arena.

Murder trials, in particular, provide a rich sense of competing viewpoints in American society. “Murder,” as cultural historian Karen Halttunen has noted, “thus demands some kind of cultural work through which the community can come to terms with the crime – to confront what has happened and endeavor to explain it, in order to move past the incident to restore order to the world.”

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11 Mohr, Doctors and the Law, 52.
century has been variously characterized as one in which a certain class of Americans (largely white and middle-class) sought to bring order to what they viewed as an increasingly disordered world. For those concerned with the cause of temperance, acts of murder provided particularly acute reminders of the dangers of alcohol use and its threat to society. Yet the nature of a trial, the process itself, provided a forum for competing points of view. Friends, neighbors, families, and the defendants themselves were granted an opportunity to offer their interpretations of events alongside legal professionals and expert witnesses. By the end of the eighteenth century, Halttunen observes, “the cultural authority to interpret murder diffused among a diverse array of new voices, as printers and hack writers, sentimental poets and even murderers themselves seized from the ministry the task of assigning meaning to the crime of murder for the American reading public.” She argues that these developments led to a decrease in empathy, a portrayal of the murderer as “beyond the pale of human nature.” And while such characterizations could be influential, the multitude of voices surrounding a public trial reflected a more nuanced understanding of the mental and physiological consequences of drinking that sometimes created room for sympathy and even an “excuse” for the intoxicated offender. The question of responsibility while intoxicated is especially subject to competing meanings as social customs and moral judgments bump up against the particular circumstances of an individual case. The prevalence of drinking in nineteenth century American culture, alongside changes in the fields of medicine and the law, led to a probing of the still unresolved question of how responsible an individual should be for actions committed while under the influence of alcohol consumption.

14 Ibid., 93.
Interestingly, I did not set out at first to write about murder at all. Broadly, I was interested in the ways in which a state of intoxication was defined by physicians of this era and the ways in which such knowledge was accepted or rejected by various members of society. Physicians brought their own ideas of scientific principles, as well as their specific social concerns related to gender, race and class, to a medicalized sense of heavy drinking. Often drinkers, their families, temperance workers, members of the legal profession, and others alternatively influenced and incorporated emerging medical sensibilities of alcohol use into their own understandings of the place of alcohol in American society. Drinking behavior itself is also determined, to some degree, by its cultural and historical moment.15 The potential pool of sources for such a project was astronomical. As I browsed through the medical journals, I found myself drawn to physicians’ descriptions of murder cases. The details themselves were compelling and quite revealing of nineteenth century America life. But more importantly, the adversarial system of a well-publicized trial provided a useful medium in which to explore a variety of opinions on the nature and impact of heavy drinking. The bulk of cases that form the backbone of this project tell of acts of murder that occurred while the offender was, by his own admission, affected in some way by heavy drinking.

The number of cases to choose from, sadly, is prodigious. It was not unusual to be searching for information on a particular case in the newspaper only to be distracted by similar tales of murder and drunkenness that emerged in the search or even on the same page. Generally, I took my cue from established medical and legal journals as I

chose which cases to write about; although I do admit to occasionally referencing others that seemed of interest. Both physicians and legal scholars were most vocal when there was a lack of consensus; for physicians, disagreement threatened their fragile professional status, and for jurists, precedent was essential. And while I’m sure the defendant would heartily disagree, the verdict was not always the most significant piece of evidence. It is certainly important to note that these cases were more likely to end with a verdict of “guilty,” but a great deal was to be learned in the arguments, the testimony, and the instructions of the court. Defense attorneys noted the “insane” behavior of their clients; they pecked away at intent; they sought mercy from the jury for a good man ruined by alcohol. Medical testimony could be significant, but it was clear that friends and neighbors felt well-qualified to judge a man a deviant, a lunatic, or a victim of alcohol. Newspapers provided not only a window into social and cultural perceptions, but they were a generally reliable source of trial transcripts.

Reviewing legal documents brought me into an unfamiliar world with its own rules; rules that were routinely questioned and ever evolving. Dates and geography gave way to precedent, and as a historian, I found myself often at a loss to reconcile the numerous legal references to cases and rulings without any acknowledgement of date, never mind historical context. Yet in these arguments and rules, I often discovered a window into historical evidence that was not revealed elsewhere. Appeals decisions, for example, were both an enduring and comprehensive record of trials. Reviewing these, I noted that a great number revolved around the judge’s instructions to the jury. Under the law, the basis of a jury’s decision can not be challenged by either side. During the trial, defense attorneys have an opportunity to play on the sympathies, or even unsupported
conclusions of the jury, to convince them that their client should not be convicted. However, if the defense fails to persuade, if the jury does convict, there is little recourse: the jury cannot be questioned, and their decision cannot be impeached. Therefore there can be no appeal based on a “mistaken” jury verdict – their decision is final. If, however, the case can be made that the judge erred in his instructions, somehow misleading the jury on a question of law, there is a basis for appeal. Thus in these proceedings, we can examine more fully the arguments of the defense, the degree to which they are accepted by the judge in his instructions, and to an extent, their effect (or lack thereof) on the jury.

The first chapter in this history begins in the early nineteenth century when the law more strenuously held that intoxication provided no defense to crime. The reasoning was that the decision to drink was voluntary; therefore an individual was responsible for any actions that were a result. The only exception under the law was if a long-sustained habit of intemperance led to a settled, or permanent, insanity that was no longer distinguishable from any other type of insanity. However, the “discovery” of the diagnosis of delirium tremens, a temporary form of insanity caused by heavy drinking, expanded the definition of exculpatory insanity. By the end of the 1820s, a supportable case of delirium tremens was a viable defense to murder.

While the first chapter largely focuses on changes in the medical profession, the second chapter examines changes in the law itself. Beginning at the end of the eighteenth century, a number of states began to revise their statutes on murder, creating a system in which charges were divided by degree with corresponding sentencing. As the question of intent became more relevant to the charge of murder itself, questions of the effect of intoxication on the offender became key points of fact to be argued. A defendant who
could convince a jury that he was sufficiently intoxicated as to be unable to form the necessary *mens rea* required of the charge could face reduced punishment or even acquittal.

Chapter three examines the impact that the social and cultural perceptions of the “drunkard” had on ideas of intoxication and responsibility. Stories of drunkenness were prevalent by mid-century; in temperance tracts and works of fiction as well as in real-life accounts of drinking and crime. Alcohol was cast as the “demon rum” in these stories, a force that brought down men and destroyed families. This narrative could serve as a warning for those who considered imbibing as it often simultaneously titillated the public with stories of violence and betrayal. Gender assumptions were central to most of these stories as women were portrayed simultaneously as the voice of morality and the victims of the alcohol habit inasmuch as the “drunkard” was understood to be male. These stories certainly did not excuse a murderer from the consequences of his actions just because he was drunk, but it did create a framework in which to consider that his guilt might be limited by, or shared with, intoxicating drink.

Chapters four and five turn back to the medical profession in observing the overlap between the rise and fall of the diagnosis of moral insanity and drunkenness. Diagnosing the alcohol habit became linked to the very contentious atmosphere surrounding an expansion of the diagnosis of insanity to include moral conditions. Defenses based on moral insanity, and more specifically dipsomania, proliferated and were oftentimes accepted by courts of law and juries despite the factious and often public debates within the medical profession, most notably exemplified in the famous Ray-Gray debates between two leaders in the field of mental illness, Isaac Ray and John Gray.
Likewise the growing strength of the temperance movement and their campaign for prohibition highlighted the perceived dangers in allowing drunkenness to act as an excuse for crime. Chapter five, in particular, reviews the details of a number of significant cases in which various defenses based on dipsomania were employed as evidence of the complicated and controversial environment in which these decisions were reached.

Finally, chapter six seeks to build a bridge to the twentieth and twenty-first centuries. The diagnosis of inebriety foreshadowed later conceptions of alcoholism as a somewhat unique diagnosis, generally outside of the purview of insanity itself, at times challenged by and at times overlapping with ideas of vice and morality. The chapter ends with two murder cases in 1881, not coincidentally the same year that Charles Guiteau sought an insanity defense for his assassination of President Garfield. While one man argued insanity and the other sought mercy based on his drunkenness, both were hanged.

Historically, intoxication has presented a unique challenge to the courts; and today, according to one legal scholar, remains a “jumbled mess” in legal systems throughout the world.16 This study certainly can not straighten out that “mess,” but hopefully it will provide a greater understanding as to how it got that way.

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16 Chet Mitchell, “Intoxication, Criminality, and Responsibility,” *International Journal of Law and Psychiatry* 13, (1990), 1. For more on the recent history of intoxication and the law, see the remainder of this issue dedicated to “Intoxication and Criminal Responsibility.”
Chapter 1: “Not the intended result of drink” – Delirium Tremens as a Defense

For centuries, intoxication as a defense to crime had provided little exculpatory value because it was viewed as a foreseeable consequence of the voluntary action of consuming alcohol. As physicians increasingly turned their attention to the study of intemperance as a disease in the early part of the nineteenth century, questions concerning the voluntary aspect of drinking and the predictability of its consequences were raised in the medical literature as well as in the courtroom. Even when the altered mental states of drunkenness and insanity were equated, the intent in achieving the former created an important distinction. The state of insanity, while hotly debated itself, was at least understood to be a condition that was neither sought after, nor anticipated, by its victims and thus conferred an exemption from punishment. Yet an interesting exception existed within the law. A state of settled insanity caused by chronic drunkenness had been treated under the law “as if the same were contracted involuntarily from the first.”¹ Offenders would not be held responsible when their voluntary habits led to unintended consequences. An individual who consumed alcohol should expect to get drunk and was therefore held responsible for his actions in a state of intoxication. Yet this same individual might not reasonably expect that his intemperate habits would lead to a state of insanity and therefore was entitled to the full consideration of the law respecting a determination of his mental state. The etiology of insanity was irrelevant in

determining legal responsibility and thus in certain, albeit limited, circumstances the law acknowledged a consideration of alcohol use as a defense to crime.

This distinction of intended versus unintended circumstances allowed for an initial expansion of the exculpatory possibilities of heavy drinking. Certainly it could, and was, argued that criminal actions precipitated by drunkenness resembled insane behavior, that they were not necessarily consistent with the behavior of the same man when sober. The law attempted to prevent such a defense by noting that one who voluntarily got drunk could hardly be surprised by the resulting and predictable state of intoxication, and was therefore responsible for all actions committed in such a condition. However, in reality, it was not always easy to separate a state of insanity from a state of drunkenness, and a growing concern over the social and medical consequences of heavy drinking meant that the sometimes indeterminate state of intoxication became a subject of debate. Interest in the new diagnosis of delirium tremens, also known as *mania a potu*, in the early nineteenth century reflected this ambiguity as physicians increasingly contemplated the threat of heavy drinking to insanity.² By the end of the 1820s, a number of prominent physicians would challenge the legal system in arguing that the disease of delirium tremens could provide a defense to crime because it existed as a form of insanity separate from a state of drunkenness as an unwanted and unintended consequence of intoxication.

At the turn of the century, insanity was only one aspect of an emerging field of medical jurisprudence in which physicians concerned themselves with matters of

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toxicology, causes of death, signs of rape, legitimacy, etc. A scientifically based inquiry into methods of poisoning, the nature of wounds, and even the timing of a pregnancy often served as key evidence in civil and criminal cases. Determining mental competence likewise proved imperative in matters of contracts and wills as well as in criminal matters. As an evaluation of a suspect’s mental state offered the possibility of a mitigated sentence or even an acquittal in criminal cases, differing medical conceptions of individual responsibility often challenged basic legal tenets. Early criminal cases involving intoxication at first drew scant attention from physicians including those who foresaw the value of medical expertise in a legal setting. T. R. Beck, an early and influential expert in the field of medical jurisprudence, initially focused on the issue of insanity in his 1811 dissertation at the College of Physicians and Surgeons in New York City. He was motivated by the hope that a careful study of insanity would result in a more humane system of care and treatment for patients. After more than a decade of a relatively unremarkable career, Beck gained notoriety with the publication of *Elements of Medical Jurisprudence* in 1823. Filling a palpable need for a summary of the current field of medical jurisprudence, the text received overwhelming praise and attention, becoming the “national standard” as a medico-legal reference in the courts. Early proponents of medical jurisprudence had already turned their attention to the issue of insanity which provided a challenge to both the legal and medical fields. Beck’s *Elements of Medical Jurisprudence* served not only as a reliable guide to the American

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5 Ibid., 26.
medical field but the legal one as well. An 1830 article in *American Jurist and Law Magazine* affirmed that prior to Beck’s publication, “there was no systematic work in our language, which could be recommended to the student at law” on medical jurisprudence. Scientific knowledge had become essential to an understanding of “the nature of diseases, the effects of violence upon the human system, and the vast variety of causes which produce death.” Issues of insanity, particularly, it was noted, “form a most important class.”

Alcohol use, however, remained peripheral to the concerns of medical jurisprudence. In Beck’s two-volume set, an entire chapter is dedicated to the issue of “Mental Alienation”; less than two pages of this chapter address the issue of intoxication.

According to Beck, intoxication exists as one of the “inferior degrees of diseased mind” that also include delirium of fever, hypochondriasis, hallucination, epilepsy, and nostalgia. Each of these is noted by name only in the table of contents and its relation to a determination of legal insanity is explicated in the text. The table of contents entry for intoxication includes the clarification: “Intoxication – its presence does not excuse from guilt of crimes – a frequent cause of insanity.” While “repeated intoxication” was acknowledged as one of the “remote causes” of insanity, the medico-legal definition of insanity offered here excluded a state of intoxication as a form of insanity itself. This distinction is further complicated by Beck’s assertion that habitual drinking may result in a “permanent” state of mental alienation. Despite the acceptance of chronic drinking as a cause of insanity, Beck exhibited some trepidation that intoxication might be equated with legal insanity.

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The problematic distinction between intoxication and insanity is exemplified in the case of William McDonough who was found guilty of murdering his wife in Massachusetts in 1817. Based on testimony from the trial, Beck recounted that the defendant suffered from bouts of insanity due to “a severe injury of the head” years earlier. A determination of McDonough’s responsibility under the law was complicated by his drinking habit. Beck noted that in this particular case, “The use of spiritous (sic) liquors immediately induced a return of the paroxysms, and in one of them thus induced, he murdered his wife,” a resulting state of mind that was argued to be well known to McDonough. Despite the undisputed condition of insanity, Beck agreed with the guilty verdict because McDonough knowingly brought a state of drunkenness upon himself: “The voluntary use of a stimulus which he was well aware would disorder his mind, fully placed him under the purview of the law.”\(^8\) In this early reference, the voluntary nature of the act of drinking along with the assumption that the consequences were known to McDonough negated any exculpatory influence that his insanity may have had. However, a key point of debate for physicians who commented on or become involved in criminal cases involving intoxication is revealed here. While a state of intoxication itself was not classified as an accepted form of insanity by most physicians at this time, intoxication often overlapped with and complicated a determination of insanity. The perceived willfulness in the decision to drink often tipped the scale from insanity to drunkenness and, consequently, legal responsibility.

Cases in which intoxication co-existed with a state of insanity, such as in the McDonough case, were particularly challenging. In 1818, Michael Clarke was tried for

\(^8\) Ibid., 375-6.
the shooting murder of his wife in Washington, D.C. Clarke had a history of drinking and was intoxicated at the time of the crime. The defense argued that the defendant “from long and settled habits of intemperance, had become disordered, both in body and mind, and subject to fits which affected both his mind and body.” Although chronic intemperance was accepted by physicians in this period as a possible cause of insanity, the defense had the onus of proving that Clarke was “at all times, when not under the influence of liquor, of unsound mind.” It was critical to establish that the insanity was permanent and not brought on only when Clarke was under the influence of drink. The judge, however, created an even greater burden of proof suggesting that the defendant’s state of mind must be clearly and solely attributable to the insanity and not the intoxication. The judge instructed the jury that “they should be satisfied, by the evidence, that the prisoner at the time of committing the act charged in the indictment, was in such a state of mental insanity, not produced by the immediate effects of intoxicating drink, as not to have been conscious of the moral turpitude of the act.” The jury thus charged with the mind-boggling task of separating the influence of alcohol from the influence of insanity returned a guilty verdict and a sentence of death.

The judge’s instructions in this case demonstrate that insanity was established as a legitimate defense years before the adoption of the M’Naghten Rule in 1843 that created the legal test of knowing right from wrong. Yet in the early part of the century, the complicating circumstances of intoxication appeared more likely to undermine a defense

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10 Cranch, *Reports of Cases*, 158. This appears to have been the second trial taking place in December 1818. The first occurred in June 1818, but a new trial was granted due to a procedural issue. See p. 152.
Based on insanity. In this case, Clarke’s intoxication not only failed to provide an excuse for crime; it served to negate what may have been a compelling, and perhaps legitimate, insanity defense. An ongoing point of contention will be what here formed the crux of Beck’s validation of McDonough’s guilty verdict and the judge’s questioning of Clarke’s mental state: the voluntary nature of the act to drink to the point of intoxication.

The distinction between intoxication and insanity was generally understood to be a clear one. In the 1827 trial of James Bennett for the murder of Thomas Callahan, the defendant, who was intoxicated at the time of the crime, put forth an argument that he was not guilty by reason of insanity. The judge seemed to see little ambiguity in determining a distinction between insanity and drunkenness and thus instructed the jury,

that upon the subject of derangement, such was the structure of the human mind, that philosophers might forever speculate, upon the subject, but could not define in what it consists; but that if a hundred men should look at a drunken man, they would agree in saying he was drunk; and if a hundred men were to look at a deranged man, they would agree in saying he was deranged.

In other words, as the old saying goes, people “know it when they see it.” Bennett was convicted and his attorneys appealed to the Supreme Court of Tennessee citing an error in the judge’s instructions to the jury. The appeals court agreed with the judge ruling that his application of an “intuitive principle” to distinguish between insanity and drunkenness was “very reasonable and probably very correct” even if “the reasons why

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the mind is insane cannot be defined in theory.” The “frenzy” in this case, was “temporary” and achieved “voluntarily.” Despite, or perhaps more likely because, only nascent theories of insanity guided the law, the average citizen was considered able to make a competent determination.12

Understandings of the alcohol habit, especially its voluntary nature, were undergoing significant revision over the course of the nineteenth century. Early ideas of intoxication assumed that drinking was a choice made by the individual. One’s legal responsibility for acts committed while intoxicated rested upon the assumption that such a state was achieved voluntarily. However, by the late eighteenth and early nineteenth centuries, a number of physicians began to conceptualize intemperance as a disease that differed from the vice of voluntary drunkenness. They sought to distinguish and define a condition of alcohol abuse that involved an impairment of the will that affected both mind and body. Historians have debated both the timing and the impetus of this ideological shift. In his oft-cited article, Harry Gene Levine has argued that the “idea that alcoholism is a progressive disease…is now about 175 or 200 years old, but no older.” Previously “the assumption was that people drank and got drunk because they wanted to, and not because they ‘had’ to.” He asserts that the model of addiction that emerged in the nineteenth century was a specific product of a society seeking to emphasize individual responsibility and establish social control.13 A recognition of the seemingly involuntary compulsion to drink may have had a long history, but excessive drinking certainly began

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12 “Bennett v. State (Mart. & Yerg.133), In the Supreme Court of Tennessee, 1827” in Lawson, The Adjudged Cases, 571-2.
to garner increased attention from physicians and reformers alike by the early 19th century.

Early references to drunkenness as a disease were expounded by British physician Thomas Trotter who first wrote on the subject in 1804 for his University of Edinburgh MD dissertation. Recognizing that a medical study of drunkenness was a novelty, he argued that it was an appropriate point of study for physicians not only because the “habit of inebriation” was “so common in society, to be observed in all ranks and stations of life,” but because “the physical influence of custom…reacting on our mental part” made it a proper subject for physicians. Trotter declared drunkenness to be a “disease,” yet recognized “the difficulty of fixing on any symptom, or even concourse of symptoms, that are invariably present.” Like many physicians and reformers of his time, Trotter’s conclusions reflect the lack of boundaries between body and mind, between the physical and moral condition.

The inquiry into the effects of heavy drinking was not just a medical question, but one with significant implications for society. In the United States, alcohol consumption had been steadily rising, reaching an annual peak of five gallons per capita by 1830. Improved distilling technology and the proliferation of untaxed distilled spirits, such as whiskey, contributed to this growth. Temperance efforts and medical study of the issue of alcohol use likewise increased over the course of the nineteenth century and would effectively reduce rates of drinking. Medical and moral attention to the issue of heavy

15 Ibid., 8.
drinking often intersected not only with each other, but also with particular developments in American society. Historians such as W.J. Rorabaugh have characterized the focus on temperance as consistent with changes already underway in the colonial period based on the large quantities of alcohol being consumed alongside “the spread of rationalist philosophy, the rise of mercantile capitalism, advances in science, especially the science of medicine, and an all pervasive rejection of custom and tradition.”18 Others, such as Mark Edward Lender and James Kirby Martin, have more squarely placed the reaction against drinking within the context of the Revolutionary period itself.19

Revolutionary-era physician Benjamin Rush was one of the first, and certainly one of the more well-known, medical professionals to outline the harmful effects of alcohol. As a graduate of the University of Edinburgh, one of the signers of the Declaration of Independence, former Surgeon General of the Continental Army, and respected professor at the University of Pennsylvania, Rush was a man whose opinions garnered attention. His *Medical Inquiries and Observations upon Diseases of the Mind*, published in 1812, was the first systematic textbook on mental diseases, later earning him the sobriquet “The Father of American Psychiatry.” Given the levels of heavy drinking Rush witnessed both during the war and later in the backwoods country of Pennsylvania, it is not surprising to find that Rush supported temperance, both politically in his support of the tax on whiskey and in his scholarship. In 1784, he published the pamphlet, “An Inquiry into the Effects of Spiritous Liquors upon the Human Body, and their Influence

18 Ibid., 36.
upon the Happiness of Society.” Rush characterized the “habitual use of ardent spirits” as an “odious disease,” and his admonition against the excessive use of distilled liquors relied on a detailed summary of its immediate and chronic physical effects. His scientific observations provided ballast for both his medical conclusions and his political ideology. He called upon “(m)inisters of the gospel” to “denounce, by your preaching, conversation and examples, the seducing influence of toddy and grog, when you aim to prevent all the crimes and miseries, which are the offspring of strong drink.” He further suggested “the republic would soon be in danger” from “men, chosen by intemperate and corrupted voters.” Rush’s attention to intemperance reflected a number of significant trends in early America – adherence to Enlightenment ideas applied to medicine, faith in the principles of the Great Awakening, and a commitment to a republican form of government.

Rush’s outlook also highlights the ways in which the practice of medicine began its transformation into a respected and influential profession in this period. Some of this nascent activity occurred in the development of medical societies, schools, and a consideration of licensure requirements. Medical jurisprudence, existing as an inchoate

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field at the turn of the century, provided a fruitful outlet for securing a role for the medical profession. Rush manifested this budding interest in the contribution of medicine to law, speaking in 1810 on the issue of legal insanity in an important lecture, published the following year, at the University of Pennsylvania. Rush’s long attention to the subject of the mind surely contributed to his attention to the subject of insanity as a fertile source to expand the medical profession just as it fueled his consideration of the effects of alcohol upon both body and mind. Rush’s understanding of the alcohol habit, along with many others of his time, reflected a complicated mix of the medical, moral and personal. Throughout the course of his life, he had witnessed firsthand the effects of alcohol on individuals especially on the lives of his patients. That Rush believed that these effects went beyond physical impairment is demonstrated by a chart, the “Moral and Physical Thermometer” that appears at the beginning of his “Inquiry.” This “scale of the progress of Temperance and Intemperance” delineated the effects of alcohol in three categories – vice, disease, and punishment. Individuals who ingested “drams of gin, brandy and rum” both “day and night” might exhibit physical signs of “melancholy, palsy, appoplexy, madness, despair.” They were also apt to engage in “burglary” or “murder” resulting in a punishment of life imprisonment or the gallows. While characterized as “vices,” the immoral and criminal acts committed by the drunkard served to inform individuals of the likely consequences of heavy drinking as much as they reinforced the immoral nature of drinking.


Rush recognized the problems to the idea of free will that drunkenness posed:

“The use of strong drink is at first the effect of free agency. From habit it takes place from necessity.”

At this early date, the challenges posed to free will that intoxication suggested were presented as an impetus to change for the drunkard and a warning for others who might imitate the habit. On Rush’s moral thermometer, intemperance existed simultaneously as a medical, moral and legal issue. The connections between violent crime and intemperance were apparent to Rush who spoke of a man cured of the “desire for ardent spirits” after attempting to murder his beloved wife. “Upon being told of it when he was sober,” recounts Rush, “he was so struck with the enormity of the crime he had nearly committed, that he never tasted spiritous liquors afterwards.”

It also demonstrates a faith in providing warnings of both the physiological and behavioral consequences of drinking as a means to discourage intemperance. As Rush’s writing suggests, the “habit” of drinking that attracted the attention and expertise of physicians in the early nineteenth century was at once a moral issue, a social problem and a medical concern. And in the aftermath of violent crime, it will be in the hard-to-define line between insanity and intoxication where medical and legal determinations confront one another in the following decades.

As physicians were simultaneously exploring the mechanism of habitual drinking and developing the field of medical jurisprudence, observations of the disease of delirium tremens began to appear in the medical records. Delirium tremens was first categorized as a form of insanity caused by heavy drinking in the period of the late 1810s and was

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referred to by a variety of different names including *mania a potu, mania a temulentia,* and *febris temulentata.*\(^{28}\) While physicians had already established that insanity could be caused by excessive drinking, such insanity, once settled, was not clearly differentiated from any other type of insanity resulting from a myriad of possible causes. Delirium tremens, on the other hand, existed as a distinct and temporary form of insanity clearly attributable to excessive and habitual intoxication. It was a form of alcoholic insanity; yet one which did not always limit itself to the symptoms of withdrawal with which it is associated today.\(^{29}\) In 1818, Dr. Joseph Klapp described the pathology of a form of temulent disease produced by “the inordinate use of ardent liquors.”\(^{30}\) A careful reading of Klapp’s detailed cases reveals the ways in which delirium tremens built upon emerging medical understandings of intemperance as a disease. Klapp professed optimism in the possibility of a cure: noting the “dyspeptic symptoms” and connection to “gastric pathology,” relying on a treatment of emetics.\(^{31}\) He observed the similarity between the form of the disease brought on by intemperance and those brought on by “other irritants.” Unlike other types of insanity, dissections revealed that those “who have died with madness from intemperance” carried “no mark of disease whatever…in the brain, when both the liver and stomach have been inflamed.”\(^{32}\) The development of this particular disease aspect of heavy drinking straddled an earlier acceptance of excessive drinking as a remote cause of insanity and a developing sense of the “habit” or “craving” for alcohol.


\(^{31}\) Ibid., 462-3.

\(^{32}\) Ibid., 464-5.
Delirium tremens, as a medical pathology, became a subject of interest for physicians; and, as a form of insanity, fell under the purview of the growing field of medical jurisprudence by the late 1820s.\textsuperscript{33} Describing an “insanity produced by intemperance” in the \textit{American Jurist and Law Magazine}, the author explained the essential, if somewhat murky, legal distinction between intoxication and insanity caused by excessive drinking:

The law discriminates between the delirium of intoxication and the insanity which it sometimes produces. While the drunkenness continues, the person under its influence is responsible as a moral agent, though reason in the meantime has lost her dominion; but when the intoxication ceases, if insanity immediately follow as a consequence of the vice, he is, in the eye of criminal justice, no longer amenable for his acts.\textsuperscript{34}

In other words, while drunkenness itself did not obviate legal responsibility, insanity caused by excessive and repeated drinking would be treated as any other form of insanity under the law. This distinction, however, could prove quite complicated as in the Clarke case cited earlier. Delirium tremens, however, offered another possibility. The state of delirium tremens, the article continues, is “a species of madness which often deprives the sufferer of the power of distinguishing between right and wrong,” but exists apart from a state of intoxication. Drunkenness continued to be no excuse for crime, but the resulting condition of delirium tremens, a condition that required the expertise of medical men to recognize, might provide just such an “excuse.”\textsuperscript{35}

The article then discusses one of the earliest cases to employ delirium tremens as a legal defense in the United States, the 1827 case of U.S. v. Drew. Alexander Drew, the

\textsuperscript{33} Note – the cases of Clarke and McDonough are later referenced in medical literature as early cases of delirium tremens but a contemporary diagnosis seems unlikely based on the descriptions of cases and early dates. Thank you to Matthew Warner Osborn for clarification on this point.

\textsuperscript{34} “Insanity Produced by Intemperance,” \textit{American Jurist and Law Magazine} 3 (Jan. 1830): 5-20.

\textsuperscript{35} Ibid., 6.
commander of the whaling ship *John Jay*, stood accused of killing his second mate, Charles F. Clark. After Clark had responded to a request to go on deck by declaring that he would first finish his breakfast, Drew stabbed him with a knife he had concealed under his jacket, and Clark died later at a Spanish port. Drew also fired his pistol, but missed, at the ship’s cooper, George Galloway, before being restrained by his crew. If Drew were merely drunk, his resulting mental state would be considered irrelevant or even an “aggravation” of the crime. If Drew were found to be insane, he could be exonerated; however, a number of factors suggested that a traditional defense of insanity would have been inappropriate in this case. He exhibited no history of insanity prior to the crime. He was described as a “respected” man of “fair character,” “a man of humane and benevolent disposition.” He seemed to have regained full use of his faculties several weeks afterwards when he “appeared to be in his right mind.” It was established by witnesses that he “often indulged to excess in spirituous liquors” and “for weeks during the voyage had drunk to excess.” His drinking and subsequent intoxication, dating back several months, appeared voluntary in nature.36

However, the defense argument was not that Drew was intoxicated when he committed the crime, drunkenness providing no excuse; but rather that, as the judge would acknowledge, he was insane due to delirium tremens, a condition that arises after intoxication has ceased.37 Two witnesses who had been present aboard ship and had observed Drew’s actions in the days prior to the crime presented undisputed testimony that the captain was drinking heavily in the last days of August 1827. However, at some point, he apparently made a resolution to abstain and ordered that all liquor aboard ship

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36 Ibid., 7-8.
be thrown overboard. It was two or three days later that Drew began to manifest odd behavior including being unable to eat or sleep, countermanding his own orders, and exhibiting verbal outbursts and paranoia. Such actions, it was observed, suggested “physical weakness and alienation of mind,” rather than drunkenness. On the night of August 31, Drew attempted to jump overboard but was stopped by Galloway who testified as the first witness in the case. Additional evidence of insanity was proffered by the witness who described his appearance as “that of a foolish person” and noted that, after being seized, bound and placed under guard by the crew, “His whole demeanor, for some time after, was that of an insane person.”

After hearing the first two witnesses, Judge Joseph Story stopped the proceedings, opining that “the indictment upon these admitted facts cannot be maintained” because the “prisoner was unquestionably insane at the time of committing the offence.” The judge’s opinion on the exculpatory nature of insanity was unequivocal: “insanity is an excuse of the commission of every crime, because the party has not the possession of that reason, which includes responsibility.” He acknowledged that intoxication is an “exception” to the rule of law concerning insanity because it allows “a man to avail himself of the excuse of his own gross vice and misconduct.” Such an “exception” applies if and when the crime was committed as “the immediate result of the fit of intoxication” rather than as a consequence of insanity caused by heavy drinking. Story’s record demonstrates that he had little sympathy for the inebriate criminal; in an earlier case he asserted that he

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39 United States v. Drew. At the time, Story was serving on the U.S. Supreme Court even as he continued to hear cases in Massachusetts. He would become better known for his opinion on another case also involving a ship at sea, the Amistad.
viewed drunkenness as an “aggravation” of crime. Clearly, Story felt here that the case for a state of insanity had been made.

Physicians had long held that chronic intemperance was one of many causes that could lead to a state of insanity – a determination that was accepted under the strictures of medical jurisprudence. From a legal point of view as well, the cause of established insanity was largely irrelevant, as “The law looks to the immediate, and not to the remote cause; to the actual state of the party, and not to the causes which remotely produced it.” Yet according to the testimony at the trial, Drew’s insanity had not been established more than a few days before the incident, and he was described as “in his right mind” just a few weeks later. The judge ruled, however, that this manifestation of mental disease fell under a definition of insanity that precluded legal responsibility. Drew’s particular form of insanity in this case was viewed as a “remote consequence” of intoxication despite its seemingly temporary nature. While questioning the morality of indulgence in liquor, the judge determined that Drew was not intoxicated at the time of the crime, but rather was “merely insane from an abstinence from liquor” and thus should be acquitted. At this point, there was little argument from counsel on either side, and the jury returned a verdict of not guilty without ever leaving their seats.

The influence of the developing field of medical jurisprudence, buoyed by Beck’s publication, is apparent in this case even as the source of medical expertise lay outside the courtroom itself. Story’s decision appears to be based on a contemporary medico-legal understanding of delirium tremens. While the judge did not employ “delirium

tremens” or any of its related medical terms in his decision, subsequent interpretations of the case were clear. Drew’s condition was characterized as “delirium tremens” in the 1830 American Jurist article, and the case of U.S. v. Drew was used as an early example of “the effect of delirium tremens on responsibility, the principles and practice of American courts” in Isaac Ray’s later treatise on The Medical Jurisprudence of Insanity.

Previously physicians had seemed reluctant to suggest that the effects of intoxication mitigated responsibility unless a clear state of settled insanity was the result. Beck concurred with the guilty verdict in the McDonough case because of the voluntary nature of the act of drinking which incited the resulting insanity. Clarke, likewise, was found guilty because of the difficulty of separating the effects of insanity and intoxication. However, a diagnosis of delirium tremens, defined as neither intoxication nor settled insanity, suggested that heavy drinking could induce a mental condition that did not fit comfortably in either category. Judge Story relied on this third option to gain an acquittal for Alexander Drew in which the vice of heavy drinking led to unintended consequences, such as delirium tremens, for which the individual could not be held accountable.

The acquittal in U.S. v. Drew represented a reconciling, perhaps uneasy, of a moral condemnation of intemperance and a nuanced medico-legal definition of responsibility. Most newspapers reporting on the case ended their coverage of the trial

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42 A full transcript of the original trial could not be located, but there is no indication of medical testimony being given based on a direct excerpt of the judge’s opinion in United States v. Drew or in the description in the America Jurist article which states that the judge came to his decision after hearing two witnesses.

with the acquittal. The *Christian Watchman*, however, included an account of the judge’s words after the verdict: “The Judge then gave the prisoner a very solemn admonition on the effects of intemperance, reminding him that although not held responsible by law to a human tribunal, he would be to one infinitely higher at the last day, and ordered him to be discharged.” A report of the case also appeared in an 1833 collection of criminal cases subtitled, “An awful warning to the youth of America being an account of the most horrid murders, piracies…” In a presumed attempt to emphasize the tragic nature of the crime, the account is provided under the heading “Charles F. Clark,” Drew’s victim. Yet the description of the case follows, virtually word for word, other public accounts and ends with the acquittal. Such murders, connected to intemperate behavior, might implicitly serve as warning; however one might also suspect that any viable “warning” was subsumed under a fascination with the details of the murder and the trial themselves.

As physicians expanded their purview to the study of the effects of heavy drinking within the field of medical jurisprudence, their conclusions often held influence within the legal arena. Yet juries, and the public more generally, were often reluctant to accept the latest medical wisdom on the effects of habitual drinking. An understanding of the effects and consequences of heavy drinking precariously straddled moral, medical, and legal interpretations. Daniel Drake, a well-known physician and temperance advocate was one of the early contributors to the medical literature on delirium tremens, concurring with Klapp and others, that this disease represented a disorder of the stomach. He also recognized it as one of “the mental diseases produced by intoxication,” and

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professed faith in medical treatment.\textsuperscript{46} Drake was able to reconcile a condemnation of the alcohol habit with the belief that delirium tremens, the sometimes result of this habit, could render a criminal offender not responsible in the eyes of the law. He was dismayed to find in the trial and verdict of John Birdsell, that the public did not always share this point of view.

Drake’s career exemplifies the expansion of the medical profession in America—both professionally and geographically. Characterized as “physician to the west,” by one historian, he is today perhaps best known for his expansive study, \textit{A Systematic Treatise, Historical, Etiological, and Practical, on the Principal Diseases of the Interior Valley of North America.} \textsuperscript{47} Despite already having completed a physician’s apprenticeship and operating a successful medical practice, Drake attended the University of Pennsylvania to receive a medical degree in 1816 at the age of thirty. He then received an appointment to the faculty of the medical department at Transylvania University in Lexington, Kentucky. “Thus Drake,” observed one biographer, “the first medical student of medicine in Cincinnati, the first Cincinnatian to receive a diploma in medicine, and the first medical author in the west, also became a member of the first accredited faculty of the first medical institution west of the Alleghenies.” He later returned to Cincinnati organizing the Medical College of Ohio and editing the \textit{Western Journal of the Medical and Physical Sciences}.\textsuperscript{48}

\textsuperscript{47} Henry D. Shapiro and Zane L. Miller, eds., \textit{Physician to the West: Selected Writings of Daniel Drake on Science and Society} (Lexington: University of Kentucky Press, 1970).
Drake took up the cause of temperance reform in the late 1820s. His interest, like that of his mentor Rush, reflected a complicated mix of medical and moral sensibilities fed by an awareness of American development. While Rush, influenced by his Revolutionary experience, was most concerned with political culture, the Western physician Drake included observations on the American environment and character in his scientific writings. Such a correlation would not have been unfamiliar to his fellow Americans who often fused the interaction of body and environment in what one contemporary scholar has referred to as a “geography of health.”

Drake’s ideas on intemperance were particularly informed by his concern over the growth of intemperance in cities as well as by an assumption of the superiority of the white Anglo-Saxon race. In an 1831 oration, Drake reassured his audience that, “It is now generally admitted, that the use of Ardent Spirits, among the respectable classes of the eastern, middle and western states, has greatly diminished.” In fact, the “civilized life” could be explained by knowledge of human physiology. However, Drake observed, In the savage state, the means of gratifying this desire, are few and feeble, in civilized life, they are diversified and abundant; and we find the desire for their use, correspondingly energetic. Their action upon us increases the appetite for them, and too often raises it to a state of morbid and ruinous importunity. This is conformable to an original law of our nature.

The desire for stimulation, such as was achieved with the consumption of alcohol, was characterized as natural to humans.


52 Ibid., 205.
Medical attention to the issue of intemperance built on an existing interpretation of alcohol consumption as a natural craving and a voluntary action. When faced with the question of what could be done to promote sobriety, Drake responded, “I answer, on the same basis, upon which the moralist rests his efforts, against the inordinate indulgence of any other propensity.”53 By the early nineteenth century, the cause of temperance was increasingly bolstered by scientific proof, long observed, of the physiological destruction wrought by alcohol. Some physicians formed their own temperance organizations and in 1841, Drake formed the Physiological Temperance Society of the Louisville Medical Institute. Included among the physical consequences of excessive drink were those that impaired the mental state. Drake reminded the public that, “It (intemperance) impairs the power of observation, weakens attention, renders the memory treacherous, excites the imagination, and subverts the understanding. Neither the observations nor the judgments of one in this condition, are to be trusted.” Habitual intoxication can result in a drinker becoming one who is “actually insane; and should no longer be held responsible, for his actions.” The significance of these effects was the point most hotly debated. Drake lamented that this view had not always been adopted in the criminal courts which “have confounded the insanity of drunkards, with their fits of intoxication, from which it is distinct; and punished the offences of both states, in the same manner.”54

Drake’s exposition on the consequences of alcoholic indulgence was surely meant to rally his audience to the temperance cause. He insisted that,

Drunkenness in all its stages…should be met with appropriate penalties. The personal rights of those who practice it, should be restricted; their political consequences abridged; their children placed under guardians, and their property transferred to trustees. By the fear of these penalties, thousands would be

53 Ibid., 206.
54 Ibid., 213.
deterred from becoming intemperate; while the friends and families, of those who might still drink to excess, would be screened, in part at least, from the calamities, which, in the absence of all protecting legislation, never fail to overtake them.\textsuperscript{55}

Yet as his subject turned to the issue of medical jurisprudence, the argument shifted subtly. The drunkard, according to Drake, should be punished under the law, but “\textit{he who is insane shall not be punished}” even when that insanity resulted from drinking. How is the public to reconcile the call for punishment with the exception for those who have seemingly drunk themselves into a state of insanity? As delirium tremens was becoming increasingly accepted as a form of dementia by the medical community, physicians were suggesting that an exculpatory state of insanity might not only come on the heels of intoxication but could be only temporary in nature.

By the end of the 1820s, delirium tremens as a defense to murder was embraced by a number of prominent physicians and members of the legal profession. However, as the case of John Birdsell will demonstrate, this type of defense was contentious and often discounted by the public.\textsuperscript{56} In fact, this case achieved its first degree of notoriety from the criticism levied against the guilty verdict by Daniel Drake in his own \textit{Western Journal of the Medical and Physical Sciences}. For Drake, a moral sense of drinking and a commitment to reform were consistent with his advocacy of delirium tremens as a defense to murder. At this point physicians had been describing this condition as both a mental disease produced by intoxication and a category of a variety of temulent diseases caused by gastric infirmity. Drake consistently described delirium tremens as a form of insanity and therefore one suffering from this illness should be held \textit{non compos} and not

\textsuperscript{55} Ibid., 214.
\textsuperscript{56} Note: An “Erratum” appears at the end of Drake’s article on this case stating that Birdsell is actually named John rather than James.
responsible for his crimes in the eyes of the law. Three physicians testified at trial that
Birdsell was suffering from the disease of delirium tremens which, they argued, should
be treated as insanity rather than intoxication under the law. Drake himself later
tested for the defense at a motion for a new trial which was ultimately denied.

In 1829, John Birdsell murdered his wife “by cutting through her neck from side
to side, with a narrow axe, at a single blow” and faced a jury with the defense that he was
suffering from *mania a potu* (delirium tremens). A man of about fifty years of age and a
resident of Harrison, Ohio, he had been married to his second wife for approximately
twenty years at the time of the murder. Witnesses recounted that Birdsell had a history of
intoxication dating back several years characterized by a variety of “physical and moral
symptoms” that Drake viewed as consistent with delirium tremens. Among these were
tremors, paleness, red eyes, perspiration, visual and auditory hallucinations. At times he
believed he was surrounded by snakes and other reptiles, heard trumpets and vocal music,
and imagined himself the subject of conversations. In particular, he experienced a
profound fear that others were attempting to harm him. Most relevant to the crime was
“his prevailing maniacal conception” that his wife was conspiring with others to kill him.
His actions in the days prior to the murder were presented as especially significant to
distinguishing a state of delirium tremens from that of intoxication. Birdsell drank and
was intoxicated on the Sunday prior to the murder. There was no evidence that he
continued to drink over the next three days, and by Wednesday evening he was ill

and Physical Sciences* 1 (1830): 44-65; “Delirium Tremens – Medical Jurisprudence,” *The Boston Medical
and Surgical Journal* 2, Oct. 20, 1829, 567-72; See also Stanley L. Block, “Daniel Drake and the Insanity
Plea,” *Bulletin of the History of Medicine* 65 (Fall, 1991): 326-39 which places the Birdsell case within the
history of the insanity defense.
58 Drake, “Medical Jurisprudence”: 44-5.
complaining of stomach cramps, but was described as rational. By the next day, 
Thursday, March 5, “his family thought him crazy.” He told two different witnesses that he believed his wife was making plans to kill him and kept an axe with him. By evening, he accused his wife of causing the deaths of 30,000 men and believed others were in his loft making ropes with which to hang him. Later, after pacing about the room, Birdsell grabbed his axe and struck his wife dead in front of a number of their children. He struck her twice more in the face before his oldest daughter began a struggle with him for the axe. The younger children opened the latched door so that she could escape unharmed.59

That Birdsell did kill his wife was undisputed. In fact, Birdsell’s past behavior and drinking habits as well as the horrific nature of the crime itself were intended to support the defense’s argument that Birdsell was insane. Despite the seeming success of the defense of delirium tremens in the case of Drew, there were two significant hurdles for a similar verdict for Birdsell. The court needed to not only accept that Birdsell was insane during the commission of the crime, but also that this state, a consequence of his use of alcohol, was sufficiently distinct from the state of intoxication. It appears that the jury was convinced of neither. It was no easy feat to prove a murderer insane. The insanity defense was controversial throughout the nineteenth century (and remains so today). Despite the wild accusations that Birdsell leveled against his wife, witnesses also testified as to his rational behavior after the crime, so much so that Drake admitted “that many of the witnesses could not believe him deranged.” Furthermore, Birdsell purportedly admitted shortly after the murder that he knew he would be hanged for the

crime, an acknowledgement that he did indeed understand the consequences of his actions.

It also appears likely that the evidence of Birdsell’s history of drinking, intended by the defense to support a case of delirium tremens, cemented the idea that the defendant was responsible for his own bad habits. The decision of the jury, Drake recounts, was such that they were not called upon to give an opinion, whether Mania a potu would, under any circumstances, be an excuse for the commission of a crime, but they feel no unwillingness to express their opinion, that if the insanity was the offspring of intemperance and the prisoner knew that intoxication would produce it, he could not plead it as an apology.60

The court recognized that Birdsell had voluntarily become intoxicated and, as he had experienced the condition of delirium before, his state of mind should have been foreseeable. One newspaper reporting on the denied motion for a new trial suggested “that habitual insanity, produced by habitual drunkenness, constituted no better apology for the commission of a crime than drunkenness itself.”61

Drake expressed regret that Birdsell was not acquitted on the basis of mania a potu; yet, he was less concerned about Birdsell than the state of medical jurisprudence, later clarifying that he was “indifferent” to the fate of Birdsell himself.62 Drake was particularly dismayed at the ambiguity of the legal decision insisting that, “If the Court could not say what the law is, they might have said what it ought to be.” Furthermore, “I am likewise unable to ascertain, whether the jury convicted the prisoner, because, in their

60 “Insanity Produced by Intemperance,” 10.
61 “Conviction for Murder,” Raleigh Register, and North-Carolina Gazette, July 2, 1829, 359.
opinions, his insanity was not made out; because the act which he perpetrated was not connected with his disease; or because they would not allow insanity, from drink to constitute an excuse.”

He emphasized the idea that not only is delirium tremens a form of insanity that upsets a sense of right and wrong, but it is a condition distinct from intoxication itself. Drake, having studied and written on the issue for ten years, expressed faith in the ability of the medical profession to discern the difference between intoxication and mania a potu, “a new and distinct delirium.”

“It must be shown,” he stressed, “either that the culprit is insane on all subjects, to such a degree as to pervert his affections and destroy his estimate of right and wrong; or that his crime had some natural connexion with the subject of his hallucination. Submitting to these requirements, the subjects of Mania a potu seem fairly entitled to plead their alienation, when arraigned for crimes.”

His experience told him that this was a true form of insanity and should be considered as such under the law. He did not argue that mania a potu, in and of itself, was a defense to crime, but rather that it should be held to the same standard as other forms of mental alienation.

Drake’s medical, moral and legal interpretation of delirium tremens rested squarely on his understanding of this condition as an unintended consequence of drinking and a remote cause of insanity. As a committed temperance advocate, Drake considered the beneficial effects to the temperance cause and the safety of society in punishing all actions that follow voluntary drunkenness. Ultimately, however, he viewed punishment for acts committed under a condition of mania a potu as ineffective: “But I cannot bring

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64 Ibid., 50.
65 Ibid., 53.
myself to believe, that this desirable end can be thus attained.—Few men, perhaps none, when presented with the prevailing temptations to drunkenness, are likely to anticipate consequences so remote, or contemplating, will be deterred by them.” Drake’s understanding of delirium tremens as an unintended and unanticipated consequence of heavy drinking allowed him to acknowledge its exculpatory impact in a court of law. He further questioned the efficacy of the law in deterring drunkards in the first place and suggests the greatest value of punishment is in “preventing bad men from real or simulated intoxication, as an excuse for the crimes which they desire to perpetrate.”

Drake was most noticeably outraged at the idea that mania a potu itself cannot be argued as a defense to crime. “If this variety of mental alienation cannot constitute a valid defence,” he argued, “it can only be from the character of its remote cause.” For Drake, the key distinction between intoxication and mania a potu, both admittedly consequences of drunkenness, was in the “remote” nature of the latter. He argued that the court had no right “to travel behind the testimony which establishes the insanity, to inquire into its causes, and estimate the culpability of non compos, not by the degree of his alienation, but the criminality of those causes.”

Drake’s medical knowledge of delirium tremens placed this condition in the same category as insanity, which could also result from a variety of remote causes including intemperance.

Drake’s interpretation of this case is a particularly telling example of the divide that often existed between scientific, legal and lay observations of intoxication. Yet the stark choice of “guilty” or “not guilty” belies a much more complicated sense of the relationship between drunkenness and responsibility. One can imagine that Drake’s

66 Ibid., 51-61.
staunch advocacy of temperance could have led him to condemn Birdsell, as the jury ostensibly had, for his years of drinking. In the end, Drake’s scientific worldview held sway in arguing the irrelevance of the remote cause of what he viewed as a legitimate case of insanity. The jury, on the other hand, appeared to have viewed Birdsell’s history of intemperance as an incriminating factor in that Birdsell should have foreseen the consequences of his actions. How then do we account for the “not guilty” plea in the case of Drew? Here the instructions of the judge were clear that the defendant met the criteria of insanity leaving little leeway for the jury to find him guilty if they were so inclined. In fact, the jury reached their verdict “without retiring from their seats.”

Events after Birdsell’s trial also reveal that the public did not necessarily view Birdsell’s case in the stark terms of the guilty versus not guilty verdict required by law. A week before Birdsell’s scheduled execution, a number of citizens of Cincinnati submitted a petition requesting a commutation of the death sentence. The request was granted; however initially Birdsell refused and was brought out to the gallows. Only after ascending the platform did he change his mind, and he was ultimately confined to the penitentiary. Those supporting the commutation were described as “respectable citizens,” perhaps those more likely to embrace the medical interpretation of events. Some newspaper accounts, however, suggested the commutation was a “disappointment” to those who had gathered “to witness the delightful spectacle.”

As physicians expanded their provenance in this period, the medical and legal interpretations of drunkenness as a disease increasingly overlapped. The field of medical

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67 “Insanity Produced by Intemperance,” 10.
jurisprudence was undeveloped, and delirium tremens as a diagnosis was still unfamiliar to many outside the medical field. Characterization of delirium tremens as a form of insanity distinct from both a fixed form of insanity and the intentional state of intoxication required the interpretation of physicians—both medically and legally. Drake hoped that the case of Birdsell would “incite our physicians and lawyers, to a closer study of mental alienation, particularly of *Mania a potu*, in reference to the laws of the different states.” It is in the presumably unforeseen consequences of drink where physicians carved a place for themselves in discussions of criminal responsibility. Beck had been reluctant to excuse McDonough’s crime, medically or legally, because the offender was intoxicated. The law had seemingly long established that one could not be excused for actions that were voluntary in nature. According to Beck, McDonough freely engaged in the consumption of alcohol and was aware the uncommon effect of producing insanity it would have on him. Yet successive physicians would raise the issue of the unintended consequences of intoxication. Beck did often consider those who had become insane due to the “remote cause” of persistent drinking to be permanently and legitimately insane. Daniel Drake argued in 1830 that, “A great variety of causes are known, among other sinister effects, to produce insanity. Suppose an individual who do not avoid these causes, is he therefore to be held accountable when he becomes insane?” While he praised Beck, he questioned the decision in the McDonough case. He agreed that intoxication brought on the “paroxysms of insanity” that led to the murder of his wife; however, McDonough “could not have foreseen this, or any other criminal action; he did not, therefore, drink with malice prepense; and his crime seems to have been, merely that

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70 Drake, “Medical Jurisprudence,” 65. For more on this case exemplifying Drake’s contribution to medical jurisprudence, see Block, “Daniel Drake and the Insanity Plea.”
he did not refrain from that which promoted the recurrence of the paroxysms, but involved no malice, and is not prohibited by our criminal law.”

Delirium tremens existed as a category somewhere between ordinary intoxication and permanent insanity. According to historian Matthew Warner Osborn, attention to delirium tremens “marked the emergence of the inebriate as a distinct category of medical study and treatment.” The recognition of this disease early in the nineteenth century influenced the field of medical jurisprudence by suggesting that intoxication could produce a unique condition of insanity in delirium tremens. While drunkenness continued to remain no excuse for crime, such a determination often depended on interpretation. Medical attention to the perceived connections between delirium tremens and the stomach and nervous system helped to define alcohol abuse in physical terms. Calls began early in the century for inebriate asylums distinct from traditional insane asylums, with distinctions between patients often dependent on class. Individuals of the “better” classes were more likely to suffer from delirium tremens than the intemperate lower classes. These distinctions would be largely obfuscated by mid-century as the symptoms and experience of delirium tremens became better known.

The physical and mental consequences of drunkenness were increasingly defined as an appropriate field of study for physicians even as intoxication itself continued to be characterized as a moral issue. Legally, jurors were often asked to draw an artificial distinction. The defense in Birdsell’s trial was careful to inform the jury that “drunkenness cannot be plead (sic) as an apology for crimes.” Yet in this oft-repeated phrase, there was usually a “but” not far behind. Birdsell’s state, the defense argued, was

71 Ibid., 63.
not drunkenness, but rather, one of insanity caused by alcohol; and he therefore was due “all the immunities of a non compos from any other cause.”

Addressing what was viewed as a disappointing verdict in the Birdsell case, one medical journal contrasted the actions of the drunkard with those of the sufferer of delirium tremens and the “paroxysm of intoxication.” The drunkard, acting from inherent immoral impulses, was fully responsible under the law: he “is only exhibiting his true character, stripped of the disguise which in his sober intervals he is able to throw over it, he is not the less a moral agent, and answerable for his conduct.” The article continued,

Whatever may be thought of the soundness of this philosophy in view of the ebrious paroxysm, it is evident that it does not at all apply to the subject of delirium tremens. He exhibits nothing of that exaggerated state of the passions, of that boisterous violence which marks the drunken man; he is timid, watchful and jealous; and much more disposed to apprehend injury from others, than wantonly to inflict it on them. Such was the state of the individual in the case alluded to, and surely there is none which renders a man more truly and deservedly an object of compassion.

Not surprisingly even as physicians argued that delirium tremens and insanity caused by chronic intemperance existed as diseases distinct from common drunkenness, categories often blurred. This ambiguity challenged the value of medical knowledge in distinguishing between disease and immoral behavior and often presented a profound stumbling block to participation in a judicial system that required clear legal strictures. Mens rea requirements of the law made unambiguous characterizations of the mental state essential if medical jurisprudence were to have any value in the criminal cases concerning drinking and insanity.

73 Drake, “Medical Jurisprudence,” 47.
Likewise an association between criminal behavior and delirium tremens complicated the contribution of medical knowledge. Drake supported the idea that the sufferer of delirium tremens was worthy of compassion. He asserted that *mania a potu* rarely resulted in violence since it most often occurred “in old inebriates, whose constitutions are broken down” and were “far more disposed to flee from danger, either real or imaginary, than to face it.”75 One medical journal praised Drake for “showing that the cause of humanity is compatible with the soundest views of medical science and ethical philosophy.”76 Another author, quoting legal scholars Wharton and Stillé, pointed out that “delirium tremens is not the intended result of drink in the same way that drunkenness is”; it is “shunned rather than courted by the patient.”77 The heroic contribution of the physician, in their eyes anyway, was to provide a means to separate the immoral drunkard from the inebriate patient.

Medical expertise could also prove essential as one of the arguments against allowing drunkenness as a mitigating factor was the fear that criminals would either feign drunkenness or purposefully drink to excess prior to a crime in order to receive a reduced sentence. Delirium tremens was thought near impossible to feign. Drake assured his readers that a trained physician could render an accurate diagnosis. In the case of Birdsell, he recounted the manifestation of observable physical symptoms such as an elevated pulse and incessant spitting.78 The “character of delirium” as well was one

75 Drake, “Medical Jurisprudence,” 54.
which was consistent with this condition. Isaac Ray later criticized the discretion that juries held in determining insanity over the determination of trained medical men. A finding of insanity was a matter of fact to be decided by the jury, not a matter of law to be determined by the judge. He described the Birdsell case as one which “furnishes another instance of the deplorable consequences of obliging a body of men, most of whom are utterly unacquainted with the phenomena of insanity, to decide the question of its existence in a given example.” He rejected testimony regarding Birdsell’s rational behavior after the crime because those witnesses “knew as little of insanity” as the jury. Furthermore anyone who believed Birdsell to be sane “must have derived his notions of this disease from some other source than the wards of the hospital and asylum.” Ray highlighted this case as an example of the divide between medical knowledge and legal interpretation as he suggested a greater emphasis for the former in the courtroom.

Although the Birdsell case generated considerable debate and outrage, it was the case of Alexander Drew, found not guilty due to delirium tremens, that would prove a more significant medical and legal precedent. In 1838, Ray referred to the decision of the court in the Birdsell case as “untenable” and ended his discussion of delirium tremens, suggesting “it is scarcely necessary to pursue this train of reflection any farther.” However, in later editions of this same work, Ray followed these very same words with the assertion that the decision in the Drew case “has unquestionably settled the law on this point in this country.” He also was able to include descriptions of a number of later cases in which delirium tremens provided a satisfactory defense.

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writing on delirium tremens in 1875, ignored Birdsell altogether and characterized Drew’s trial as “the great American case.” As far as physicians had been able to define delirium tremens as a condition distinct from intoxication, the diagnosis became an acceptable and often successful defense to criminal acts. Physicians, by the end of the 1830s, were not only epistemologically convinced of delirium tremens; the habit and resulting behavior of heavy drinking itself were increasingly receiving medical attention as a form of disease. T.R. Beck, who in 1818 was so reluctant to accept McDonough’s insanity because of the complicating factor of intoxication later retracted his support for the guilty verdict in that case.

Delirium tremens initially presented a problem for legal systems and juries because of the overlap with the issue of intoxication. Delirium tremens occupied a place between permanent insanity, in which heavy drinking was considered one of a number of possible remote causes, and intoxication, whose effects were viewed as both immediate and foreseeable. Thus it allowed physicians an opportunity to expand their purview over issues of drinking as part of an intensifying concern with the effects of intemperance on American society. A broader array of the consequences of heavy drinking became legitimate fodder for medical interpretation.

82 Ray, A Treatise on the Medical Jurisprudence of Insanity (1871), 569 (footnote).
Chapter 2: “Not capable of entertaining this specific intent” – Intoxication as Mitigation

Evidence of alcohol use raised questions of intent that, while hardly guaranteeing acquittal, complicated legal proceedings. In his 1831 oration on temperance, Drake made a plea for the recognition of the special circumstances of the “mental alienation of habitual drinkers.” Such habits, he argued, could lead to a madness in which the drinker became a “victim” of delusion who no longer could “distinguish between right and wrong,” as his friends and family faced the possibility of becoming “the prey of vindictive and murderous designs.” He expressed dissatisfaction with the stark distinction required by the courts between insanity and drunkenness as he urged that, “Even the delirium of a fit of drunkenness, should be plead in mitigation of punishment; for the individual often does that, when intoxicated, from which he would recoil with horror, in his sober moments; and this should be the test.” Despite the argument for some degree of mercy for the intoxicated criminal, Drake remained a staunch temperance advocate; in fact, he argued that society would best be served by punishing drunkenness “in all its stages.”  

Drake’s judgment that intoxication created a condition in which individuals might not be fully responsible for their actions was not only informed by his knowledge and experience as a physician; this sense also reflected ongoing changes in the American legal system that increasingly emphasized intent and an influential temperance message that blamed alcohol for putting men on the road to ruin.

Ultimately, the possibility of a compromise verdict that weighed intent alongside the act itself emerged, as the charge of murder, in many states, was delineated into degrees with corresponding levels of punishment. While drunkenness did not form the only basis from which to argue for a mitigated charged, it did provide one of the more powerful examples of a state of mind incapable of forming the requisite intent to commit first degree murder.

As accounts of horrific murders became ubiquitous in popular culture through trial reports, temperance pamphlets, newspaper accounts, and literature, the public exhibited a fascination with the chilling details of crime. The murderer’s behavior before, during, and even after the crime became a means to speculate on motive and intent. Accounts of crime prior to the nineteenth century tended to be succinct relaying only key details, and religious sermons that drew on criminal actions for inspiration generally sought to impart a clear moral message on the consequences of evil. However, by the early nineteenth century, a shift to a more rational understanding of human nature, one based on free will, reason, and an inclination to virtue rather than an inherent depravity, brought questions of motive to the fore.\(^2\) And while the grisly details of a murder might beg the question “why,” murders committed under the influence of alcohol contained at least a partial built-in motive and a denial of intention: the “demon rum” made me do it. Historically, however, drunkenness had provided “no excuse” for crime. Legal precedent and medical opinion held an offender responsible for his actions if he had voluntarily made the decision to drink because his resulting state of mind was foreseeable, even if his specific actions were not. Settled insanity and delirium tremens

proved exceptions because those outcomes were deemed not to be intended results of drinking. However, a heightened focus on the issue of intent within the legal field called the conclusion into question. Did the decision to drink sufficiently constitute intent to commit crimes that took place while in a state of intoxication? To what extent was an offender’s state of mind at the moment of the crime relevant to his guilt or innocence? This is not to say that alcohol excused crime, although at times it did, but rather that the fact of alcohol use during the commission of a crime raised legal questions relevant to a determination of intent.

The significance of intent to a criminal act lay in the legal doctrine of *mens rea*, or “guilty mind.” English common law dating back to the mid-seventeenth century provided the precedent for this concept with Sir Edward Coke’s assertion that ‘*actus non facit reum nisi mens sit rea*’; the idea that a guilty act requires a guilty mind. However, prior to the nineteenth century, courts were not particularly invested in exploring the inner working of a defendant’s mind: the concept was not clearly defined, and the nature of the criminal act itself often served to sufficiently demonstrate guilt. Insanity proved an exception, but insanity that was recognized under the law was not subtle, and temporary states of insanity or an altered mind provided “no excuse” for crime. By the eighteenth century, British courts generally employed what was referred to as the “wild beast” test for an insanity defense. A man would be held not responsible for his crimes only if he was “totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast…”³

the initial decision to drink was presumably made by a sane and sober man, the resulting intoxication did not by definition meet this test. Yet the distinction between legal insanity and mens rea existed at best as an “uneasy entente” according to one modern legal scholar. As questions of intent began to be more seriously contemplated in criminal trials, the doctrine of mens rea provided a significant point of entry for medical knowledge in cases of insanity and criminal drunkenness.

Legal doctrine in the United States, given its history as an English colony, was shaped by English law; most notably in this period by Blackstone’s *Commentaries on the Laws of England* which sold out in its first printing in the American colonies in 1771-2. Blackstone held that laws governing men were “immutable” and discernable like scientific laws; a position that influenced the recognition of the “self-evident” truths and “unalienable rights” found in the Declaration of Independence. The concept of mens rea itself reflected an Enlightenment faith in reason and individual free will. In a legal consideration of who could be held responsible for committing crime, Blackstone stated, “All the several pleas and excuses, which protect the committer of a forbidden act from the punishment which is otherwise annexed thereto, may be reduced to this single consideration, the want or defect of will. An involuntary act, as it has no claim to merit, so neither can it induce any guilt.” In other words, a crime must be accompanied by an intent to do harm, what Blackstone called a “vitiuous will.” While this phrase has

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routinely been interpreted as “vicious will,” legal scholar Gerald Leonard has pointed out that “vicious” is more properly defined as “vitiating” - “unlawful” or morally corrupt. This meaning is more consistent with Blackstone’s assertion that an actor was responsible for the consequences, foreseeable or not, of “an unlawful act.” The evil intent and moral blameworthiness of the defendant was generally sustained by the harmful outcome of his action. Such a position was consistent with English law at the time that held voluntary drinking, to the extent that it caused public harm, did not excuse crime. An individual with a “vitiating mind” was one whose behavior was at odds with the interests of society.\(^6\)

By mid-nineteenth century, however, the legally defined “vitiating mind” was less likely to be one in which the offender did not have the best interests of society at heart and more likely to be one in which the offender manifested a specific unlawful intent. Legal scholars of this period reflected an optimistic faith not only in the objective nature of the law but also in a system that would mete out a moral justice. The American legal system was in the throes of a shift from a framework that was “harm-oriented,” to one that was “act-oriented.” Earlier legal theorists weighed the threat of criminal acts on traditional society as they considered individual volition; but changes in the legal system, buoyed by medical interest in diagnosing mental functions, meant that a determination of intent became more narrowly defined.\(^7\) While consideration of a “vitiating mind” meant examining the broader social consequences of a wilful action, a determination of a “vitiating mind” meant a greater consideration of the specific mental state of the individual at the time of committing the act. A determination of individual intent therefore became

essential to deciding upon an appropriate charge and commensurate punishment. Yet deciding that a defendant did not possess an evil intent did not mitigate the pernicious effects on victims and society. The question became to what extent should the punishment conform to the actual intent and moral character of an offender and to what extent should it reflect the cost of crime to society and the value of deterrence to the rest of the population? This question was particularly applicable to assessments of the mitigating impact of drunkenness in a society that viewed intoxication as a state of limited control and decried intemperance as a social evil.

American legal authority Joel Prentiss Bishop asserted that establishing mens rea was a means of ensuring that punishment corresponded to the malicious intent exhibited by the offender with the goal of what has been called the “awarding of punishment in accordance with moral desserts.” Describing the general doctrine of intent in his 1858 *Commentaries on the Criminal Law*, Bishop noted that, unlike in civil law, “crime proceeds only from a criminal mind” and that “neither in philosophical speculation, nor in religious or moral sentiment, would any people in any age allow, that a man should be deemed guilty unless his mind were so.” He rejected the argument that deterrence should be a consideration questioning how the punishment of one “who meant no wrong” could be in the public good.8 Characterized by one biographer as “(d)riven by an inseparable mix of religious inspiration and empirical study,” Bishop accorded great weight to legal scholarship and the significance of judicial decision over the rigid application of precedent. His jurisprudence was informed by both a deeply held religious sense and an abiding faith in a system of law modeled on natural science and empirical study. Bishop

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was an influential scholar whose background of relative poverty and limited schooling made him typical of most middle-class lawyers of his time. Additionally, despite his lack of formal education, his legal writings reflected a knowledge of the mainstream psychology of his day. This approach cast Bishop as representative of jurists of his age who more purposefully weighed individual morality against a determination of intent; and as such, provided an example of the legal system’s shift from classical jurists “who prided themselves on separating law from morals and on divorcing law from society.”

Bishop came of age during the period of the Second Great Awakening, and early reformers were similarly influenced by Enlightenment beliefs that behavior derived from rational thought and that humans could exert free will in shaping their destiny. The potential conflict between the actions of the individual and the greater good of society was not immediately apparent as evangelical reformers simultaneously foresaw an improved society on earth and a heavenly reward for those who followed the moral course.

The general vagueness of the concept of mens rea also meant that actions were often subject to competing interpretations by legal actors, physicians and even the public who often applied their own interpretations of human nature to evaluate criminal responsibility. The distinction between the “vicious will” and the “vitiuous will” was not always apparent. Reformers came to realize that some did not follow the rational course, even after a healthy dose of “moral suasion,” and required compulsory or legal measures. Thus we see the moral crusade of temperance transform into a movement for Prohibition by mid-century. Medico-legal doctrines developed within a changing United States in

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which the problems of an urbanizing and industrializing society increasingly seemed to require broader social attention and even institutional solutions. The focus on mens rea in this period likewise reflected this growing public and professional concern for the mentally ill. Medical men, for example, could recognize the particular circumstances of the mentally incompetent defendant by advocating for his exoneration based on an insanity defense while simultaneously establishing asylums to address the social problem of the mentally ill. In other words, if the mind of the defendant was in some way impaired, there was an argument that there was no legal responsibility. However, what of the mind of the drunkard? At first glance, the problem of drunkenness, and drunken criminal behavior in particular, seemed to pose little challenge to prevailing beliefs and structured responses. The drunkard, in exercising his free will to drink, constituted a threat to society; thus punishment was both moral and practical. The law even went so far as to note exceptions for those who had been made drunk accidentally or against their will. Therefore, as noted above, early rulings continued to hold that drunkenness was no excuse for crime. To the extent that the act of drinking itself was made through free will, the individual was wholly responsible for the consequences of that act. However,

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11 Cited in “State v. Johnson (41 Conn. 585), In the Supreme Court of Errors of Connecticut, November Term, 1874,” in *The Adjudged Cases on Insanity as a Defence to Crime*, ed. John Davison Lawson (St. Louis: F. H. Thomas and Co., 1884), 610. This statement on accidental or unintended intoxication was included almost every time the argument against drunkenness as an excuse to crime was employed.
*mens rea* provided an argument that drunkenness did indeed affect intent and therefore responsibility.

It is not difficult to imagine an alternative scenario in which the sustained focus on temperance and eventual campaigns for legal prohibition of alcohol led to a characterization of drinking as irrelevant to intent or even as an aggravating factor to crime. This interpretation would follow the model of strict liability in which a person is responsible for his/her actions regardless of intent or fault.\(^\text{12}\) For example, the element of strict liability was applied to the crime of statutory rape in the mid-nineteenth century with courts ruling that an offender is held strictly liable for knowing the age of the victim. For this particular crime, a lack of intent to commit wrongdoing, for example based on a mistaken belief concerning the age of an underage girl, was not an adequate defense: the crime was defined by the action alone. Public interest held sway over concerns for moral justice for the individual. The nineteenth-century legal climate has been described as one in which “varieties of consequentialism – defining a self-consciously ‘public’ approach to criminal justice – dominated the language of criminal theory, while never entirely crowding out concerns for individual moral and legal justice, concerns that suggested a distinctly ‘private’ approach to criminal law.”\(^\text{13}\) Debates over the appropriate punishment for the drunken offender represented this negotiation between private justice and public interest. By the 1830s, evidence regarding a defendant’s use of alcohol had been relevant only as a remote or unintended cause of a disordered mind in which the result was either settled insanity, in which case the cause became irrelevant, or delirium tremens. However, changes in the law provided another means of introducing intoxication as a

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\(^\text{12}\) Strict liability is generally applied in drunk driving.

possible legal defense to crime. As intent became relevant to a determination of criminal charge, a state of drunkenness could provide a possible defense or serve as a mitigating factor.

In 1794, Pennsylvania became the first state to distinguish between degrees of murder. The impetus behind this change sprang from reforms in the criminal justice system; in particular a move toward rehabilitation and a reaction against capital punishment. Pennsylvania had already abolished the death penalty for robbery, burglary and sodomy eight years earlier. Justification for reforming the law pertaining to murder is found in the statue which observed that the offenses to be defined in the law “differ... greatly from each other in the degree of their atrociousness.” Murder in the first degree was a capital crime and was defined as “willful, deliberate, or premeditated killing” or murder committed during the course of another serious crime such as arson, rape, robbery or burglary. Crimes that did not meet this definition were considered second degree murder under the law. In other words, mens rea must be established in order to convict an individual of first degree murder and sentence him to capital punishment. Throughout the nineteenth century, other states began to similarly divide the crime of murder into degrees with some including the charge of manslaughter into their penal codes. By 1858, Massachusetts joined a dozen other states which already included a variety of statutes defining degrees of murder in their laws. First degree murder was characterized by “deliberately premeditated malice aforethought”; second degree murder fell short of this definition. The very specific requirement of premeditation or intent meant that the

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criminal’s state of mind prior to and during the act was relevant to the charge and eventual punishment, and the new law was praised by legal authorities for providing “certainty and humanity” to the courts.\textsuperscript{15}

The defendant who was intoxicated during the commission of a crime still faced a substantial challenge in using his state of intoxication as a sufficient defense. Drunkenness, and increasingly drinking itself, was considered a wrongful act, and as Bishop observed, “when a man intending one wrong does another unintentionally, the intention and the act coalesce”; therefore, the “wrongful intent” required by the law could be found in the voluntary decision to drink. Yet noting that the charge of murder was divided into degrees in some states, Bishop did allow that drunkenness could prove that the offender was “not capable of entertaining this specific intent” and is rightly convicted of murder in the second degree.\textsuperscript{16} Thus the possibility that a state of intoxication could mitigate responsibility emerged within those legal systems that required malice aforethought in order to prove first degree murder. As one legal historian asked, “Could you, then, be so far gone in liquor that you could not make the grade as a first-degree murderer?”\textsuperscript{17} Descriptions of the effects of intoxication found in writings on medical jurisprudence suggested that drunkenness could prove incompatible, as Ray argued, with the “wilful, deliberate, malicious and premeditated” killing that defined first degree murder.\textsuperscript{18} Punishment was to be meted out in line with the appropriate degree of guilt.

\textsuperscript{15} Alan Rogers, \textit{Murder and the Death Penalty in Massachusetts} (Amherst, Massachusetts: University of Massachusetts Press, 2008), 112-3. Thanks to Alan Rogers for clarification (via email) on this point.


As early as 1819, the relevance of drunkenness to intent was contemplated in English law in Rex v. Grindley which stated “Though drunkenness cannot excuse from the commission of crime, yet where, as upon a charge of murder, the material question is whether an act was premeditated or done only with sudden heat and impulse, the fact of the party being intoxicated is a circumstance proper to be taken into consideration.” The question, however, was far from settled. Some judges later disagreed with this ruling, and the relation of drunkenness to intent was fiercely debated in state and federal courts in the United States.\(^{19}\) The law continued to insist that drunkenness was no excuse for crime, but slowly and steadily U.S. courts began to agree that drunkenness should be considered in determining state of mind and subsequently an appropriate criminal charge. While the 1851 *United States Digest*, a summary of decision rendered in courts of common law and admiralty asserted that “drunkenness is no excuse of crime,” it also addressed circumstances in which drunkenness should be considered as part of a valid defense. Drunkenness could prove a particular challenge to establishing a charge of murder in the first degree which was defined as “a deliberate, formed design to take life.” Here legal authority conceded that “evidence of drunkenness to an extent that absolutely incapacitates the defendant from forming such a deliberate and premeditated design is admissible for the jury, to show that the offence has not been committed.”\(^{20}\) Drunkenness would not excuse from murder, but it could serve as evidence of a lack of the requisite intent outlined in the charge of first degree murder. It is important to remember, however, that just because drunkenness was viewed as consistent with establishing state


of mind did not mean that it always served to mitigate the charge. There continued to exist a great deal of reluctance to allow what was already considered bad behavior to excuse greater crimes. Additionally, early in the century, courts resisted considering drunkenness as an excuse because of fears that criminals would plan their crimes in such a way as to take full advantage of the law.

Courts in Tennessee debated the impact of intent and state of mind on criminal culpability in the years prior to passing a statute establishing separate charges for murder in 1829. The 1827 trial of Burrell Cornwell in Tennessee provides an early example in which the defense of drunkenness was raised to argue that the defendant could not form the intent required to adequately convict the accused of murder. The prisoner’s counsel had requested that the court charge the jury to consider intoxication as “a circumstance of excuse or mitigation” if it had caused Cornwell to act under “a temporary suspension of reason” or if “intoxication were not intended at the time of drinking.” However, without the distinction between first and second degree murder yet in place, the court set the bar high requiring that a case of settled insanity be proven, charging that “if his insanity or bad conduct arose from drunkenness, it was no excuse.” Only when the habit of drinking resulted in permanent insanity could it properly be considered. Cornwell was convicted of murder.  

In setting precedent and instructing juries, the courts struggled with the larger implications of allowing drunkenness of any sort to act as an excuse for crime. In particular, they feared that criminals would take advantage of legal decisions that defined intoxication as a mitigating factor. In the case of Cornwell v. the State of Tennessee, the

21 “Cornwell v. State (Mart. & Yerg. 147.) In the Supreme Court of Tennessee, 1827,” in Lawson, The Adjudged Cases, 583-8. For citations, see p. xii.
appeals court seemed especially troubled by the fact that the accused had been witnessed drinking with another man, M’Clanahan, who swore his enmity against the victim just prior to the murder. While defense counsel doubtless hoped that this testimony would substantiate the claim of a temporary insanity based on intoxication, the court instead viewed the act of drinking in contemplation of a crime as a voluntary step towards greater malice. The appeals court asserted that cases in which there was an “entire prostration of intellect immediately occasioned by drunkenness” were rare. Rather they relied on what they viewed as the more likely scenario: “It is generally the drunken man acting out the sober man’s intent.” The history of criminals, it was argued, demonstrates that such men will rely on liquor to quiet any lingering moral qualms and to “screw his courage to the sticking point.” If the court were then in turn to view such behavior as a mitigating factor it would mean that murderers could calculatingly use drunkenness as “a shield to protect from punishment.” Similarly, in State v. Turner in Ohio in 1831, the court feared that “the most hardened criminal would escape punishment, and the corrupt, and profligate and revengeful, would only have to intoxicate themselves to be exonerated from liability for crime, and to acquire the right to commit any act, however shocking and horrid, with impunity.”

Furthermore, the courts continued to view law and order in terms of the greater social good. Temperance organizations grew increasingly influential throughout the nineteenth century, and their admonitions against drinking would not be unfamiliar to either judges or juries. Any argument that drunkenness was an excuse abrogating mens rea could be quieted by the assumption that the choice to drink was both a moral failing

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and a social ill; thus the prisoner was rightfully punished. For the judge in the Cornwell case, this connection was explicit as evidenced in his opinion to the court. He cited a recent case in which a murderer not only looked to get drunk prior to committing a “horrid murder,” but “inquired of a grocery-keeper, what kind of liquor would make him drunk soonest.” In the aforementioned Ohio case, the judge instructed the jury: “The habit of intoxication is highly immoral and vicious, tending to the destruction of the best interests of society...”23 And, as with Cornwell, the conclusion that the choice to drink, to engage in a “degrading and disgraceful” vice, was a lapse in moral judgment simultaneously served as a sign of the defendant’s weak moral character as well as a lesson on the evils of drink. The court observed that, “All civilized governments must punish the culprit who relies on so untenable a defence; and in doing so they preach a louder lesson of morality to all those who are addicted to intoxication, and to parents, and to guardians, and to youth, and to society, than ‘comes in the cold abstract from pulpits.’” Significantly, they noted that during the current term of the court, they had already heard three cases of murder and one case of intent to murder by perpetrators who were drunk.24 In the end, both individual justice and the needs of society appeared to have been justly served.

Despite the risk of highlighting their clients’ immoral habits, nineteenth century defense attorneys frequently requested that the jury be allowed to consider a defendant’s intoxication in their determination of guilt. By mid-century, a number of state courts were more vigorously debating the proper application of the insanity defense and

significance of state of mind to determining the degree of culpability on the part of the 
criminal. Intoxication would prove to be a key factor in this determination. Earlier 
rulings had established that heavy drinking was exculpatory only when it resulted in 
settled insanity or produced the unintended consequence of delirium tremens. Ordinary 
intoxication was no excuse for crime; yet it was increasingly viewed as admissible 
evidence in determining a state of mind that would establish a proper charge. While the 
drunk criminal might still be convicted of murder, a charge of second degree murder 
rather than first generally meant the difference between life and death. If a jury could be 
moved by a degree of sympathy for an individual acting under the effects of alcohol, the 
court had virtually no means by which to question the reasoning behind the decision. 
While ideally the law hoped for impartial jurors; in reality, decisions could be based on 
newspaper accounts, prior prejudices, misunderstandings of the law, or outside influence. 
The law had long held that verdicts could not be impeached based on the decision process 
of the jurors themselves. Such an undertaking itself would be time-consuming, fraught 
with uncertainty, and a betrayal of the confidentiality of jury deliberation. Appeals 
therefore often revolved around the specific instructions given to the jury and provide a 
good source of insight into the legal consideration of the relevance of intoxication in 
determining culpability since attorneys and judges were limited in the extent to which 
they could question the jury. A challenge to the instructions given to the jury, technically 
a point of law, could be a means to challenge the mindset of the jury without infringing 
upon the sanctity of the jury system itself.25

25 James W. Diehm, “Impeachment of Jury Verdicts: Tanner v. United States and Beyond,” St. John’s Law 
There was certainly no consensus on the significance of drunkenness to intent or responsibility – either legally or morally. Permanent insanity caused by the alcohol habit continued to be the least contentious defense, and, as in the Cornwell case above, was often cited by jurists as a clear example of the appropriate consideration of intemperance. The key distinction was the difference between the “permanent” insanity caused by “long-continued habits,” and the “insanity which is the immediate effect of intoxication.” By mid-century, delirium tremens, despite its temporary nature, was considered to meet the criteria of “any other species of madness,” and thus, when adequately proven in a court of law, exculpated the defendant. However, the increasing distinction of first degree murder from second degree murder set up a framework in which drunkenness was considered relevant in a court of law. This is not to say that such a defense was always successful, but rather that the courts increasingly accepted the idea that, “If a man’s intoxication is so great as to render him unable to form a wilful, deliberate and premeditated design to kill, or of judging of his acts and their legitimate consequences, then it reduces what would otherwise be murder of the first degree to murder of the second degree.” A writer in the American Law Journal who feared “that some unfortunate prisoners have gone to the gallows for want of a proper explanation of the law,” praised a Pennsylvania judge who “humanely” explained the requisite conditions for first degree murder – even though in the end it “did not save the lives of the prisoners.” The changes in statutes establishing degrees of murder were intended not to redefine murder, but rather to act as a guide to appropriate punishment. A

successful argument that drunkenness mitigated degree would effectively result in reduced punishment rather than acquittal.

As drunkenness and crime increasingly became subjects of scrutiny by legal scholars, physicians, and reformers, a growing body of experts in medical jurisprudence began to more carefully delineate between states of drunkenness through the observation of physical, mental and moral symptoms. Perhaps the troubling question of responsibility and intoxication could be answered by the medical expert. Isaac Ray noted in his 1838 Treatise that “it has become a question of considerable delicacy in some cases to decide how far legal responsibility is diminished” by the effect of drunkenness on the mind. A more “scientific” understanding of drunkenness and its states was needed because of the difficulty in determining the effects of drunkenness. One author noted that the common practices of inquiry into the quantity of alcohol consumed were unreliable because individuals can be affected quite differently by drink. Rather he suggested that the grade of drunkenness should be defined by an informed observation of its physical and mental effects. Here, like many others including Isaac Ray, he relied on Hoffbauer and Macnish, contemporary experts in criminal psychology, who outlined three stages of “voluntarily, wilful drunkenness” in order to consider their relevance to state of mind and criminal responsibility. The first was described as a state of mild intoxication that “stimulates men to the commission of crimes,” but did not affect moral or legal responsibility. The description provided was of an individual who voluntarily became drunk and was assumed to retain sufficient control over his faculties and reasoning abilities to be held legally responsible, even as it was acknowledged that the alcohol may have contributed to the likelihood that he would commit a crime. In contrast, the third stage was one in
which “reason is gone,” this state was described as one in which the individual was virtually unable to act: “As to the legal responsibility of one in this latter state no inquiry is necessary, for there can be little possibility of one who is ‘dead drunk’ injuring anybody.” Certainly an individual in this state was unable to form the requisite intent to commit a crime, but presumably he was also so close to a state of incapacitation that such a scenario was unlikely. Rather it was the second stage of drunkenness, in which senses were “enfeebled or distorted,” that was deemed the appropriate concern of the court; a stage which “renders a man ‘unable to form a wilful, deliberate and premeditated design to kill or of judging of his acts and their legitimate consequences.’” In this stage, physiological symptoms capable of influencing state of mind were observable. The drinker might exhibit greater muscular strength or confused perception; the “stronger pressure of the blood” and “increased nervous irritability” could give rise to a “state of passion” creating a “deceived and confused consciousness.” This condition did not necessarily abrogate responsibility, but it might suggest the justness of a reduced sentence for the sufferer. Of course assumptions about the character of the man himself were relevant; for one who was easily angered was thought more likely to commit a crime in the first stage in which responsibility is clear; while a man known to have a normally peaceful temperament who committed a crime under the influence of alcohol could be more easily regarded as having entered the second stage of drunkenness. It was this second stage of drunkenness that became a subject of contention in courtrooms as the appropriate verdicts and punishments were meted out to drunk offenders.29

In 1827, Tennessee justices had dismissed Cornwell’s intoxication as a mitigating factor, but subsequent trials reflected changes in Tennessee statutes and clarified that intoxication was relevant in determining intent. The circumstances of the March 1842 murder of T.G. Moore were pretty well substantiated. Wade Swan, the defendant, and Moore, his victim, had been working together rolling logs and, at some point during the day, both became intoxicated. Following dinner and a brief interaction between the two, Swan left ostensibly to go home. Instead, he returned a few minutes later with a handspike he “could have killed a horse with” and struck Moore, who was sitting down leaning against the wall, two or three times “giving him a deep cut over the left eye, two or three inches long, and breaking the bone over the eye.” Moore died the next morning. Swan was arrested and admitted that he delivered the blows after being treated “damned badly” in a dispute over whether or not a twenty-dollar bill was counterfeit.

The significance of Swan’s intoxication was not clear under the law. While the defense asked that the charge to the jury include a statement that Swan’s drunkenness reduced his crime to one of murder in the second degree “as a matter of law”; the court refused. Swan’s actions were ultimately characterized by the judge as murder in the first degree defined by “the existence of a settled purpose and fixed design, on the part of the assailant, that the act of assault should result in the death of the party assailed; that death being the end aimed at, the object sought for and wished.” The circumstances of the case from choice of weapon to Swan’s own sense of being wronged, it was held, reflected a “deliberate design and purpose” to take Moore’s life. Certainly the decision to hold


Lind, “Drunkenness as an Extenuation in Cases of Murder,” 506.
Swan’s intoxication as irrelevant was consistent with earlier English law establishing that “voluntary drunkenness can not excuse,” as the appeals court affirmed. However, a full reading of this decision, which ultimately went against Swan, does suggest a greater willingness on the part of the court to consider intoxication as relevant to the determination of charge:

To regard the fact of intoxication as meriting consideration in such a case, is not to hold that drunkenness will excuse crime, but to enquire whether the very crime which the law defines and punishes has, in point of fact, been committed. If the mental state required by law to constitute the crime be one of deliberation and premeditation, and drunkenness or other cause excludes the existence of such mental state, then the crime is not excused by drunkenness or such other cause, but has not, in fact, been committed. 31

Blackstone’s “viti6us will” held an actor responsible for his actions, foreseeable or not, in a definition of guilt that conflated moral and legal judgment. The introduction, however, of differing degrees of murder based on intent allowed for a more flexible interpretation of culpability and a greater consideration of the role of intoxication.

Courtroom debates over criminal responsibility and appropriate punishment mirrored broader nineteenth century debates over free will, self-control, and morality among medical men, jurists, and reformers. Since the turn of the century, medical jurisprudence had already proven itself useful in civil courts as a “sound mind” was required in order to execute a valid will or contract. Historian James C. Mohr recounts the dramatic impact of physicians in medical jurisprudence in the years 1820 to 1850, noting, in particular, resulting changes in the treatment of insanity, understanding of poisons and poisoning and attitudes towards sexuality and procreation. As the physical

and mental effects of alcohol were studied and described by physicians, medical evidence could either support or undermine traditional ideas of responsibility. For example, the temperance movement relied on both physiological and psychological evidence to bolster their claims of the ill effects of drink, presumably hoping to convince members of society to make the choice to abstain. Yet if the results of drink were so pernicious, was there “wiggle room” for the drunkard who had committed a crime to argue for a lesser, if not absent, sense of responsibility? The proliferation of legal arguments that intoxication served as a mitigating factor or even a defense to murder provides insight into a culture that simultaneously weighed the deleterious impact of heavy drinking on individuals against the harm such behavior inflicted on their families and the broader society. While courts did not always, or even often, side with a defendant whose counsel made an exculpatory claim based on his intoxication; by mid-century, a significant number of trials and appeals hinged on just such an argument. The case against mitigation relied both on traditional law that held “drunkenness is no excuse” and a broader mission to protect society from the consequences of such behavior.

In the case of State v. Bullock in 1848, the defendant was found guilty of intent to murder – a charge that was upheld upon appeal in the Alabama Supreme Court. However, at least one judicial observer questioned the verdict, suggesting that, “Possibly this case may have gone too far in refusing to allow drunkenness to be given in evidence upon the question of intention.” 32 On the day in question, James Bullock, the assailant and Henry W. Robertson, the victim, were “deeply intoxicated…with spiritous liquors.” At a certain point, Bullock “with a certain large knife…did cut, thrust, and stab” his

32 “Notes to Leading Criminal Cases,” 557.
drinking companion. In this case, because the victim Henry W. Robertson survived the attack, the question of intent was a key element in the charge. The indictment read that he intended “feloniously, wilfully, and of his malice aforethought, to kill and murder.” The defense sought to convince the jury that Bullock’s actions sprang more from his drunkenness than from any malicious intent. As noted in the bill of exceptions, the defense asked that the court charge the jury “that although drunkenness does not incapacitate a man from forming a premeditated design of murder, yet, as drunkenness clouds the understanding and excites passion, it might be evidence of passion only, and of a want of malice and design.” The court refused to so charge, Bullock was found guilty and sentenced to five years’ imprisonment, and the actions of the court became part of the later appeal. Justice Chilton agreed that the question of malice was one to be considered by the jury; however, he argued that, “Malice may be inferred from the deadly character of the weapon used in the commission of the act.” The judge also considered the further implications suggesting that had Bullock “slain his victim,” his drunkenness would not have reduced the charge to manslaughter – essentially providing an “excuse” for murder. He cited precedent in cases in which a mitigation of charge from first degree to second degree was argued, conceding the significance of “mental status,” but argued “that these decisions do not apply to the case before us.” Even as Chilton accepted the legal relevance of drunkenness to establishing malice, he defined this evidence very narrowly; refusing to allow the jury to decide the issue.33

The debates and decisions to charge one degree of murder versus another reflected convoluted ideas about responsibility, intoxication and punishment. While

33 The State v. Bullock, Supreme Court of Alabama, 13 Ala. 413; 1848 Ala. Lexis 100; Lawson, The Adjudged Cases, 730-1.
drunkenness continued to be “no excuse” for crime, statutes distinguishing between degrees of murder allowed for a greater consideration of the effects of intoxication on criminal actions. Arguments for lack of intent could be undermined by a belief that drunkenness should not provide an excuse for crime; or, a more expansive sense of the effects of intoxication could, almost by definition, preclude meeting the conditions necessary for a conviction of first degree murder. A finding of murder in the second degree for one who committed murder while intoxicated often reflected a compromise position between acknowledging the debilitated state of mind that accompanied drunkenness and the general approbation against intemperance. Some judges attempted to limit the extent to which intoxication could mitigate the degree of crime. For example, in Tennessee in the 1849 case of Pirtle v. State, the court ruled that “it seems to us proof that the prisoner was drunk when he struck the blow is legitimate, not to mitigate the offence, but in explanation of the intent.” Drunkenness generally was determined to be relevant to state of mind only for determining the applicability of first degree murder, but rarely was it admissible to mitigate a charge of second degree or manslaughter.34

In the case of Haile v. State, also in Tennessee, the judge instructed that voluntary intoxication is “an aggravation” of crime and only relevant “if the defendant was so deeply intoxicated by spirituous liquors at the time of the killing, as to be incapable of forming in his mind, a design, deliberately, and premeditatedly to the act” – and even then it was argued that at best the killing could be ruled murder in the second degree. An appeal was made to the Supreme Court of that state in 1850 with that court determining that “any degree of intoxication” was relevant to determining mental state:

34 “Pirtle v. State (9 Humph. 663.), In the Supreme Court of Tennessee, April Term, 1849,” in Lawson, The Adjudged Cases, 645-652; Bishop, 302-4.
We know that an intoxicated man will often, upon a slight provocation, have his passions excited and rashly perpetrate a criminal act. Now, it is unphilosophical for us to assume that such a man would, in the given case, be chargeable with the same degree of deliberation and premeditation that we would ascribe to a sober man perpetrating the same act, upon a like provocation.

The judgment of the lower court was reversed.35

Despite medical expertise and the often specific, and arguably leading, instructions of judges to juries, members of juries may have felt themselves well-qualified to form their own opinions on the nature of drunkenness. By mid-century, most Americans were routinely exposed to stories of true crime and were well-versed in the conventional temperance narrative. In her study, *Froth and Scum*, Andie Tucher acknowledges the significance of stories of murder, particularly “the ax murder,” in expanding the appeal of early mass media. Even as the penny editors relied on sensationalism, they promoted themselves as tools of self-improvement and learning for the working classes. Benjamin Day, editor of the *Sun*, argued that ‘the public have as good an opportunity of forming as correct an opinion’ on public matters as the jury or the authorities. They therefore had a ‘right to express that opinion, whatever it may be.’” For the popular press, the “Court of Public Opinion” was just as important as official pronouncement.36

Ideally under the law, juries reach decisions through a careful assessment of the facts of the case and a thoughtful application of the law; yet, undoubtedly they are also influenced by their own experiences as well as prevailing social norms. Prior to the nineteenth century, fewer opportunities for jury discretion existed particularly in murder

cases where the instructions of the judges tended to be quite direct, and the choice was “guilty” or “not guilty” with only limited and specific circumstances allowing for a determination of insanity. However, an expanded sense of legal insanity combined with the classification of murder charges into degrees created a plethora of decisions and increased discretion for the jury. Legal and medical definitions were up for debate, literally, in an adversarial system of justice that often required juries to rely on their own discretion. Experts in medical jurisprudence faced challenges in the courtroom from both professional adversaries and popular opinion. Some of the more pronounced challenges dealt with issues of sexuality in which “myths, fears, and unscientific misconceptions” characterized the views of many Americans. It was not uncommon in the early decades of the nineteenth century to believe pregnancy resulting from a sexual assault demonstrated volition on the part of the woman or that sex with a virgin could cure sexually transmitted diseases. 37 Similarly, physicians sought to disabuse the public of their traditional ideas on drunkenness. Yet here both medical and legal opinions were often divided, and the line between common knowledge and expert opinion was not always clear. One legal scholar criticized juries who acted “as if they were privileged to return a verdict of murder in the second degree in case they find that the defendant, when he gave the fatal blow, was at all under the influence of liquor.” 38 Questions of character, intent and responsibility seemed as subject to social consideration as to expert opinion.

38 Lind, “Drunkenness as an Extenuation in Cases of Murder,” 508.
Chapter 3: “A victim of intemperance” – The Drunkard’s Story

By the 1830s, as the relationship between criminal responsibility and intoxication was contemplated by medical and legal authorities, the general public increasingly turned its attention and its judgment to narratives of crime and alcohol. These acts of “horror” made for good entertainment as they simultaneously provided their audiences with titillating descriptions of violent crime alongside an opportunity to weigh the moral consequences of drink. “(T)he drunkard’s story,” one literary scholar notes, “generated larger contests for moral authority that were waged between professional elites and ordinary people within relatively new forms of mass communication such as the newspaper and the popular lecture, as well as across the evolving literary genres of sermon, novel, autobiography and stage melodrama.”¹ The alcoholic narrative in this period was one that was both contentious and familiar, and no easy answer existed as to what to do with the inebriated criminal. As nineteenth century society focused on the shocking details of crime to portray murderers as monsters, the same details, when combined with alcohol use, might indicate an exculpatory lack of intent. The range and conflicting nature of opinions on drunkenness and murder are reflected in medical, legal and public commentary on Theodore Wilson.

On June 10, 1835, Theodore Wilson was arrested on the charge that he had murdered his wife in Kittery, Maine. Earlier that Wednesday morning, Wilson had complained of feeling ill and accused his wife of attempting to harm him. Shortly before the murder, he removed his clothes, left his home completely naked and began to walk

down the road “throwing up his arms, and making a wild, howling noise.” His wife, after failing to get assistance from one of the neighbors, followed him and attempted to persuade him to return home. Wilson reacted by throwing her on the ground and beating her on the head with a sharp stone causing her immediate death. He then proceeded to a nearby house, pounding on the doors and breaking windows as he threatened to kill the two women inside. Wilson, who had apparently grievously injured himself as he broke the windows with his bare hands, reportedly rubbed blood along the side of the house claiming he was sealing the house with the blood of his wife. The women were able to fend him off with an ax until help arrived and Wilson was arrested. Wilson’s defense was to be insanity.²

The brutal nature of the murder was not disputed by any of the parties. The indictment against Wilson read that he “did strike, beat and kick the said Sally Wilson, with his hands and feet, in and upon the head, breast, back, belly, sides and other parts of the body,” threw her on the ground, and using “a certain stone there situated with great force and violence” causing “one mortal wound on the left side of the head of her the said Sally Wilson, of the length of three inches and of the depth of three inches.”³

Newspapers called the murder an act of “extraordinary barbarity,” a “horrid deed,” and conveyed the grisly details to the public, including the fact that Wilson used the same stone he had used to kill his wife to break the windows of the women’s house.⁴ His wife’s body was described as “mangled” and “truly frightful” in appearance, and

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Wilson’s own injuries were described as considerable with one newspaper erroneously reporting that he had succumbed to them.\(^5\)

At this point, delirium tremens provided the strongest legal defense that a habitual drinker was not responsible for his actions, that he did not intend the resulting state of mind that led to murder. For this defense to be effective, it was vital that insanity be proven as something other than ordinary intoxication. The question of when Wilson, a man of admittedly intemperate habits, had last had a drink became crucial as far as determining whether or not he was laboring under some form of alcoholic insanity, delirium tremens, or mere drunkenness. Wilson admitted buying rum on Saturday and drinking all of it the next day; however, according to Isaac Ray “(i)t did not appear that he drank any more after this, and circumstances render it probable that he did not.” Ray bolstered his conclusion by describing, in a situation reminiscent of that of Alexander Drew, how five years earlier Wilson had become “deranged” on a fishing voyage in which he had been “deprived of spirits” for three days.\(^6\) Here Ray appears to interpret Wilson’s actions as consistent with the effects of delirium tremens, a now medically and legally accepted form of insanity. Outside of the trial, however, others had their doubts, one newspaper reporting, “He had not been seen to drink any spirit for three days previous to the murder, although there is no reason to doubt but he was under its influence at the time of the horrid deed, as it was his custom at times to keep liquor secreted.”\(^7\) Another was more unceremonious reporting, “Theodore Wilson, of Kittery,

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\(^7\) “Rum and Murder,” *Connecticut Courant*. 
Me., murdered his wife on Wednesday, by beating her head with a stone. He was drunk at the time.”

A diagnosis of delirium tremens did not necessarily resonate with a public who felt confident enough to themselves expound on what it meant to be drunk, as Drake had learned in the Birdsell case. One newspaper account attributed Wilson’s behavior to a combination of immoral character and the effects of drunkenness, arguing against the validity of an insanity defense by suggesting “no symptoms of insanity had ever been observed in him, excepting when under the influence of spirituous liquors.” The intent here was to condemn Wilson for both his drinking and his criminal behavior. Wilson was observed to have “abused and beaten his wife when intoxicated” in the past; yet his actions on the morning of the murder certainly seemed further out of the realm of the ordinary. He was described as “raving” and “traversing the road naked.” He beat his wife “in the most shocking manner” and then attempted to attack another woman as “blood ran profusely from his hands and wrists, which were lacerated with deep gashes made by forcing them through the glass.” As three men seized him he made “little or no resistance.” For many, Wilson’s “shocking” behavior represented little more than the effects of intoxication. However, situating these details of the crime alongside the consequences of heavy drinking meant that such actions could be potentially defended by shifting some of the blame to the effects of alcohol.

Despite some conflicting details in the press, reports of the Wilson murder were remarkably consistent and widespread as newspapers across the country routinely lifted

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8 “Chapter of News,” Zion’s Herald, June 24, 1835, 99. The text cited above constitutes the full article. Also their reporting appears quite problematic as they mistakenly reported Wilson’s death the next month.

9 “Horrid Murder.”
new items virtually word for word. By the 1830s, hundreds of newspapers existed across the United States, reprinting stories of interest in what one historian has described as a “chain-letter version of national and international news.” The penny paper had become a ubiquitous presence in American cities and towns, and crime reporting was their bread and butter. Even in large cities where a thriving press had already existed, the penny press was able to build on the appeal of reports of violent crime which were not always covered regularly in the more respectable newspapers. Inexpensive publications were readily available and appealed to a largely literate working-class readership in search of entertainment. As media scholar Aurora Wallace has argued, newspapers help build community, serve as a tool of democracy, and often play a key role in social and political change.10 Stories of drink and violence simultaneously shaped perceptions of the effects of alcohol even as they reflected experiences that were often unfortunately too familiar in the lives of their readers. Murder pamphlets were also popular in the nineteenth century, serving the dual purpose of providing a moral lesson alongside graphic or titillating illustrations and detailed narratives of shocking behavior.11 It was not unusual for newspapers and pamphlets to include expert testimony from medical witnesses or letters from the criminal him or herself, although the veracity of the latter especially was sometimes suspect.

Horrific crimes, such as that perpetrated by Theodore Wilson, provided an opportunity to extemporize on the subject of heavy drinking. After describing the lurid

details of the “shocking” crime, one Christian paper declared it “Another horrible result of intemperance.” For some, intemperance was a character flaw, an expected indication of a dissolute character. Wilson was characterized in one newspaper as “a farmer of 52 years of age, of bad disposition and habits” and in another as “a man of notoriously irregular habits, and possessed of a fiend-like disposition.” Another paper, however, alluded to the insidious nature of the habit designating Wilson a “victim of intemperance.” Such accounts did not mean to suggest that Wilson was a sympathetic figure; rather his actions would serve as a lesson to others who might consider the drinking habit themselves. The fact that Wilson “manifested no penitence or concern at what he had done” emphasized Wilson’s depravity in a number of accounts. Yet attributions of blame directed solely to Wilson existed uneasily alongside the temperance warning reportedly coming from Wilson himself who blamed the retailer who sold the rum as the “cause of the murder” and asserted, “I should not have killed my wife if that man had not sold me Rum – had not sold me Rum out of his store.” The modern reader may be skeptical as to whether or not Wilson actually uttered these words the morning after his arrest. In either case, whether by Wilson himself or the newspaper writer, the real-life murder is transformed into a lesson on the evils of drink.

Ultimately, in this case, the court seemed quite tolerant of implementing a broader definition of insanity. The deliberations of the jury are not known, but Ray recounts that “the court in charging the jury observed that it was not material for them to determine

12 “Intelligence – Domestic,” Christian Register, June 22, 1835. 179.
15 The Ohio Observer seems to have adopted its story from the Connecticut Courant almost word for word. The other stories I have found on the murder do not include these utterances from Wilson, and while Ray also suggests that Wilson expressed no remorse he states that he “continued furious, talking wildly and incoherently” for several days after his arrest. Ray, Treatise, 315.
what species of insanity it was under which the prisoner had been suffering, if satisfied with the fact of its existence.”

Wilson was found not guilty, “he laboring under insanity at the time of the act.”

In the early nineteenth century, the temperance movement sought to limit drinking, whether through moral suasion or legal means, with a convincing and universal portrait of the “drunkard.” Inchoate medical and legal definitions of drunkenness and responsibility overlapped with this growing temperance movement with each seeking to create their own public narrative of the alcohol experience. As Augst observes, they did this through a characterization of the drunkard:

At a moment when the ideological status and social uses of written texts were themselves the object of critical debate, technological innovation and institution-building, the drunkard’s story generated larger contests for moral authority that were waged between professional elites and ordinary people within relatively new forms of mass communication such as the newspaper and the popular lecture, as well as across the evolving literary genres of sermon, novel, autobiography and stage melodrama.

Arguably each of these groups had in common the goal of establishing a certain societal authority even as their end goals differed. A state of drunkenness complicated traditional notions of individual moral responsibility. According to temperance advocates, the choice to abstain was the moral one; the choice to drink was sinful. However, while the initial choice was one of free will, the resulting desire for alcohol was often described with words such as “overpowering” or “irresistible” – suggesting an enfeebled will.

While a number of historians have suggested that the compulsion to drink had been

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16 Ray, A Treatise on the Medical Jurisprudence of Insanity, 316.
17 “State v. Wilson,” 152.
recognized by ministers dating back to at least the eighteenth century; by the 1830s the loss of control associated with alcohol became a common trope among moral reformers, physicians, and jurists.\textsuperscript{20} Even as temperance advocates exhorted that the decision to drink was a voluntary sinful act, both their descriptions of drunkards’ lives spinning out of control and their resistance to try to reform actual drunkards suggested a limit to free will if not individual moral responsibility. Moral reformers could and did condemn the drunkard for his initial decision to drink even as they suggested he no longer had the power to resist the urge to drink.

Concern over drinking reflected both an awareness of the high levels of drinking in American society as well as disruptions in social norms that contributed to new ways of viewing behaviors. From its origins as a colony, alcohol was an integral part of American life serving various economic, social, political and even nutritive purposes. By the first decades of the nineteenth century, however, alcohol was increasingly viewed as being at odds with a changing way of life. American society was viewed as more demanding from reasons ranging from climate, its democratic system, and increasingly, its high rate of urbanization and industrialization, demands that were both a point of pride and a source of trepidation.\textsuperscript{21} Conceiving of the alcohol habit as a disease drew attention to both the manifest physical effects of heavy drinking and the often uncontrollable compulsion to drink. It would be misleading, however, to construe the disease concept of alcohol use in a narrow medical sense as it proved a constitutive part of nineteenth


century temperance thought. Physicians such as Rush and Drake warned of the physical consequences of drinking in concert with temperance goals. In fact, as one historian has demonstrated, the sense of habitual drunkenness as a disease has its precursors in 17th century English religious oratory. Moral reformers urged abstinence in light of the addicting properties of alcohol which could lead to both moral and physical ruin.

Lyman Beecher was a Presbyterian minister who advocated abstinence as the only effective means of preventing the alcohol habit. He was certainly not the first to do so, but the moral mandate to abstain fit in especially well with the emphasis on moral perfectibility that characterized the Second Great Awakening. Beecher was one of the founders of the American Temperance Society in 1826 which, in the span of five years, boasted 2200 chapters and over 170,000 members. Preaching on the “sin of intemperance” in his 1826 *Six Sermons on Intemperance*, Beecher described drunkenness as “a sin which excludes from heaven.” He recognized the compulsion to drink in which “men become irreclaimable in their habits”; and preached therefore that abstinence was necessary before the point whereby “the habit is fixed, and the hope of reformation is gone.” This of course meant that the proper target of reform was the moderate drinker or even the potential drinker. Beecher in fact claimed “that habitual tippling is worse than

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22 For more on the disease concept, see William White, “Addiction as a Disease: Birth of a Concept,” *Counselor* 1(2000): 46-51, 73.
23 Warner’s article, “Resolv’d to Drink No More,” provides a direct challenge to Levine and may miss the significance of essential changes in the later period. For discussion of both articles, see Peter Ferentzy, “From Sin to Disease: Differences and Similarities Between Past and Current Conceptions of Chronic Drunkenness,” *Contemporary Drug Problems* 28 (Fall 2001): 363-90.
periodical drunkenness.” American Temperance Society members “took the pledge” to abstain from drinking as the only effective means to avoid the path of the drunkard which inevitably led to moral ruin. By the time one became a drunkard, there was little hope of moral redemption; his or her only purpose was to act as a “warning” to those who could still be saved. While certainly Beecher and his followers did not argue that the degenerated state of the drunkard excused immoral or criminal actions that resulted from a sinful indulgence in alcohol, they did portray the drunkard as largely irreclaimable; as an immoral creature unable to any longer make a moral decision. Such a characterization provides some resonance with medical jurisprudence arguments concerning the level of intent and/or responsibility of a drunk offender.

Beecher’s sermons alternately described both the moral and physical degradation of the drinker. The decision to engage in ardent spirits, even in limited amounts, was described as a sin leading to the “moral ruin” of the individual. The physical symptoms of the disease were laid out in detail as additional warning for the sinner who could expect to suffer any of a number of bodily infirmities including “nausea at the stomach,” “obstructions of the liver,” “epilepsy,” “gout,” “consumptions,” “coughs,” and “insanity.” The equation of intemperance with disease additionally provided a means to rally the community to the cause: “Intemperance is a disease as well as a crime, and were any other disease, as contagious, of as marked symptoms, and as mortal, to pervade the land,

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it would create universal consternation.” The correlation between heavy drinking and physical and mental disease was utilized quite effectively by both moral reformers and medical men and provided a reciprocal reassurance of the soundness of their respective views.

The observable symptoms of the effects of drinking further expanded the purview of medical knowledge on the consequences of heavy drinking. Intemperance became not just one of myriad possible causes of insanity, but one that could create a distinctive mental state that required the expertise of the physician to diagnose and treat. Descriptions of the symptoms of delirium tremens particularly resonated broadly within a culture increasingly concerned and often titillated by the consequences of heavy drinking. Some of the earliest and most lurid accounts were of delirium tremens. Historian Matthew Warner Osborn has argued that medical descriptions of delirium tremens were drawn in part from “a broad cultural fascination with the supernatural and hallucinations.” Confirmation of the disease often rested on the presence of “horrible nightmares,” descriptions of vermin crawling over one’s body and overall what was described as a “‘diseased imagination.’” Osborn suggests that the symbolism of these accounts cast light on the fears of an urban middle class over attendant social and economic changes. “Reflecting doctors’ concerns with the threat liquor posed to individual psychology,” he argues, “here and elsewhere accounts vividly portrayed supernatural horrors lurking just beyond the fragile walls of middle-class selfhood, walls

that spirituous liquors threatened to dissolve.”

Intemperance, its reformers could argue, simultaneously threatened both the individual and society. Medical descriptions of delirium tremens were not only influenced by the wider culture, but after becoming part of the medical canon, re-entered popular culture in American literature. David S. Reynolds noted that, “No other single reform had so widespread an impact upon American literature as temperance, largely because of its extraordinary cultural prominence.”

The Washingtonians were especially adept at utilizing the horrors of alcohol abuse to convey an anti-drinking message. In 1840 Baltimore, a group of habitual drinkers formed the Washington Temperance Society which would boast a half million members within a few years. Unlike evangelical groups like the American Temperance Society, Washingtonian societies directed their message to the drunkard himself. Their members too advocated total abstinence, but they presented their case through emotionally charged personal anecdotes and public confessions of their own alcohol-related experiences. Their orations were a mix of fiction and experience that outlined the destruction that alcohol wreaked on the drunkard, his family and society. Graphic stories of delirium tremens added to a narrative that simultaneously demonstrated the consequences of heavy drinking and the extent of the compulsion to continue.

John Gough, one of the society’s leaders and most well-known speakers, offered especially graphic accounts of drunken behavior and the experience of delirium tremens. A former actor with little formal education, Gough became known as “the poet of the d.t.’s,” and would often physically re-enact the scene of a man in the throes of delirium tremens for his audience. Born in England in 1817 and sent to America by his family at the age of twelve, Gough worked on a farm and eventually entered the trade of book-binding. His mother and sister eventually joined him, but he recounted a difficult life in which his mother’s death spurred a drinking habit that consequently led to the loss of employment and an ongoing struggle to support himself. Gough epitomized the style and appeal of the Washingtonians, who were largely working class men with little formal education, utilizing a “homespun eloquence” to reach out to an audience simultaneously entertained and uplifted. Attempting to describe one of Gough’s lectures in New York after his return from a tour in England and Scotland, the New York Times stated, “Words, when from his mouth, and accompanied by his gesticulation, are not as when they fall from other men” further noting “his power over the sympathies of his fellow man.” His stories were a mix of fact and fiction meant to simultaneously enthrall his audience and warn them of the dangers of alcohol consumption. He became enormously popular as a public speaker ultimately delivering over 9000 lectures. The difficulty of resisting the compulsion to drink, however, was too often acted out in real life by members of the Washingtonians. By 1845, Gough personified the notorious backsliding of the group.

with his own highly publicized alcoholic binge coinciding with the precipitous decline of the Washingtonian movement. 34

Timothy Shay Arthur, perhaps best known for the temperance novel Ten Nights in a Bar-Room and What I Saw There, initially found fodder for his temperance message in the stories of the Washingtonians. Arthur published Six Nights with the Washingtonians in 1842 after reporting on the Washingtonian experience meetings for the Baltimore Merchant. These articles brought greater attention to the burgeoning Washingtonian movement and helped establish Arthur’s career as a writer. His background was a modest one, and his interest in the condition of the drunkard may have been inspired by some of his own past experiences; in particular, an early friendship with notorious drinker and drug user, Edgar Allan Poe. Arthur’s writings reflected a sense of working-class community alongside an affirmation of the prevailing moral sensibility that emphasized personal accountability and traditional gender roles. Arthur would later write for Godey’s Lady’s Book as well as for other women’s magazines. It is not surprising that the Washingtonian movement held a literary appeal for Arthur. The life stories of these men often symbolized their descent into drunkenness through transgressions of the domestic ideal before realizing the possibility of individual redemption. For Arthur, the strength of the Washingtonian stories lay in the fact that they had actually happened: “it is because they are not mere fictions that they have any power to awaken a corresponding interest in the mind of the reader.” 35 In Six Nights, he recounts stories of men who

neglected and abused their wives and children, descended into poverty, fell ill and died…

In one particularly disturbing passage, a man recounts how he beat his sick child who was vexing him with her crying:

But little Mary did not hush. Then I caught her up madly by one arm, and commenced beating her with all my strength – the strength of a nervous man inspired by intoxication and anger, exercised on a delicate child but two years old! One blow, such as I gave her, were enough, it would seem to have killed her. The poor child ceased crying on the instant; but I was in a rage and ceased not my blows until her mother, terrified at the scene, sprung forward, and snatched the little creature from my hand that held her high above the floor. To this I responded with a powerful blow on the side of my poor wife’s head, and she fell senseless to the floor, and at the same moment, I kicked my child who was clinging to her mother’s garments, half across the room.

While his wife and child survived the beating, the man noted that afterwards his “little one seemed to me to have a sad expression in her dear young face” and his wife eventually died “from the agonies of a wounded spirit” caused by his drinking.36

The graphic depictions of criminal behavior found in these stories, on one level, catered to a public demand for entertainment; however, they were also cautionary tales against intemperance. As the publisher explained in his introduction to Lucius Sargent’s Temperance Tales, “The perusal of some one of these narratives is well known to have turned the hearts of many persons of intemperate habits, from drunkenness and sloth, to temperance and industry.”37 Alcohol appears as a monster in literary form, a destroyer of lives in Washingtonian speeches and a cause of physical and mental illness in the medical literature. However, casting drink as the true villain of the story created a more ambivalent meaning of the drunkard himself as the palpable focus on alcohol, buoyed by temperance and medical writings, served to provide some explanation for seemingly

incomprehensible acts. Despite Arthur’s commitment to the temperance cause, his portrayal of these men was quite sympathetic with Arthur admitting he “felt with the actors.”38 The man who beat his wife and child is described by Arthur as “a middle-aged man, with a thoughtful intelligent countenance.” Arthur made no comment on his actions; rather the story is conveyed in the man’s own words; for the man’s guilt and agony are as an essential part of the temperance lesson as is his reclamation at the end of the tale. The warnings against alcohol use fall flat if the victim of alcohol is not portrayed as a once average person. The “this can happen to you” point of the story made little sense if the drunkard was portrayed as an unimaginable monster. Rather it was the alcohol that made him so. Even as evangelical temperance advocates often cited a moral weakness in the character of the drunkard, and physicians pinpointed physical, mental and nervous weakness in inebriates, the purported overwhelming impact of alcohol use left room to form a sympathetic picture of the victim of the alcohol habit. The Washingtonians employed graphic stories of families destroyed financially, morally, and even violently by a drunkard husband and father. However, unlike the sinful intemperate individual described by the evangelicals, the Washingtonian vision of the drunkard was that of a good man destroyed by the alcohol habit. The evocation of sympathy was for both the drunkard and his family.39

What is initially most striking in these stories is the horrific set of circumstances that accompany heavy drinking. Part of this certainly reflects the literary conventions of the time. Murder narratives displayed and promoted a fascination with the horrific details of crime that emerged by the end of the eighteenth century. This change in narrative

reflected a new way of viewing immoral behavior and the criminal himself. Earlier crime literature had come out of the Puritan tradition, accompanied by moral lessons to serve as a warning to the potentially sinful. By the 1820s, purpose and literary convention began to change. “(T)he cult of horror,” cultural historian Karen Halttunen argues, “had largely replaced an earlier view of the condemned criminal as sympathetic moral exemplum with a view of the murderer as moral alien.” Halttunen characterizes these works as “overwhelmingly secular” as compared to the inherent moral lessons found in earlier accounts. Tales of murder which were constructed largely to appeal to a popular audience as both literature and trial reports shared a detailed and realistic writing style that “invited readers to peer into those secret spaces.” The murderer was clearly the villain of the story, “a moral monster between whom and the normal majority yawned an impassable gulf.” Yet as the subject turned to domestic crime, that distinction was less defined.

Halttunen demonstrates that the view of murderer as “monster” and “alien” was complicated when the crime occurred within the domestic setting: “For the domestic-Gothic tale of murder quite literally brought the horror and the mystery home, showing readers that sometimes the moral monster was not an alien creature of the wicked world outside, but an intimate companion at the family fireside.” Not surprisingly, Halttunen’s chapter on “Murder in the Family Circle” begins with a reference to Poe’s “The Black Cat,” a story of intemperance and its resulting violence. Some of the stories

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42 Ibid., 4-5.

43 Ibid., 136.
of Edgar Allan Poe perhaps best demonstrate the possibilities of literary horror presented by temperance discourse and medical descriptions. The vivid hallucinations and imagery of delirium tremens, in particular, provided fodder for stories such as “Metzengerstein” and “The Black Cat” in which the protagonists suffer alcohol-related delusions that lead respectively to the death of one and the murder of the other’s wife. While the tragic ending of the drunkard and his family was conveyed with moral purpose in the temperance tale, Poe was able to utilize the disjunction between tranquil family life and the resulting brutality that accompanied drink to a successful narrative purpose in constructing a tale of horror. “The Black Cat” is also particularly illustrative of the ways in which the horror of alcohol abuse combined physical symptoms with moral consequences.44

As murder was, and is, far too often a crime of familiarity; of blood as well as blood relation, the murder narrative provided a window into familial relations. “These tales of the family,” Halttunen observes, “drew cultural power from a major transition in American domesticity: the shift from the traditional patriarchal family, with its central concerns for economic productivity and hierarchical order, to the modern sentimental family, with its central concerns for emotional closeness and mutual affection.”45 The ideal family of the nineteenth century held traditional gender roles at its foundation as women from middle-class families saw a diminishing economic role in the household by the early decades of the century. The American Revolution failed to bring about

44 Reynolds, “Black Cats and Delirium Tremens,” 34-6. For more on these tales and temperance literature more generally, see additional chapters in Reynolds and Rosenthal, The Serpent in the Cup; Nicholas O. Warner, Spirits of America: Intoxication in Nineteenth-Century American Literature (Norman, Oklahoma: University of Oklahoma Press, 1997).
45 Halttunen, Murder Most Foul, 135.
significant legal or political changes for women who found themselves restricted to the
domestic sphere. By the 1830s, women’s economic role took on at least a less obvious, if
not always a less important, presence in American society. One historian views these
economic changes, in particular, as fueling the “romance of family culture” that
characterized this era.\footnote{Jeanne Boydston, “The Woman Who Wasn't There: Women's Market Labor and the Transition to
Capitalism in the United States,” \textit{Journal of the Early Republic} 16, Special Issue on Capitalism in the Early
Republic (Summer, 1996): 199; Linda Kerber, “The Republican Mother; Women and the Enlightenment -
An American Perspective,” \textit{American Quarterly} 28 (Summer 1976): 187-205.}
Accounts of murders committed in the domestic sphere,
generally wife murder, not only focused on the grisly details of the crime itself but also
drew a picture of the criminal’s home life. As one literary scholar notes, they “turned the
domestic lives of ordinary men into a new kind of public spectacle.”\footnote{Augst, “Temperance, Mass Culture and the Romance of Experience,” 298.}

The temperance movement’s focus on a “separate spheres” ideology of family
served to elevate public awareness of men’s drinking as it further stigmatized women
drinkers who were generally perceived as lower class and lacking in virtue. In the earlier
part of the century, women’s participation in temperance was most visible in the Martha
Washington societies whose members provided food, clothing and other forms of
tangible relief alongside general moral support for the male drunkards. Most of the
Martha Washingtonians were from the lower classes, often the wives, daughters, and
sisters of intemperate men, who might have found that embracing domestic ideology in
this context provided a level of affirmation and influence. The Washingtonians did
accept women drunkards as members, but they were not allowed to speak publicly; thus
denying them both the camaraderie that came of shared experience and limiting their
ability to shape the public image of the drunkard in society.\textsuperscript{48} It is difficult to get an accurate portrayal of the numbers and the lives of women drinkers. Prevailing ideals may have indeed discouraged some women from drinking, and women could more acceptably partake of a variety of patent medicines and opium derivatives. Gender assumptions also served to limit resources and even an acknowledgement of the woman drunkard. To the extent that women were employed as victims of men’s intemperance, the recognition of the woman drunkard could actually undermine temperance arguments. At a women’s temperance convention in 1853, Clarina Howard Nichols defended her right to speak by characterizing women as the victims of men’s drinking: “Woman, who is herself not addicted to this vice, suffers more than man…” Nichols utilized traditional gender roles as a powerful critique against intemperance even as she challenged these roles through her own public speaking in support for legal reform. However, little room was left to envision a woman drunkard.\textsuperscript{49}

While some accounts (and defense attorneys) did cast opprobrium on the female victim of the drunk murderer, more commonly a sense of astonishment at the incongruity between the horrific violence of the crime and the womanly virtue of the victim was relayed to the reader. Consider a description of the testimony in the 1833 murder of the widow Mrs. Hamilton by Joel Clough, a resident at Hamilton’s mother’s boarding house, who, after having allegedly unsuccessfully pursued her affections, turned to drink and murdered her:


The testimony was of the most thrilling and touching character. The description of her (Mrs. Hamilton’s) delicate person – her amiable character – her piercing shrieks, and her death struggles, while he held and pushed still deeper and deeper, the murderous dirk into her bosom, was truly affecting.

The victim was further described as “chaste, beautiful, urbane, and lively, and as pure as the unclouded sky,” and when her bloody garments were displayed in court, reportedly only the prisoner was able to look upon them. The disjunction between violent murder and the virtue represented by women was further highlighted in a pamphlet titled, “The Authentic Confession of Joel Clough” which included a letter Clough purportedly wrote to his mother just days before his execution.\(^5\)

Ironically, even as domestic murders were often quite shocking on their surface, they served to challenge the idea of the murderer as unfamiliar and unknowable. Halttunen notes, “For the domestic-Gothic tale of murder quite literally brought the horror and the mystery home, showing readers that sometimes the moral monster was not an alien creature of the wicked world outside, but an intimate companion at the family fireside.” Despite the incongruity between violent crime and the domestic ideal, few Americans in this era were unacquainted with stories or even their own experiences of domestic violence. And, not unlike today, the connection between such violence and alcohol was easily observable. One study of crime in eighteenth century Pennsylvania noted that roughly half of all murders claimed family members as victims, and homicides in which alcohol played a part routinely involved family, friends or neighbors as their victims. Surveys conducted in 1829 and 1853 revealed that members of the legal

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profession viewed a strong connection between violence and intemperance, particularly within families. As one respondent observed, "domestic happiness is generally destroyed by drunkenness," and many drew on their professional experiences to assert that at least nine-tenths of domestic violent crimes were a result of excessive drink. Even as temperance literature exposed the reality of home life for some, its potency rested on the disjunction between the ideal of the domestic home and the savage violence that took place within; between virtuous wives and unrestrained husbands.\(^{51}\) How could such a monster infiltrate the core of American domesticity, the theoretically inviolable sanctuary of family? A key player in this drama was often alcohol, the "demon rum." Drunkenness served simultaneously as an indicator of the husband’s failing to live up to his end of the domestic bargain as a sober and productive man, and as some explanation for what should be considered an unthinkable crime.

A short item titled “The Effects of Intemperance” in the *Christian Secretary* noted the trial of a man named Barlow for murder in 1828. Barlow’s wife and victim, not specifically named, was described as “a pious and affectionate wife, who has borne him five children: the youngest two weeks old.” Mrs. Barlow’s gentle nature contrasted sharply with the actions of her husband who “beat his wife until he thought she was dead,” and then, when she attempted to escape, “pursued her and beat out her brains with a stone!” The dubious claim that that the couple “had previously lived in perfect harmony” served to highlight the horrific effects of intemperance and possibly bolster a claim of insanity. How else to make sense of such a crime? In this particular case,

Barlow was acquitted on insanity which was “induced by drunkenness.” A similar report in the *Christian Watchman*, this one titled “Awful Effects of Intemperance,” went so far as to suggest that the preacher who had supplied Barlow with spirits in the weeks before the murder was himself an “accessory to murder and to the death of the soul.” Barlow’s guilt was one that was shared with “demon rum” and its purveyor.

Real-life stories of alcohol and murder existed alongside equally sensational temperance novels that charted the drunkard’s devolution from ordinary man to irredeemable criminal. Reynolds notes that the “movement toward the sensational” in temperance literature can be traced to the early 1830s as temperance writers sought to compete against the increasingly lurid and tremendously popular stories in the penny press. Mark Canada describes the “sibling rivalry” between journalism and literature in the early nineteenth century as both sought to convey their own “sense of the truth.” Despite the immediacy and mass appeal of the penny paper, both journalism and literature often looked to real-life events as the source of their stories, and like Timothy Shay Arthur, the career trajectories of journalists and authors often intersected. By the 1830s, increasing sensationalism in literature and the press combined with the profound impact of temperance reform on society, and the temperance movement, broadly defined, became “a fertile source of literary themes and images.” The *Catastrophe*, published in 1833, recounts the story of Edward L— once an upstanding member of a dry community who turned to alcohol and ultimately murdered his wife. Nathaniel Currier’s 1846

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52 “Effects of Intemperance,” *Christian Secretary*, November 22, 1828, 175.
56 Reynolds, “Black Cats and Delirium Tremens, 22.
lithograph, “The Drunkard’s Progress” depicts the drinking man’s “steps” from respectability to ruin. In the first step, a well-dressed man partakes in “a glass with a friend”; by steps eight and nine, he has turned to “desperation and crime” and ultimately “death by suicide.” Rush had already suggested that intemperance could lead to crime and murder, but he provided few of the grisly details that were found in nineteenth century temperance tracts. By the 1830s, expounding on the horrific nature of alcohol-related crimes operated simultaneously as warning and titillation to the public. A valence of sentimentality was likewise apparent in both fictional and journalistic accounts of murders committed while under the influence of alcohol. The Drunkard’s Progress depicts a weeping woman and a young girl, presumably the family of the drunkard, below the steps in what John Crowley calls “the masterplot for hundreds of temperance tales, in which the hope of domestic bliss is cruelly dashed by chronic inebriety.”

Alcohol, “Demon Rum,” itself existed as an independent actor in stories of human frailty and destruction. Fictional works, such as The Catastrophe and “The Black Cat,” often culminated in the drunkard’s murder of his wife to demonstrate the depths to which alcohol had brought him. In much of the temperance-influenced literature of this period, alcohol appeared as a separate element of horror terrorizing the lives of drinkers and their families. The narrator of Edgar Allen Poe’s “The Black Cat” is first introduced as a “destroyed” man on the day before his death by hanging. He describes his “tenderness of heart” as a child and his early love for animals. He explains his change in character as due to disease: “for what disease is like Alcohol!” This transformation is symbolized by his mistreatment of his cat – gouging out its eye and ultimately hanging it. This deed

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58 Crowley, Drunkard’s Progress, frontispiece.
59 Ibid., 2.
comes back to haunt him in the return of a very similar cat. In trying to kill this cat, the narrator becomes enraged by the interference of his wife and “buried the axe in her brain.” These stories were powerful not just because they were shocking, but because they were all too familiar.

Similarly, in real life, Wilson’s “barbarity” and “bad disposition” stood in stark contrast to the “exemplary” character of his wife, and certainly made his crime all the more horrific. The murder of the “innocent victim,” often the wife, made the crime even more appalling and demonstrated the power and influence of alcohol in causing a man to kill the woman he had once loved. These narratives made for a poignant temperance lesson as they suggested the powerful transformative role of alcohol on an individual’s character. This common experience was generally limited to that of the ordinary male drinker whose habits seemed more threatening to the dominant social structure. Similarly, this literature “focused on native, financially secure, American men and so did not mislead readers into imagining a lower-class problem which could be safely ignored.” If the drunkard were portrayed as inherently venal or somehow innately inferior, the cautionary nature of the tale, the possibility of identification with the protagonist, would be lost. Just as temperance literature mimicked the sensationalized reporting of nineteenth century newspapers, accounts of actual murders often reflected the conventions of temperance literature. This is not to say that men who drank heavily

61 “Report of Murder.”
62 Karen Sanchez-Eppler has also studied the way in which images of children as the victims of a father’s intemperance were used in temperance tales in Karen Sanchez-Eppler, “Temperance in the Bed of a Child: Incest and Social Order in Nineteenth-Century America” in Reynolds and Rosenthal, Serpent in the Cup, 60-92.
and murdered their wives were necessarily portrayed as good men gone bad. As the statements on Wilson’s character cited earlier suggest, such men were just as likely to be characterized as men who turned to drinking as a sign of an already immoral character. Yet the tragedy was often two-fold as the lives of both the drinker and his innocent victim were ended by the effect of drink.

Despite its reliance on medical descriptions and legal consequences for the drunkard, the early goal of the temperance movement was not cure or even redemption, but limiting the consumption of alcohol. By the late 1830s, the growing emphasis on complete abstinence, meaning not even wine or beer was acceptable, had caused some of these groups to lose members. Yet, in this same era, the consequences of heavy drinking were felt more keenly than ever before as Jacksonian political reforms meant that drinking could pose a threat to political freedom. As liquor flowed freely during political campaigns and all classes of men gained the right of suffrage, alcohol was viewed by many as a “national evil.” The growth of cities, changes in the nature of work and an increase in immigration in this period likewise contributed to this loss of faith in moral suasion. The popular outreach efforts of the Washingtonians also influenced temperance groups that had previously been more concerned with promoting an already largely teetotal membership to “take the pledge.” However, unlike the Washingtonians, a number of temperance organizations began to embrace political action. As early efforts based on moral suasion proved less effective than its advocates had hoped, the movement turned towards advocating legal restrictions on alcohol. On the one hand, this shift reflected a growing belief that those most likely to drink excessively were the least likely to heed moral and medical arguments, no matter how well-crafted. The legal prohibition
of alcohol was necessary because too many men lacked the moral capacity and individual sense of responsibility to abstain. However, the legal argument also rested on an assumption that alcohol itself was so insidious that it could easily become an irresistible habit to those who did not embrace abstinence. In much of the temperance literature, “demon rum” and the “rum-seller” often joined the drunkard as accomplices in crime.64

In 1836, the evangelical-based American Temperance Society merged with another national temperance group to form the American Temperance Union. This group advocated abstinence through a mix of religious rhetoric and legal action, and its journal routinely included reminders of the temperance pledge inter-mixed with arguments that the law must reflect morality. It was argued that alcohol, when authorized by the law, lost the impact of horror and moral transgression.65 Not only was intemperance a sin, but the sale of alcohol was characterized as “purely evil” and it was noted that the rum-seller builds a “fence between himself and heaven.” The warning that alcohol use could lead to violent actions had been used to both dissuade the potential drinker and to bolster the responsibility of the offender who should have anticipated possible criminal results. However, temperance advocates argued that the drinker did not act alone. Reverend Beecher preached that, “The commodity which the rum-seller deals out, murders not only the man who takes it, but it often instigates to the murder of others; and the rum-seller knows it.”66 Alcohol and its purveyors seemingly acted with full knowledge of the consequences of their actions. A Connecticut man, who killed a young woman with an

65 “Mr. Sprague’s Speech,” Journal of the American Temperance Union 3 (April 1839): 50-1
axe and then himself, was described as having been “infuriated by rum, sold by a man licensed to sell for the public good.”67 Government sanction of the sale of liquor added insult to injury.

Somewhat ironically, the demonization of alcohol and those who sold it allowed for a narrative that mitigated the actions of the drunkard himself. This is not to say that temperance advocates did not hold an individual drinker responsible for his actions – for he is the one who made the decision to imbibe. And certainly by the mid-nineteenth century, few could claim ignorance of the warnings on the dangers of drink, whether they learned of these through temperance sermons, the penny press or personal witness. Yet the drunkard did not act alone. If he could not be persuaded to refrain, perhaps his accomplices – the demon rum and the rum-seller – could be interdicted. In one article, intemperance was portrayed as a “foreign enemy,” wreaking havoc on society. Certainly the greatest sympathy was for sober society and the families of drunkards; however, those who chose to imbibe were portrayed as “too much excited by it,” eventually entering into a “hopeless captivity.”68 Could such a man be held entirely responsible for his actions under the influence of alcohol? To the extent that the decline of the drunkard was predictable, true evil was found not only in the moral lapse of the intemperate, but also in the calculated business of those who promoted it.

In his autobiography, John Marsh, corresponding secretary and editor of the American Temperance Union, included numerous examples of the ways in which members of society embraced the temperance movement’s condemnation of the rum-seller alongside the drunkard. After the accidental death on the railroad tracks of a

“respectable mechanic” who was “made drunken by liquor sold contrary to law,” and the resulting “destitute condition” of his family, Governor Briggs assigned responsibility to the “vendor of intoxicating drink, the man who, in defiance of all laws, human and divine, scattered around him the seed of temporal and eternal death.” And even as he excoriated the drunkard, Reverend Todd similarly urged those who sold liquor to understand the lethal consequences of their actions: “Don’t you see the blood on it? In your bar-room, by the cask, don’t you see that mangled body? Don’t you hear the steps of the naked feet of the orphans? Don’t you see the wild eye and the pale face of the broken-hearted widow?”69Another minister suggested that the manufacture and sale, as well as the consumption, of alcohol met the “legal and scriptural definitions of murder and manslaughter.” The deaths of these men were often laid squarely at the feet of the rum-seller with some temperance tracts going so far as to label a drunkard’s death “murder” in order to highlight the need for laws to end the sale of alcohol.70 The complicity of the rum-seller was also extended further to the criminal actions of the drunkard. Professor Youmans continued to insist that drunkenness is no excuse for crime since it was “voluntarily brought on,” but he did name an accomplice in suggesting “Is not society, is not every individual who makes, sells or patronizes the use of Alcohol, and leads the wretch to temptation and death responsible also?”71 An article, titled “The Traffic, The Traffic,” recounted the stabbing murder of Jemima Morgan and the sorry state of her husband and killer as he awaited his fate in prison. The author concluded with

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71 Marsh, Temperance Recollections, 261.
the admonition, “Such, we are obliged to repeat, are the bloody effects of the license system.” Of course part of the opprobrium cast on the rum-seller came out of political expediency. In order to effectively make alcohol illegal and hopefully end drinking, it was necessary to stop the sale of liquor. The 1851 Maine Law, which would become a model for other state prohibition campaigns and eventually the 18th amendment, was the first to effectively ban both the manufacture and sale of alcohol. This law became a model of success for the temperance movement, and by 1855, thirteen states had their own version of the Maine Law.

In the murder trial of Terence Hammill in 1855, the court seemed persuaded that alcohol bore at least some of the blame for the death of Eliza Hammill, ultimately deciding that her husband was guilty of manslaughter only. The first newspaper report of the murder appeared in the New York Daily Times under the headline, “Murder of a Wife by her Husband.” The details suggest such acts of violence, “another horrible murder,” were not uncommon and were routinely covered in the press. In fact, two other stories on the same page of that newspaper reported on alcohol-related crime. In one case, a man attempted to defend himself against charges of robbery stating, “I am not guilty. I was drunk at the time.” Another recounts a “probable murder and suicide” between two men gambling in a groggy. In the case of the Hammills, the domestic nature of the violence seems to have not been unanticipated. The couple was described as having lived “in a very unhappy state, on account, as is alleged, of the ill-nature of the husband, he having been constant in his abuse to his wife, occasionally beating and kicking her in a shameful manner.” On New Year’s night, Terence Hammill, forty years old and originally from

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Ireland, reportedly “went home in a beastly state of intoxication” and then proceeded to
beat and strike his wife until she “fell to the floor a corpse.” The newspaper also
recounted how Hammill attempted an escape but was thwarted by neighbors, although
later witnesses claimed he was found next to his wife in the apartment.73

Later reports provided a more sympathetic portrayal of Hammill, painting a
picture of a good man done in by drink. At his arraignment, he was described as having
“deeply regretted the death of his wife, but that he was intoxicated at the time, and did
not know what happened.” Further details revealed that he was at one time employed in
“a good situation” at a warehouse, but was “left penniless.” Nonetheless, he retained the
support of friends who raised the money to pay for his defense.74 In the resulting case of
the People v. Hammill, attorney, Henry L. Clinton portrayed his client as a character in
what seemed to be the classic drunkard’s tale: a man, described by the court as “strictly
temperate” on most occasions, but made so “infuriated and ungovernable” by drink that
he “killed the wife of his youth and the mother of his children.” The defense counsel
certainly took care in selecting the jury; relying on peremptory challenges and spending a
great deal of time on the interrogation of jurors who would be asked to judge Hammill’s
actions. The question before the jury would be not whether or not Hammill had killed his
wife, for his own defense admitted that he had, but rather the effect his intoxication had
on his intent to kill her.

73 “Murder of a Wife by her Husband,” New York Daily Times, Jan 3, 1855, 3. This early article
misidentified Terence Hammill as “Thos. Hammond.” Later newspaper accounts listed this name as an
alias, and his name was spelled variously as “Hamill,” or “Hammill.” I have used “Hammill” here for the
sake of consistency and as reflected in legal accounts. “Robbery,” New York Daily Times, Jan 3, 1855, 3;
“Probable Murder and Suicide” New York Daily Times, Jan 3, 1855, 3; “Trial of Terence Hamill for the
74 “Examination of Hammill, the Murderer,” New York Daily Times, January 5, 1855, 8; “Hammill, the
The prosecution presented a case that Hammill had intended to kill his wife and that he was a habitual drinker. On the opening day of the trial, medical testimony was provided to emphasize the ferocity, and presumed murderous intent, of the injuries inflicted on Eliza Hammill. A neighbor, Thomas Malone, testified to a history of “drunken scrapes” between the couple and claimed that Hammill confessed that not only had he “meant” to kill his wife, but that he “was sorry he did not do it long ago.” The district attorney described Hammill’s drunkenness as an unremarkable fact, noting the existence of “thousands and thousands” of other habitual drunkards in the state, and he quoted Shakespeare alongside legal authorities to note that such a habit provided “no excuse” for crime.\(^{75}\)

A good part of the defense’s case depended on establishing that Hammill’s behavior when drunk was not indicative of his usual character. While intoxication might prove a mitigating factor, convincing the jury that Hammill’s condition approached a state of insanity was the surer bet. A number of witnesses for the defense emphasized that Hammill behaved as a “crazy” man when drunk. One witness noted that “very little liquor made (the) prisoner quite crazy,” and another described Hammill as being “of a wild disposition and a terror” when drinking and related previous incidents in which the defendant was “drunk naked in the street.” A friend and co-worker of four years similarly noted that Hammill was “wild or crazy,” and “very passionate” when under the influence of drink. This witness, like others, testified to a remarkable personal tolerance of Hammill’s seemingly violent proclivities when drunk. He noted that Hammill, when drunk, would “hunt me for my life” and “I had to run to get out of his way”; yet he

seemed surprisingly tolerance of such behavior insisting they remained “always on good terms.” A local police officer, after describing several run-ins with a drunken Hammill, concluded that, “I do not think that he knew what he was about” when intoxicated and that “when sober he was a very peaceable and quiet man.” Many witnesses asserted that Hammill was “very kind to his family.” Additional testimony, including that of the couple’s fourteen-year-old daughter, also revealed that he had suffered from a blow to the head a number of years back. While such evidence seemed to suggest that Hammill’s drunken behavior may have not been typical, that he was perhaps inordinately affected by drink, no medical testimony was offered on this point and the connection appears to not have been made explicit to the jury.  

The court’s charge to the jury noted that this case was “an unusually painful one” because

The prisoner is not a man who has been familiar with vice or hardened by crime. Though in the humble walks of life he is proved by men of the highest standing who have known him well, to have sustained the most irreproachable character for honesty, integrity, and industry, and on all occasions, except when infuriated by intoxication, for kindness and attention and affection to all his family. With that single exception, no better character in all these respects, or for quietness and unobtrusiveness of manners, could have been shown than has been established for him.

This remarkably sympathetic portrayal stood in stark contrast to the details of the crime. Hammill was found “in the act of stamping upon his wife” while wearing “heavy iron-nailed shoes.” His wife “exhibited marks of the most brutal violence, the head and chest being covered with bruises and blood,” and died within minutes.  

Clinton defended his

client as lacking a motive and asserted he was “for the time at least insane” under the influence of liquor. The defense argued for manslaughter in the second degree citing Hammill’s otherwise good character and the fact that he did not intend to kill his wife who was also derided as having been “in the habit of drinking freely” and intoxicated at the time of her death. Arguments of character and intent were accepted as legitimate points of fact to be determined by the jury. On the question of intent, the court charged, “But if his judgment was in part obscured and his only intention was to severely beat his wife, but with no thoughts that death was either certain or possible, then the jury must convict of a less offence.” The fact that Hammill chose to strike his wife with kicks and blows, rather than with a “deadly weapon” such as a rifle, bowie-knife or poison, it was argued, spoke to his lack of intent to cause her death. Presumably he was less aware of the effects of his blows due to a state of intoxication which “clouds and obscures the judgment” and affects “the whole nervous organization” to the point of mitigating intent, even if the same act “in a state of entire sobriety” indicated “a murderous mind.” Likewise, Hammill’s reportedly upstanding character was relevant to the issue of determining intent as the court added,

But where the intent is not certain, where the minds of the jury feel that the scales are nearly poised, then the jury may do that which the prisoner humbly asks them to do here, throw the weight of his good character into the scales and thus secure a preponderance in his favor. In cases not free from doubt, the law allows it.

Despite the barbarity of the act, the jury was convinced that Hammill did not intend to kill his wife, and he was convicted of manslaughter in the second degree.78

The sentencing seemed to speak more as a lesson on the evils of drink than to the facts of the case. Through his attorney, Hammill threw himself on the mercy of the court

78 Lawson, Adjudged Cases, 760-3; “Trial of Terence Hamill for the Murder of his Wife,” April 11, 1855.
claiming no memory of the “lamentable and horrible death of his wife.” While not denying the crime, he “attributes (it) solely to the use of intoxicating drinks” and proclaimed himself now a redeemed man promising to never again “touch spiritous liquor.” The court agreed, attributing the paradox of Hammill’s upstanding character and the “dark deed” he had committed to “that maddening poison” which was to be blamed “partially at least, if not entirely” for the current situation. Like the verdict, the sentencing seemed remarkably lenient:

The Court have taken into consideration your circumstances, and the condition of your little children, who appear to be wholly dependent on you for support, and are disposed to treat your case with leniency, in the hope that, now that you have had this severe experience, and have seen the danger and the peril in which you put yourself by taking into your system a stimulus that lowers you from a man almost to a level with the brute, you will, when you emerge from the prison to which you will now be consigned, come with a full determination to abandon the use of intoxicating liquors, to live the life of a reputable man, and to do all in your power to retrieve your character.  

In sentencing Hammill to four years and six months in prison, a mere half year from the minimum term, the court asserted a faith in redemption that echoed the tales of the Washingtonians.

Under the American legal system, in which the ultimate determination of guilt is made by a jury of the defendant’s peers, a defense based on intoxication rested on a blend of legal, medical, and popular perceptions of the causes and effects of heavy drinking. A reliance on intoxication as a defense challenged the legitimacy of medical and legal experts as “ordinary” people felt qualified to speak on the all-too-common issue of drunkenness. The consequences of drink were of practical concern in a culture that was weighing the social costs of alcohol consumption in terms of crime, self-control,

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domestic relations, and health. Contemporary ideas on intoxication served to shape the debates surrounding the legitimacy of diagnoses and legal definitions. Not confined to medical texts or courts of law, these questions influenced, and were in turn influenced by, popular opinion as ideas spilled over into the broader culture.
Chapter 4: “The broad resemblance between insanity and drunkennes” – Moral Insanity

Despite the prevailing insistence in American law that drunkenness provided “no excuse” for crime, by mid-century, a murderer who was drunk during the commission of his deed could employ a variety of options to mitigate, if not excuse, his crime. Certain key precedents had been set: settled insanity caused by the habit of drinking was regarded as any other type of insanity; delirium tremens was accepted as a legitimate insanity defense; and evidence of intoxication was considered relevant to establishing mens rea and degree of crime. During these same years, temperance advocates were growing in strength and vociferously condemned drinking as a vice, casting social opprobrium on both the drinker and his supplier. But, in utilizing language that emphasized the danger of the habit of drinking, the drunkard often presented as a pitiable figure, and a reliance on the classic temperance narrative could help direct the attention of society to “demon rum” and the rum-seller as the true villains. There were a few key cases, like those of Theodore Wilson and Terence Hammill, that demonstrate an unprecedented potential to establish that intoxication could, under certain circumstances, mitigate or even “excuse” from criminal responsibility. Nevertheless, intoxication continued to hold an uneasy place in medical jurisprudence, and the chasm between vice and mental illness meant that drunkenness only infrequently served as a legitimate excuse for crime.

By the second half of the nineteenth century, the emergence and subsequent debate over moral insanity would create a bridge between aberrant behavior and disease that allowed for greater consideration of intoxication in criminal cases. A great deal has been written on the controversies surrounding the insanity defense in this era with the
history of the medico-legal debates over alcohol subsumed within this narrative.¹

Medical science increasingly offered a profusion of diagnoses, backed by testimony from medical experts, that could support a plea of not guilty based on insanity. The inclusion of excessive or uncontrollable drinking within the lexicon of psychiatric terms was often touted as proof of the illegitimacy of the concept of moral insanity, a diagnosis that was often condemned as nothing more than an excuse for bad behavior. An intractable craving for alcohol and compulsion to drink, what was frequently called dipsomania in this era and alcoholism by the twentieth century, was classified within a subset of medical conditions related to insanity. The medicalization of heavy drinking within the context of the still-developing discipline of psychiatry shaped the ways in which such behavior was treated medically and assessed legally.

Yet it is difficult in this period, and arguably today as well, to separate the metaphorical utility of characterizing chronic drinking as a disease from its nascent medical and legal sense. The act of drinking can be viewed as either an established cultural norm or a deviant social behavior depending on the context.² Intoxication can similarly evoke a variety of responses depending on whether it is viewed as a sign of good cheer or aberrant behavior. The public in this era, notes historian of science Roger Smith, was especially fascinated with a variety of mental states, such as dreaming,


hypnosis, excessive emotion, epilepsy, insanity and drunkenness, that suggested a lack of self-control and a potential for social disorder. In particular, he indicates that “it was the effect of alcohol that provided the firmest, most concrete, and certainly the most familiar example” of a loss of control; one “so familiar that it provided something of a baseline against which writers compared other experiences.”

The narrator of Poe’s “The Black Cat” compared the drinking habit to a disease, and, according to literary scholars, was undoubtedly influenced by the work of one of the foremost writers on the medical jurisprudence of insanity, Isaac Ray.

Isaac Ray was a thirty-one year old physician in rural Maine when his *Treatise on the Medical Jurisprudence of Insanity* was published in 1838. This text filled an appreciable need for a comprehensive discussion of mental illness and the law in the United States and signaled an expanded presence and authority for medical men in ongoing debates concerning legal responsibility. The book was favorably reviewed and was relied on extensively by lawyers and judges for decades; going through five editions before Ray’s death in 1881. Although Ray was young with little direct experience dealing with legal issues, he was well-versed in the latest medical and legal writings from Europe. Like most doctors of his time, Ray’s initial education was as an apprentice under a local physician, and then, more atypically, under George Cheyne Shattuck, a member of

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the faculty of Harvard Medical School. He finished his studies in 1827 at Bowdoin where his medical school dissertation dealt with the pathology of disease and stressed the importance of authoritative autopsies to search for and confirm causes of death. Ray had little patience for what he saw as the lack of knowledge and professionalism among his peers, and he noted that the growing emphasis on medical testimony unfortunately too often highlighted inadequacies in such knowledge.

Through his work, Ray looked not only to establish a career in medicine but to gain a legal audience with the hope that scientific knowledge would influence the law. He published regularly in legal journals and maintained a spirited correspondence with lawyers and legal scholars. Despite the still inchoate state of the field of psychiatry, Ray contended that questions of responsibility should fall under the purview of both law and psychiatry and foresaw a significant role for medical experts in the courtroom. Existing legal definitions of insanity were limited and imprecise but continued to thrive, Ray argued, only because of “that reverence which is naturally felt for the opinions and practices of our ancestors.” He underscored his point with references to archaic and superstitious practices surrounding the diagnosis and treatment of the insane. Medical science, on the other hand, he felt represented “advancement,” and the law would be better served “yielding to the improvements of the times and thankfully receiving the truth from whatever quarter it may come.”

Ray established his own professional reputation by firmly situating himself in a line of physicians who sought reform in the emerging field of psychiatry. Among these

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were Philippe Pinel, a French physician often called “the father of modern psychiatry,” who promoted what would be known as “moral therapy”; and Pinel’s student, J.E.D. Esquirol, who continued the cause of psychiatric reform and advocated an expanded understanding of insanity through a focus on the “passions” as well as the intellect. English physician James Cowles Prichard, who dedicated his Treatise on Insanity to “Monsieur Esquirol,” similarly focused on the emotional and volitional aspects of a condition he termed “moral insanity.”

Prichard described a mental state that de-emphasized reason as the defining quality of human action by suggesting that mental disease could be characterized by a variety of non-intellectual forms of madness including “a morbid perversion of the natural feelings, affections, inclinations, temper, habits, moral dispositions and natural impulses.” He explained that it might exist “without any remarkable disorder or defect of the intellect or knowing and reasoning faculties, and particularly without any insane illusion or hallucination.” For Prichard, insanity was not restricted to the brain, but was the result of various somatic disorders, and as such, the “disposition to madness” was a natural part of the human condition. In other words, anyone could potentially become mad.

Intemperance, as a form of disease, was not specifically addressed in the Treatise, and Prichard referenced alcohol only as a contributory factor to or a symptom of other types of insanity. Yet, the loss of reason, significance of habits, and the inauspicious human potential to descend into madness

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found in his theories certainly echoed some of the temperance warnings against drinking. Prichard’s description of insane homicide as one which lacked motive, plan, concealment or escape, the example he provides is of men who kill their wives and children “to whom they were most tenderly attached,” also suggests certain parallels with the drunk murderer.  

Influenced by these theorists, Ray embraced the expansive concept of moral insanity – a definition that included a variety of emotional and volitional impairments. He vociferously rejected what was commonly referred to as the “wild beast” test, the idea that only an individual who was “reduced to the condition of an infant, a brute, or a wild beast” could be declared irresponsible for criminal action while those in whom “the slightest vestige of rationality” remained were subject to the penalty of the law. True to his role as a pioneer in the medical jurisprudence of insanity, Ray’s argument rested on both his medical understanding that the physical effects of mental illness could be confined to just a part of the brain, such as the moral center, as well as a keen sense of precedent taken from civil law that exempted those suffering from partial or temporary mental impairment from entering into valid contracts. He cited the example of a man declared “too much impaired” to manage his own property who would, under current law, remain fully responsible and likely be executed, for a murder committed under the influence of this same disease.  

With the publication of Ray’s influential Treatise, the definition of insanity in the United States began to morph into one that had significant implications for both the medical and legal fields.

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10 Prichard, A Treatise on Insanity, 384-99; Prichard, On the Different Forms of Insanity, 58, 126-7.
Medical jurisprudence, a field which had barely existed just ten years earlier, thus offered the possibility of progress not just to medicine but to the legal system. Ray viewed legal reform as essential within the context of the “moral therapy” advocated by his intellectual mentors. He contrasted the emerging state of medical science with a history of the “reckless and inhuman treatment” of the insane, including those who had been accused of criminal acts, that had long been common practice.\textsuperscript{12} In fact, one historian characterized Ray’s \textit{Treatise} as “a virtual manifesto in behalf of the innocent insane, a category of defendants whom Ray considered all too often the victims rather than the beneficiaries of American legal procedure.”\textsuperscript{13} Ray’s theories, while controversial, would be enormously influential in expanding the use of the insanity defense over the next two decades.

Ray’s explication of insanity also meant that the consequences of drunkenness could more easily be defined as a form of insanity. An 1829 address on temperance attests to an early and established interest in and professional recognition of the subject of alcohol.\textsuperscript{14} Under moral insanity, behavior previously attributed to an immoral character was more easily categorized under a wide spectrum of mental disease, and as such, could potentially act as a legal excuse. A variety of new diseases including moral mania, temporary insanity, kleptomania, pyromania, dipsomania, etc… provided a variety of medical diagnoses for seemingly immoral actions. By the 1840s, a more flexible definition of insanity was endorsed by a broad swath of medical and legal professionals. In particular, the inclusion of various forms of “temporary insanity,” “irresistible

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\textsuperscript{12} Ibid., 10-13.
\textsuperscript{13} Mohr, \textit{Doctors and the Law}, 146.
\textsuperscript{14} Quen, “Isaac Ray on Drunkenness,” 342.
\end{flushright}
impulse,” as well as those conditions brought on by an uncontrollable compulsion to drink, specifically provided for an expanded understanding of heavy drinking as a mental disease that abrogated responsibility.  

The first edition of Ray’s *Treatise*, published in 1838, dedicated two of its twenty-five chapters to drunkenness and its legal consequences. One reason earlier physicians had resisted viewing drunkenness as a disease was because of its temporary and voluntary nature. Only when it manifested itself as a settled form of insanity or as an unintended state, such as delirium tremens, did a voluntary behavior transform itself into a medical condition. Ray reaffirmed the connection between the habit of drinking and settled insanity as he observed that “the long-continued use of alcoholic liquors affects the moral and intellectual powers” in which “the original delicacy and acuteness of the moral perceptions are invariably blunted.” However, the diagnostic reach of the physician was extended to include a greater variety of drinking behaviors under the concept of moral insanity. The effects of drinking combined with the irresistible craving to drink, Ray noted, “strongly remind us of some of the manifestations of moral mania” despite its sometimes “periodical character.” He quoted Cox’s observation that those suffering from moral mania often appeared as though they were under the influence of intoxicating liquors.  

Beyond noting these similar effects on the moral faculties, Ray further expanded considerations of drunkenness as a disease by accounting for its habitual nature. Psychiatrist and scholar Jacques Quen has suggested that Ray’s use of the term

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17 Ibid., 304.  
18 Ibid., 130.
“drunkenness” was “similar in meaning to chronic alcoholism” although Ray assumed that such cases reflected organic changes in the brain.\textsuperscript{19} In the nineteenth century, it was taken as a matter of scientific principle that mental illness, however induced, could be confirmed by a somatic indication such as brain lesions. Repeated drinking, Ray argued, caused the brain to become “accustomed to artificial stimulus,” and in turn became an “indispensable habit.” While acknowledging the initial “voluntary” nature of drinking, he explained that “pathological changes” affecting the brain “in turn, become efficient causes and act powerfully in maintaining this habit, even in spite of the resistance of the will.”\textsuperscript{20} Ray questioned the degree of volition behind the decision to drink and therefore the legal assumption of intent behind the condition of drunkenness that made it no excuse for crime. He concluded that, “The drunkenness being thus an accidental, involuntary consequence of a maniacal state of the mind, it cannot impart the character of criminality to any action to which it may give rise.”\textsuperscript{21} As evidence for the irresistible nature of the habit caused by drinking, Ray noted that

\begin{quote}
there are few who have not seen the melancholy spectacle of the most powerful motives, the most solemn promises and resolutions, a constant sense of shame and danger, bodily pain and chastisements, the prayers and supplications of friendship of as little avail in reforming the drunkard as they would have in averting an attack of fever or consumption.\textsuperscript{22}
\end{quote}

Ray’s description could have easily appeared as part of a Washingtonian speech or temperance tract.

The disease concept of intemperance moved easily across already blurred moral and medical discourses, and experiences of intoxication were presented as simultaneously

\textsuperscript{19} Quen, “Isaac Ray on Drunkenness,” 343.
\textsuperscript{20} Ray, A Treatise on Medical Jurisprudence, 300-3.
\textsuperscript{21} Ibid., 324.
\textsuperscript{22} Ibid., 303.
physical and moral. Insanity, in particular, had oftentimes been understood by many in
the medical profession as a consequence of a variety of immoral behaviors which
included intemperance. For these physicians, the choice to drink was key, and with few
exceptions, they were generally reluctant to connect habitual drinking with insanity.

Historian of psychiatry Gerald Grob notes, “Reared in a culture in which religion played
a vital role, most psychiatrists instinctively rejected a model of disease that threatened
traditional values and beliefs.”

Even Ray acknowledged, “But since drunkenness is itself a sin, it becomes a question how far a person’s liability for the consequences of his acts in that state can be affected by a condition which is itself utterly inexcusable.”

With moral insanity, the recognition that insanity could exist as a temporary or periodical
state as well as the suggestion that the decision to drink was not necessarily a voluntary
one further expanded the idea that intoxication abrogated responsibility. Ultimately this
equation provided greater fodder to reject the validity of a moral insanity diagnosis than it
did to strengthen a legal defense based on intoxication.

Despite some concerns, the initial response to Ray’s Treatise was generally
favorable as it provided a definition of insanity that could potentially facilitate and
promote cooperation between the law and medicine, provide for a more humane
consideration of the insane, and contribute in general to the professionalization of the
medical field. Moral insanity seemed to simultaneously offer a more nuanced
interpretation of human behavior and one that rested on scientific explanation. Certainly
the “wild beast” test of insanity formalized in the early eighteenth century was

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insufficient to account for the variety of criminal deeds and motives that jurors were required to appraise, and Ray’s work could provide for a new legal test of insanity. The influential M’Naghten rules laid down in an 1843 English case stated that “if the prisoner retain the power of distinguishing right from wrong, his responsibility for crime is unaffected.” This “right or wrong” test of insanity soon became widely adopted throughout the United States, and most current definitions of legal insanity have been influenced by this rule, which recognizes cognitive, rather than volitional, insanity as an excuse for crime. Despite the fact that the judge in this case cited Ray’s *Treatise* as scientific support for his interpretation, Ray was critical of this test of insanity arguing that it excluded the “affective and volitional disorders.” Insanity did not follow a set pattern nor could it be proven through a simple test, Ray argued. That same year, Chief Justice Shaw of Massachusetts issued a broader ruling in the case of Abner Rogers that echoed the precedent set forth in M’Naghten but recognized the volitional aspects of the defendant’s mental state when he instructed the jury that the defendant should be acquitted if his actions were “the result of disease.” Despite the “right and wrong” test becoming a generally accepted principle of law, jurists variously interpreted and voiced disagreement with the M’Naghten test as a point of law.25

Proponents of moral insanity had hoped that a more expansive definition of insanity would allow the mentally ill to get the humane treatment they needed and to be shielded from unfair prosecution for crimes for which they could not reasonably be held

responsible. Its critics, however, feared that the inclusion of a broad spectrum of aberrant behavior created too nebulous a concept; one that viewed virtually all criminal behavior as a symptom of a diagnosable moral defect. The larger net cast by the diagnosis of moral insanity, it was argued, threatened to excuse true criminals alongside actual patients. And ironically, rather than increase the reputation and relevance of physicians in the courtroom, the controversy over moral insanity meant many medical professionals began to avoid testifying in criminal trials and even saw their relevance diminish in other areas of medical jurisprudence such as the adjudication of wills. 26

Alfred S. Taylor, a British toxicologist who published his own text, Medical Jurisprudence, in 1845, openly questioned the basis, as well as the implications, of the moral insanity doctrine. While acknowledging that insanity could be characterized by either a defect in the intellect or an “aberration in the feelings, passions, and emotions,” Taylor declared it “doubtful” that moral insanity could exist “without greater or less disturbance of the intellectual faculties.” Like many physicians before him, he presumably saw the study of insanity as a question of medical jurisprudence to be of limited utility. In his text, he noted that his subjects were listed “in order of their importance,” with insanity left to the last section of the text, and “criminal responsibility” in the very last chapter. And while acknowledging the shortcomings of the “right and wrong test,” he feared the repercussions of the acceptance of moral insanity within the canon of medical jurisprudence. He argued,

Some have looked up on such cases as instances of insanity of the moral feelings only, - ‘moral insanity’ but an unrestricted admission of this doctrine would go far to do away with all punishment for crime, for it would then be impossible to draw a line between insanity and moral depravity, and the law will not at present excuse an act committed through moral depravity.

Taylor’s opinion that drunkenness “is held to be no excuse for crime” did not appear until the last two pages of the text.\(^{27}\) Despite Ray’s urging that the medical field should promote the most progressive scientific methods and professional standards, moral insanity would typify the problematic application of medical expertise to criminal culpability. Ultimately, the association of psychiatrists with this theory helped to turn the study of insanity, as one historian describes, “from a professional asset to a public embarrassment.”\(^{28}\)

Moral insanity, by definition, stressed the emotions and passions over the intellect, thus broadening categories of mental impairment. However, scientific theories do not arise in a vacuum; not only was moral insanity influenced by current social conditions, but by legal expediency. Lawyers often utilized various forms of “temporary insanity” in a bid to gain sympathy, and hopefully an acquittal, for their clients. The medical evidence, sometimes verging on “mumbo jumbo,” as one legal historian has argued, was less important than finding some argument on which the jury could hang a verdict of “not guilty.”\(^{29}\) The most well known of the temporary insanity defenses was the “unwritten law,” which upheld the right of a husband to kill his wife’s lover “in the heat of passion” - a premeditated murder did not fit the criteria. Hendrik Hartog, a legal historian, has studied the “unwritten law” and focused on a number of well-known cases to demonstrate the way in which the excuse of insanity allowed for a “recognized exception within the law.” He notes that rarely were women granted the same “legal

privilege”; the violent “frenzy” incited by a spouse’s infidelity “was less a medical or psychological defect and more a legitimate and appropriate attribute of male identity.”

One of the most famous, or infamous, cases of this use of the insanity defense was the 1859 trial of Daniel Sickles, a New York congressman, who shot and killed his wife’s lover, Philip Barton Key. Since it was suggested that the adultery itself created the conditions for Sickles’ “temporary insanity,” evidence of the affair was a key part of the trial, and Sickles was found not guilty.30 An “unwritten” law, however, isn’t really a law which meant that creative strategies were often required to play sufficiently on the sympathy of a jury to get them to return a “not guilty” verdict.

It is not difficult to imagine a state of intoxication described as a similar form of “temporary insanity” even as the law consistently held that such a state was “no excuse,” largely because of its voluntary nature. One exception did exist under the law: delirium tremens had been accepted as a defense to crime as early as the 1820s. Over the intervening years, courts had attempted to limit the exculpatory value of heavy drinking by distinguishing voluntary intoxication from the unintended manifestation of a state of delirium tremens. The case of United States v. McGlue in 1851 suggests a more complicated relationship between insanity and drunkenness than what had existed two decades earlier.

On May 1, 1851, James McGlue, the second officer of the bark Lewis, stabbed and killed the first officer, Charles Johnson. McGlue’s defense was that he was suffering from the disease of delirium tremens, and evidence was presented “to prove his

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intemperate drinking of ardent spirits during several days before the time in question, and also certain effects of this intemperance.” The prosecution looked to prove ordinary drunkenness and countered that the defendant had been drinking “down to a short time before the homicide; and that when he struck the blow it was in a fit of drunken madness.” McGlue was ultimately acquitted of the murder charge. The case has some interesting parallels to the earlier case of Alexander Drew. It occurred on board ship, although there was some debate as to whether McGlue’s vessel was on the high seas or at port in Muscat in North Africa; and both men were found not guilty based on a defense of delirium tremens.31

Points of law related to the insanity defense, however, had proliferated since that earlier case. Questions ruled on during McGlue’s trial related to a presumption of sanity, a consideration of the degree of insanity as it related to the nature of the act, degrees of murder, and the role of experts. Furthermore a clear assertion was made that voluntary intoxication conferred responsibility while acts committed while suffering from delirium tremens were “not punishable.”32 The medical evidence was likewise extensive with “(p)hysicians of great eminence” providing proof to support both the prosecution and defense. Without clear medical consensus, the jury was cautioned by Judge Curtis on their consideration of the respective opinions of these experts: “If you consider that any of these states of fact put to the physicians are proved, then the opinions thereon are admissible evidence, to be weighed by you. Otherwise, their opinions are not applicable

31 United States v. McGlue, Circuit Court D. Massachusetts, 26 F Cas. 1093; 1851 U.S. App Lexis 371; 1 Curt. 1.
32 “United States v. McGlue, (1 Curt. 1.), In the United States Circuit Court, District of Massachusetts, October Term, 1851,” in The Adjudged Cases on Insanity as a Defence to Crime, John Davison Lawson, ed. (St. Louis: F. H. Thomas and Co., 1884), 54-5.
to this case.” Physicians had counted on medical jurisprudence to contribute to an enhanced reputation for their field, and by the 1840s, the presence of expert medical witnesses had become commonplace. However, disagreement over diagnoses of insanity and their significance to responsibility led to quarrels within and between medical and legal fields. Instead of resolving questions of medical jurisprudence, the multiplicity of opinions often created greater confusion that led jurists and jurors alike to form their own conclusions apart from expert testimony. The final instructions to the jury, which sought to outline the key distinction between voluntary intoxication and a state of insanity recognized by the law, also suggested a sometimes fine line between intoxication and insanity:

My instruction to you is, that if the prisoner, while sane and responsible, made himself intoxicated, and while intoxicated committed a murder by reason of insanity, which was one of the consequences of that intoxication, and one of the attendants on that state, then he is responsible in point of law, and must be punished. This is as clearly the law of the land as the other rule, which exempts from punishment acts done under delirium tremens.33

The jury was charged with determining the cause and nature of the defendant’s mental state amid confusing legal rulings and disputed medical evidence. In this case, McGlue was found not guilty.

Newspapers reporting on the murder also pondered questions of intent and insanity, but in a way that may have more closely reflected current social concerns and prevailing cultural attitudes. The first report of the murder in a Boston newspaper, where the trial would eventually be held, was not until July 21 when an article appeared on the stabbing murder of first officer Charles Johnson by McGlue. The Boston Daily Atlas

33 United State v. McGlue 26 F. Cas. 1093; Instructions to the jury were reprinted in “Law Cases Bearing upon Insanity,” American Journal of Insanity (July 1856): 74-80. On juries and medical experts, see Mohr, Doctors and the Law, xiv-xv, 96-100.
reported that “They had been on the most friendly terms throughout the voyage, and no
provocation or quarrel of any sort is known to have arisen between them.” The accuracy
of this information is unclear since the paper reported that their information was based on
letters received from Zanzibar. Additionally, the New York Daily Times later
contradicted this report noting that there had been a previous quarrel between the two
men. Yet the significance of the assertion in the Boston paper that McGlue acted without
provocation follows in the next paragraph: “It is not a little remarkable, that two persons
are already confined in our jail for murders committed without any known provocation.”
Thus McGlue’s actions allowed the writer, in his article titled “Another Murder,” to more
expansively address the nature of crime and society.34

Later newspaper accounts noted that McGlue had been positioned to succeed
Johnson as first mate, and that the two had been on “friendly terms.” It was also reported
that McGlue was “unwell” on the morning of the murder; one article even concluded
before the trial began, “The circumstances would seem to justify a plea of insanity.”35 It
is unclear to what extent the writer of an article noting McGlue’s later acquittal accepted
the medical testimony that the accused was “laboring under the influence of delirium
tremens,” rather he seemed to form his own judgement based on reports of the
defendant’s behavior:

I don’t see but the acquittal was right; McGlue was unquestionably – out of his
mind; his jumping from a train of cars, some months before he went to sea caused
a fracture of his skull; this fact seems to have given him a most unhappy brain for
drinking, yet he got on a debauch at Zanzibar, became crazy in a temporary

Times, October 2, 1851.
35 “Examination on a Charge of Murder,” The Boston Daily Atlas, October 3, 1851; “Murder on
manner, and committed murder, thus furnishing the millionth case of the curse of rum drinking.\textsuperscript{36}

The writers’ conclusion seems to be based on a patchwork of theories not easily parsed: a traditional medical interpretation that looked to physical signs of insanity, an acceptance of insanity as a temporary condition that echoed more recent medical thought, and an acknowledgement of temperance warnings on the dangers of drinking. Whether the jury used similar reasoning is unknown, but undoubtedly they decided, through some combination of their interpretation of medical evidence, their understanding of the law itself and their own experiences and perspectives, that McGlue was suffering from some version of insanity.\textsuperscript{37}

The expansion of the definition of insanity to one that included the effects of intoxication often served to undermine the impact of the law and allowed for more room for the interpretation of ordinary citizens.Speaking to the jury, Judge Curtis acknowledged ongoing medico-legal debates over moral insanity as well as the difficult balancing act between creating a more humane system for the insane and excusing criminal behavior:

Some observations have been made, by the counsel on each side, respecting the character of this defence. On the one side, it is urged upon you, that the defence of insanity has become of alarming frequency, and that there is reason to believe it is resorted to by great criminals, to shield them from the just consequences of their crimes, when all other defences are found desperate; that there exist in the community certain theories, concerning what is called moral insanity, held by ingenious and zealous persons, and brought forward on trials of this kind, tending to subvert the criminal law, and render crimes likely not to be punished, somewhat in proportion to their atrocity. On the other hand, the inhumanity, and the intrinsic injustice of holding him guilty of murder, who was not, at the time of

\textsuperscript{36}“Court Calendar,” \textit{Boston Courier Semi-Weekly}, October 30, 1851, 2; “Another Gale and Loss of Life – Sorrows of the Cape Cod Gals – Acquittal of McGlue…” \textit{New York Daily Times}, November 5, 1851, 4.

the act, a reasonable being, have been brought before you in the most striking forms.\textsuperscript{38}

The instructions of Judge Curtis in the McGlue case deviated from those of judges who, in an earlier era, forthrightly insisted that “drunkenness provided no excuse for crime.” He provided a much more tentative definition of insanity as compared to the actions of Judge Story, who, in the Drew case practically directed a verdict from the bench. The theory of moral insanity had expanded the definition of insanity, and the insanity defense, to a point in which intoxication was often viewed as relevant to more than just degree of crime. Intoxication, it could be argued, created a condition of insanity that provided an “excuse” for murder. Yet few agreed on just where that line should be drawn.

Interestingly, an 1854 article in \textit{The Monthly Law Reporter}, cited U.S. v. McGlue as an example of an accepted defense of delirium tremens; while a discussion of the same case cited in a later 1870 trial, noted “the evidence left it doubtful whether the furious madness exhibited by the prisoner was the result of present intoxication or of delirium supervening upon long habits of indulgence.”\textsuperscript{39} Clearly, society continued to seek to limit the exculpatory nature of intoxication; however, those limits appeared quite fungible by the middle of the nineteenth century.

As physicians and jurists struggled with the implications of changing definitions of mental illness, a plea of insanity offered a viable, if not always successful, defense for those who committed murder while under the influence of alcohol. Moral insanity described a type of insanity that paralleled drunken behavior: it could be temporary in

\textsuperscript{38} United States v. McGlue 26 F. Cas 1093.

nature and was characterized by passion or emotion; when it led to violence, the crimes were often perpetrated on loved ones and lacked clear planning. An act committed in passion could arguably reflect a diagnosable state of mind, and as more jurisdictions instituted statutes that separated murder charges into various degrees, it had become increasingly crucial to establish the defendant’s state of mind during the commission of a crime. Citing an 1837 English case, the *American Law Register* raised the question of the relation between drunkenness and a crime committed in passion:

Thus judges have charged that drunkenness may be taken into consideration, in cases where what the law deems sufficient provocation has been given; because the question is, in such cases, whether the fatal act is to be attributed to the passion of anger excited by the previous provocation, and that passion is more easily excited in a person when in a state of intoxication than when sober.\(^{40}\)

By the 1840s, a number of cases had already established the relevance of intoxication to intent, and courts sometimes viewed this state as a significant mitigating factor in limiting, if not excusing, guilt.

Individuals under the influence of alcohol who murdered generally had little else to rely on in a court of law outside of a sympathetic jury. Defense attorneys attempted to portray their clients as ordinary citizens whose passions were exaggerated by drink, and they utilized the tools society offered them: the tragic temperance tale of the drunkard, a temporary insanity incited by passion, a diagnosis of moral insanity that afflicted emotional responses, legal precedents that accepted intoxication as relevant to intent. These explanations, whatever their value, were not unrelated. Drunkenness was quite common, and it was the rare juror who could not relate, at least indirectly, to the experience of an intoxicated individual behaving poorly. References to “common sense”

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judgments on the meaning of drunkenness were prevalent in courtrooms, and the theory of moral insanity helped put the stamp of medical expertise on this point.

Despite some early skepticism, however, clear opposition to the doctrine of moral insanity did not emerge until the mid-1850s when John Gray took over the American Journal of Insanity and mounted a sustained attack on Isaac Ray and the implications of his theories. Ray had been one of the founding members of the Association of Medical Superintendents of American Institutions for the Insane (AMSAII), later the American Psychiatric Foundation, but by the early 1860s, a key contingent of asylum superintendents within this group emerged in opposition to moral insanity. Their contact with large numbers of patients within the asylum system was often utilized to provide evidence disproving the existence of the condition of moral insanity. Gray was a prominent psychiatrist and expert in forensics who served as the superintendent of the New York State Lunatic Asylum at Utica from 1854 to 1886. He became a renowned expert witness against the concept of moral insanity and had even been called on to offer his opinion to President Abraham Lincoln. 41 Disagreeing that a distinction could be made between the intellectual and moral faculties, Gray warned that an acceptance of moral insanity served only to excuse crime and undermine the social order. Using his status and access to patients as an asylum superintendent, Gray argued there was no “clinical” or “physical” evidence to support an argument for “irresistible impulse,” “impulsive insanity,” or moral mania as mental diseases that excused crime. Other asylum superintendents joined Gray in taking a firmer stand against moral insanity. In

the 1866 “Proceedings of the Association” of the AMSAII, W.S. Chipley observed that among the thousands of patients respectively under his care and the care of medical superintendents McFarland, Gray, Workman, and Ranney, there had not been a “single case of what is termed moral insanity.”

The “Gray-Ray debates,” as they became known, heated up through the 1860s as the rift over moral insanity spilled out from the pages of medical journals and into courtrooms. The very public implications of this debate were repeatedly played out in the press fueled by the spectacle of criminal trials and the growing ubiquity of the insanity defense. High profile trials such as that of Daniel Sickles and later Charles Guiteau, the assassin of President Garfield, undermined the insanity defense as well as, it was feared, the professional status of physicians. The media attention and public impact of the Sickles case highlighted the troubling implications of the latest medical definitions of insanity when they were employed in a court of law. “The medico-legalists,” observes historian James Mohr, “had created a monster; with enough nerve and the right lawyers, a citizen with clout could use the concept of temporary insanity to quite literally get away with murder.” Despite the promise of moral insanity to contribute to the professional status and legal relevance of physicians, contention among medical and legal authorities undermined this goal.

The inclusion of intemperance in the nosology of insanity contributed to a growing public perception that moral insanity provided a means for criminals to literally

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Asylum superintendents were especially concerned with their professional status and public perceptions of their role in society as they struggled with the place of alcohol abuse within the framework of insanity. While some physicians worked to establish dedicated inebriety asylums, by the 1880s, many medical professionals distanced themselves from the moral morass of diagnosing drunkenness and the inherent difficulties in treating patients, who, once sober, resisted confinement in an asylum. In the midst of debates over moral insanity, intoxication further problematized definitions of mental illness in both the legal and medical fields.

Andrew McFarland, superintendent of the Illinois Insane Asylum, felt strongly that the doctrine of moral insanity was often utilized to protect the criminal class and was thereby undermining the best efforts of the profession to treat psychiatric illnesses. Accepting some of the “moral treatment” arguments that had helped birth the moral insanity doctrine, McFarland characterized the practice of sending “palpable insane men” to the penitentiary as a “blemish on our civilization.” However, he rejected moral insanity as nothing more than an excuse for criminal acts. “Already some pretenders to psychological science,” he asserted, “have thrown reproach upon the entire plea of insanity in criminal cases, by substituting the captivating name of moral insanity for what is nothing else but sheer villany.” He contended that “We cannot call anything moral insanity, except an impulse to do wrong or criminal acts…” His attack highlighted concerns among many of the asylum physicians that the legal and social consequences of

a general acceptance of moral insanity would not just allow criminals to escape
punishment, but that it would undermine recognition and treatment of the truly insane.
McFarland’s fears were not hypothetical, and the inclusion of disorders related to
intemperance under the rubric of moral insanity proved especially problematic. In an
1863 article titled, “Insanity and Intemperance,” that appeared in the *American Journal of
Insanity*, McFarland discussed a case in which testimony regarding a defendant’s history
of drinking compromised what he viewed as a viable defense of insanity. Sometimes it
was the physicians who saw insanity where the public saw the ordinary vice of
intemperance, but McFarland held faith that medical knowledge would be able to sort out
the truth:

> It is not merely with the broad resemblances between insanity and drunkenness
that we have to deal, in some of the cases which occur; not the question how far a
fit of intoxication renders the individual irresponsible for what he does; but we
sometimes have the two states conjoined in the same individual, each with its
liabilities and immunities, making a skein of commingled guilt and
irresponsibility, which science must disentangle. We must sometimes throw so
much light on the tissue (sic) of testimony held up before us, that amid all its
intertwisting, what is the indelible coloring of disease, and what the transient stain
of a vicious habit, shall at once appear. The task is a difficult one, requiring a
nice analysis of their differences, and such a bold separation of them that justice
may plainly see where to strike.

McFarland’s assessment of the complicated connections between insanity and
intemperance preceded a discussion of two Illinois court cases. The first, which involved
a claim to property, he outlined only briefly; the second “of much greater importance,”
concerned the trial of William Hopp for murdering his wife.46

Hopp, an Englishman of fifty-nine years of age, had arrived in the United States
thirty years earlier and established himself as a successful farmer in Wheeling, Illinois, a

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town approximately twenty miles from Chicago. In 1839, he married Martha, described as a “quiet, industrious Scotch woman,” and they had thirteen children, ten of whom were living at the time of the trial in December 1862. For a number of years, Hopp had apparently been physically abusing his wife and accusing her of various indiscretions, including giving birth to a child fathered by another man and even engaging in prostitution. On the night of June 30, 1862, he fatally stabbed her in the abdomen in their home and purportedly showed no remorse afterwards, claiming his wife’s behavior as justification for his actions.\footnote{Ibid., 451-3; “Trial of William Hopp for the Murder of His Wife,” \textit{Chicago Daily Tribune}, December 19, 1862.} There was no testimony presented at trial that suggested Hopp’s wife had indeed been unfaithful, and McFarland assured his readers that “no woman could exist in whom such accusations could be more unfounded.” The \textit{New York Times} reported, somewhat less graciously, that, “The only plea was that Hopps (sic) was laboring under a delusion in regard to his wife’s chastity – a woman with grown-up children – at the time of the commission of the murder”\footnote{“From the West,” \textit{New York Times}, May 13, 1866; McFarland, “Insanity and Intemperance, 452.} 

The defense attempted to establish that Hopp was insane and thus not responsible for the murder, but their argument was complicated by the fact of his undisputed intoxication at the time of the crime. McFarland, who acted as a witness for the defense, recognized the challenges in proving insanity in this case, “of obtaining credence for the fact that a mental disease and a vicious habit may co-exist; and to create a doubt that where the habit of intemperance and insanity exist together, they are not in relation of cause and effect.”\footnote{Andrew McFarland, “Editorial: Trial of Wm. Hopps for Murder,” \textit{Chicago Medical Examiner} 3 (December 1862): 766.} The defense employed a variety of tactics to convince the jury of
Hopp’s insanity. Physical signs were offered. McFarland described the incongruity between the defendant’s expressions and his speech and the telling nature of his “fatuous laugh.” The pupil of his eye, McFarland testified, appeared “immoveable, neither expanding or contracting with the admission or exclusion of light. I believed it has passed beyond the control of his intellect, and only responded to the play of his passion, and I thought I detected something fiendish in it.”

He also attributed the onset of insanity to a precipitating physical condition, “an obstinate dumb ague” of twelve years earlier. At least five other physicians testified as to Hopp’s “nervous temperament,” rapid pulse, “odor of the skin,” and a temperature of the head higher than the rest of the body to provide physical, and seemingly empirical, evidence that Hopp was indeed insane. Somatic signs remained important to physicians’ attempting to establish insanity and seemed to mesh with the public’s understanding that true mental disturbance would be reflected in appearance. At least one reporter drew a similar conclusion:

“After looking at the accused full in the face for several minutes we could not but feel that there may be some truth in the theory of the defense, to wit: that he was at the time of the murder, and has been for years past, insane.” The defense also relied heavily on establishing a hereditary cause for Hopp’s insanity. A significant part of the testimony concerned Hopp’s brother, Ralph, deemed “incontestably insane,” through prior legal proceedings; in fact, William had previously been appointed conservator of his brother.

Dr. Wing, most likely reflecting the view of all the physicians for the defense, confirmed

50 “Wm. Hopps on Trial for Murder,” Chicago Medical Examiner 3 (November 1862): 701.
the significance of a strong hereditary disposition for insanity stating, “I regard the fact of his brother’s insanity as an important fact in forming my opinion of the prisoner’s condition.” Testimony also confirmed that one of Hopp’s daughters suffered from St. Vitus dance.\footnote{“Trial of Wm. Hopp for the Murder of His Wife – Fifth Day.”}

Establishing the nature of Hopp’s delusions as distinct from his drunkenness perhaps proved the most intractable point. Hopp’s pattern of drinking was well established, as was his abuse of his wife while intoxicated – both points were stressed repeatedly by a number of witnesses.\footnote{See especially the testimony Eva Wydner and John Ermichell in “Trial of William Hopp for the Murder of His Wife – Second Day.”} It is possible that, at this point in history, testimony of domestic violence in the Hopp household may have, in the minds of the jury, reinforced the idea that the defendant was a common drunkard. Various temperance groups relied on stories of domestic disorder and violence to make an argument against drinking. Despite strictures on public speaking, the topic of temperance allowed women to add their perspective to an already existing narrative and to connect to their general audience. As historian Carol Mattingly points out, temperance women often created effective rhetorical arguments using “comfortable, familiar language,” evoking ordinary experiences to promote nontraditional reforms in temperance as well as in women’s rights. Unlike the testimonials of the Washingtonians, these accounts were not used to compel the transformation and redemption of the drunkard, but rather to argue for greater rights for women to protect themselves against a domestic ideal gone wrong. This
narrative of the drunkard came not from sober and reformed men, but from women who shared powerful stories of abusive men well entrenched in the habit of drinking.\(^{56}\)

To the extent that temperance women advocated against liquor and for greater rights for women, they railed against demon rum and the rum-seller, but they rarely lost sight of the evil actions of the drunkard himself. For example, as Carrie Bloomer expanded her cause from the temperance movement to marriage reform in the 1850s, she painted a decidedly unsympathetic portrayal of the alcoholic husband:

Can it be possible that the moral sense of a people is more shocked at the idea of a pure-minded, gentle woman sundering the tie which binds her to a loathsome mass of corruption, than it is to see her dragging out her days in misery tied to his besotted and filthy carcass? Are the morals of society less endangered by the drunkard’s wife continuing to live in companionship with him, giving birth to a large family of children who inherit nothing but poverty and disgrace, and who will grow up criminal and vicious, filling our prisons and penitentiaries and corrupting and endangering the purity and peace of the community, than they would be should she separate from him and strive to win for herself and her children comfort and respectability?\(^{57}\)

It was these experiences of “ordinary” women, increasingly publicized, that highlighted the abuse and neglect that accompanied the alcohol habit. Certainly it was too late to protect Martha Hopp, but it is possible that the fact of her husband’s abuse resonated more squarely with the most vicious and immoral aspects of drinking than it did with the exculpatory implications of insanity.

Despite the fact that Hopp had “always used ardent spirits freely,” McFarland offered an alternative explanation for the defendant’s behavior emphasizing testimony that indicated he was “not regarded as an intemperate man.”\(^{58}\) He assured the jury that

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\(^{57}\) Mattingly, *Well-Tempered Women*, 28

“the justification for the act committed by Hopp existed in his mind years ago,” and the
“liquor had but a secondary place, if a place at all, in acting upon the disease.” Hopp’s
insanity, he continued, was defined by the nature of his delusion, and this particular type
of monomania could neither be simulated nor brought on by liquor.59 Commenting on
the case some months afterwards, McFarland clarified that Hopp’s drinking was aptly
interpreted as a symptom of his insanity: “the vice and disease acted and reacted on each
other. When the paroxysm was coming on, he ran to the bottle by that instinct of the
disease which feeds a natural excitement with an artificial one.” It was also possible, he
argued, that intoxication had actually served to delay the murderous act, noting that “the
fixed purpose of the lunatic was sometimes lost sight of in the windy brawl of the
drunkard.”60

By popular accounts, McFarland made a “dignified” and “impressive” witness
offering testimony “which was of a purely scientific character,” and “devoid of the
slightest ambiguity.”61 Mountains of medical evidence, however, did not convince the
jurors in this case who proclaimed Hopp “guilty of wilful murder.” The editors of the
Chicago Medical Examiner attempted to explain the verdict, citing “the chief ground on
which the jurors were induced to set aside the unanimous testimony of medical witnesses,
was doubtless the belief that whatever mental impairment or derangement existed, had
been the result of the long continued and inordinate use of intoxicating liquors.”62 This
type of settled insanity, however, even if caused by excessive drinking, had been

59 “Trial of William Hopp for the Murder of His Wife – Sixth Day,” Chicago Daily Tribune, December 25,
1862.
61 “Trial of William Hopp for the Murder of His Wife – Sixth Day.”
62 “Wm. Hopps on Trial for Murder,” 703.
established as a legitimate defense since the previous century and should have upheld a case of insanity: in this case it seems doubtful that the jurors made a medical or legal determination as much as they made a practical one.

Those who believed that the physician as expert witness would enlighten legal minds and jurors often found that a very different experience awaited them. McFarland complained about his treatment as a witness for William Hopp:

In the defence on a plea of insanity, the expert witnesses stand in the bad light of partisans. They are not allowed the privilege of neutrality. In most of our courts they are sworn in the same motley group with witnesses of fact, and it is a chance if they do not have to stand the same pettyfogging fire on cross-examination, to which those luckless unfortunates are yet subject, notwithstanding the march of refinement everywhere else.63

McFarland was especially dismayed at the guilty verdict that contradicted his medical assessment, blaming both judge and jury. He had assured the jury that Hopp’s behavior was consistent with insanity rather than intoxication; that his actions were not characterized by “that diffusive character of insanity usually displayed by persons insane from the use of intoxicating liquors.”64 He faulted the instructions to the jury which did “not recognize the disease and the vicious habit as two incidents, to be separately considered,” and thus the “fatal idea that the prisoner was either insane or drunk, was that which a juryman, not much in the habit of thinking, would most likely entertain.”65

McFarland was outraged that not only was Hopp supplied “intoxicating liquor, apparently without stint or limit,” while in prison, but that the liquor account book was read in court.66

64 “From the West.”
65 McFarland, “Insanity and Intemperance,” 469. McFarland did praise the judge for allowing the privilege of the “benefit of a doubt” normally given in criminal cases to be given to insanity.
Yet it is possible that the jurors felt that McFarland and the other physicians were not the best qualified to evaluate Hopp’s drinking habits. Towards the end of the trial, the prosecution introduced some “rebutting evidence” supplied by several neighbors of Hopp. While not providing extracts of this testimony, the paper reported, “The drift of the testimony was, that Hopp was in the habit of drinking, and had been for a number of years, and that he acted as though under the influence of liquor, though not drunk, at the time the homicide was committed.”

Drunkenness was not a medical condition, and Hopp’s peers who sat in judgment of him may have accepted the assessment of his neighbors over that of physicians brought in as experts for the defense. Hopp did, however, gain an acquittal on appeal even as one paper called this result “a mockery upon justice, and a travestie (sic) upon law,” and insisted, “No one outside the Jury believes he was insane, except with liquor and passion.”

Despite promoting what might be interpreted as a fairly progressive sense of the relationship between alcohol and mental disease in his defense of Hopp, McFarland drew a clear line between his medical views and moral insanity, blaming his inability to convince the jury of Hopp’s insanity on the latter theory. “It should be explained,” he concluded, “that during the trial, the usual passage-at-arms took place between the counsel for the prosecution and a witness expert, on the subject of moral insanity – wholly foreign to the points of the case, and intended for mere effect.” He very much resented the fact that the popularity of the moral insanity defense meant that physicians were compelled to address ideas he characterized as “broad burlesque.”

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67 “Trial of William Hopp for the Murder of His Wife – Sixth Day.”
68 “From the West”; Hopp v People 31 Ill 385 (1863).
69 McFarland, “Insanity and Intemperance, 461.”
the case of Hopp did not differ substantially from that of McDonough in 1817 in which the defendant’s drunkenness left the jury unconvinced of a state of insanity; the social “baggage” of drunkenness could complicate a finding of insanity. However, McFarland, who himself was born in 1817, was educated and practiced medicine in a very different professional context.

By mid-century, the fields of psychiatry and medical jurisprudence had gained substantial recognition, and physicians had carved a niche for themselves in both the civil and criminal court system. From McFarland’s perspective, the debates over moral insanity in the courtroom were undermining the authority and relevance of the medical profession. Physicians who were not willing, or perhaps prepared, to publicly wade into current debates on medical theories in the restricted and combative atmosphere of a criminal trial often withdrew from the legal process and subsequently hampered the cooperation between doctors and lawyers. Without clear agreement on just what constituted responsibility under the law, juries, as well as the press and the general public, came to their own varied, and often contentious, conclusions.

While in the case of Hopp, McFarland tried to convince the jury of insanity where they saw only drunkenness, W. S. Chipley, superintendent of the Eastern Kentucky Lunatic Asylum, was outraged by the outcome of a trial in which he saw only drunkenness which the court interpreted as insanity. Chipley feared that the expansion of the diagnosis of insanity allowed immoral men, often aided by their lawyers, to escape just punishment by claiming, and even feigning, insanity. The vital role of the “psychologist” in detecting “feigned insanity” was underscored in his 1865 paper read

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70 Mohr, *Doctors and the Law*, xiv.
before the AMSAII. “In a certain sense,” he held forth, “our positions make us ministers of justice and humanity; in so far, as we may be able to expose the subterfuges of the simulator and make apparent the irresponsibility of those who are really deprived of reason.” He contrasted the efforts of knowledgeable, and seemingly incorruptible, physicians with those of lawyers to whom “the claims of truth, justice and humanity, might subject them to the charge of failing to earn their fees.”

In the trial of Robert Smith, Chipley was particularly dismayed by the way in which the courts accepted what he viewed as dubious theories of mental illness to excuse crime.

On the evening of April 23, 1864, a dispute broke out at the bar of the United States Hotel in Louisville, Kentucky, between a patron, Robert Smith, and the barkeeper, Frederick Landauer, when the former attempted to get a drink on credit. Words were exchanged between the two, culminating in Smith challenging the barkeeper to take the conflict to the “street.” Landauer agreed, and as he began to move out from behind the bar, Smith shot his victim in the abdomen with a Derringer pistol. Landauer died before morning, and Smith was arrested and charged with killing “wilfully (sic), wickedly, feloniously, and of his malice aforethought.”

There was little room to dispute the basic facts of the case, that Smith had been drinking and got into an argument with Landauer over payment for a drink, which were corroborated by numerous witnesses present at the bar. The strategy in the initial trial

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72 The last name of Smith’s victim is variously spelled as “Landaw,” “Landaur,” and “Landauer.” I have used the spelling from the official indictment.

seemed to be twofold as the defense sought to gain an acquittal based on either self-defense or insanity. A great deal of the testimony elicited from witnesses who had been present at the scene concerned the respective positions of the two men and the specific actions of Landauer prior to the shooting. The defense argued that Smith believed the barkeeper was reaching for a weapon behind the counter, emphasizing the confrontational language on the part of both men, as well as “the custom of barkeepers to keep pistols under the counter.” Yet, not only was there no clear evidence that Landauer actually had a weapon behind the bar, Smith was described as having instigated the event and clearly had been drinking. As drunkenness technically remained “no excuse” under the law, the defense needed to account for Smith’s drinking in a way that did not aggravate his actions.

Additional testimony for the defense suggested that while Smith had not had very much to drink, he was atypically affected by alcohol because of a diseased mind attributable to a previous illness. Some physicians testified that a “morbid desire for intoxication” could be brought on through a disease of the brain structure such as a fever or blow to the head. Joseph Woodruff, who had been drinking with Smith that evening, stated “that he knew the accused well, and that when drunk he was wild and crazy – on this occasion he was somewhat under the influence of liquor.” He insisted that the “accused could drink more intoxicating liquor than ordinary men and not become drunk.” Both of Smith’s parents testified that their son had been “attacked with brain fever” when he was a teen with his father noting,

that ever since then, the accused when taking a few glasses of liquor, was crazy and unmanageable – on such occasions he would not know what he was doing and would abuse or attack his father or other members of his family or his best friends – on one of these occasions he attempted to kill his father, the witness,
with a dangerous knife – and witness exhibited a scar on his face made by him on that occasion.

Despite this troubling portrait of the defendant, another witness, Mrs. Peters, assured the jury that “the accused when not under the influence of drink or excitement – is a kind hearted man – none better – when drinking he is not at himself but crazy from disease of the brain.” Dr. Ryan explained that “brain fever, when sufficiently violent to produce delirium or derangement, frequently leaves the brain in a diseased condition so that the use of alcoholic liquor easily produced undue excitement and insanity.” The brain could remain in this condition even after the fever had passed. Upon cross-examination, however, the doctor was forced to admit “that he never saw Smith drunk but once, last December, about, and that on that occasion he conducted himself like other drunken men.”

It is not clear how the jury was expected to reconcile the argument that Smith rationally acted in self-defense even as he may have been made insane from the effects of alcohol on a diseased mind. Smith was found guilty of murder and promptly filed for an appeal.

The appeal focused more squarely on proving that Smith suffered from insanity, moral insanity, in particular; and as such, the attorneys introduced new medical evidence of Smith’s mental condition. They also disputed the instructions to the jury, which, they argued, incorrectly characterized the relevance of Smith’s intoxication. In his request for an appeal, Smith claimed to have “discovered important evidence in his favor”; in particular, an affidavit submitted to the court by physician Henry M. Bullitt who had

concluded that Smith was correctly diagnosed with moral insanity most likely attributable to the “brain fever” he had suffered earlier in his life. The accused, Bullitt noted:

had been gentle and amiable till about the 16th or 18th year of his age, and then after an attack of brain fever, he became irascible, impulsive and violent, this change of disposition, would clearly indicate the continued existence of a morbid or diseased state of the brain or its membranes. Persons thus afflicted may be capable in their calm moments, of discriminating, as well as persons of sound mind, between right and wrong, and yet may be subject to sudden and overpowering impulses, under the influence of which they lose completely the moral government of themselves.

He noted that such a condition could cause a variety of aberrant behaviors including “an insane appetite for strong drinks, a form of insanity described by writers on the subject as oinomania.” He accounted for Smith’s violent actions:

Such persons, with their dispositions thus changed will lay violence hands when under these fits of impulse upon Fathers, Mothers, Brothers or Sisters, or even Wifes (sic) - or their best friends, where such acts are of frequent occurrence, the provocation being fanciful or imaginary, there could scarcely remain room to doubt, that they were the result of true moral insanity, such as rendered the individual incapable when under excitement of controlling his impulses as the most confirmed lunatic.

The above evidence was particularly relevant to the argument that the instructions given to the jury in the original case, which excluded the possibility of moral insanity, were both erroneous and insufficient. The verdict, guilty of murder, was set aside, and Smith was eventually found guilty of the lesser charge of manslaughter and sentenced to ten years in the penitentiary.76

The reversal of the original judgment was not only significant to Smith, who had been sentenced to hang, but this decision became an oft-cited precedent defining

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intoxication as an “excuse” and linking it to moral insanity. Judge Robertson, who delivered the opinion of the court in Smith’s appeal, was quite critical of the actions of the court in the original trial, the record of which contained thirty-six instructions. He observed that not only was it unreasonable to expect the jury to “thread such a labyrinth,” but also that the appeals court had been unclear on “what precise law was given to the jury.” He questioned, “Shall a man’s life be staked on such a confused, incongruous, and bewildering chaos of instruction?” The appeals decision cited four instructions in particular that were in error. The first two dealt with the issue of self-defense, and the last two, on which the bulk of the decision focused, concerned the legal sense of insanity. Robertson observed that “enlightened jurists” had accepted moral insanity, and thus the judge’s instructions were in error when he excluded the possibility that a man suffering from this disease “is no more a fit subject of punishment than an animal without a controlling will.” He also disputed the instruction that the jury should “always find in favor of sanity” if there was a “rational doubt” as to his mental state; rather, he ruled, that if such a doubt existed, it should “favor the acquittal of the accused.”

In justifying his reversal of the verdict, Robertson relied on a definition of moral insanity that was already squarely under attack by a strong contingent of medical men, including Chipley. The judge demonstrated little awareness of this changing tide in the field of insanity as he optimistically stated, “Moral insanity is now as well understood by medico-jurists, and almost as well established by judicial recognition as the intellectual form.” He also rejected the classical “right and wrong” test of insanity established in the

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77 Smith vs. Commonwealth, Court of “Appeals of Kentucky, 62 Ky. 224; 1864 Ky. Lexis 37; 1 Duv. 224; “Smith v. Commonwealth (1Duv. 224.), In the Court of Appeals of Kentucky, Summer Term, 1864,” in Lawson, The Adjudged Cases 669-74. A list of subsequent cases that cite Smith are identified on p. xxix.

M’Naghten case, viewing such a test as only applicable in cases of “intellectual” insanity and incompatible with moral insanity. He defined the latter as a case in which the sufferer’s “will being paralyzed or subordinated, the uncontrollable appetite necessitates an act which he knows to be wrong” and turns the individual into “a helpless puppet in the hands of Briarean passions.” The original judge’s instruction informed the jury that “‘in cases of homicide, without any provocation, the fact of drunkenness is entitled to no consideration;’ and that ‘temporary insanity which has followed as the immediate result of voluntary drinking to intoxication, is no excuse for crime.’” Robertson acknowledged the long-held fear that if drunkenness were considered an excuse, criminals would intentionally avail themselves of this advantage: “If a man designing a homicide, drink to intoxication either to incite his animal courage or prepare some excuse, the killing will be murder.” Nevertheless, he insisted that intoxication could rightly act as a mitigating factor that reduced a crime to manslaughter if there was no malicious intent, merely “sensual gratification or social hilarity, without any premeditated crime,” behind the act of drinking itself. Robertson did not seem troubled by the question of whether a state of intoxication was intentional or temporary, a consideration that had more customarily excluded it as an exculpatory factor, acknowledging that “if transient insanity ensue, although it should not altogether excuse, yet it should mitigate the crime of the inevitable act.” He questioned why the idea that drunkenness can provide “no excuse for crime” should “be still recognized as law in this improved age of a more enlightened and homogeneous jurisprudence?” Robertson’s view on the exculpatory significance of drunkenness, informed by his understanding of what he understood as accepted medical
science and “true modern law,” was quite expansive and bordered on accepting drunkenness itself as a form of insanity that abrogated responsibility.\(^79\)

Chipley commented on the decision in the appeals case in a paper that was read before the Association of Medical Superintendents in April, 1866, and subsequently published in the *American Journal of Insanity* alongside the summary of the case. At this point, Dr. John Gray had taken over as editor of the journal which had resolutely taken an anti-moral insanity position under his leadership. Chipley began his remarks on the case by acknowledging the complicated questions accompanying medico-legal issues of intoxication. And even as he noted his respect for Robertson, he expressed his fear that the decision in this case was a “dangerous” one in which “drunkenness is distinctly recognized as ‘an excuse for crime.’” Chipley affirmed that drunkenness is not insanity: “It is a voluntary state, not a calamity. It is simply temporary excitement, accompanied by more or less confusion of intellect, brought on by the voluntary act of the inebriate,” and at best, it may mitigate crime in certain cases. If drunkenness exempts from punishment, he asks, then “what protection would the law give to society from the violence and vindictive passions of wicked, heartless, and desperate men, who are restrained by no higher motive than the fear of punishment?” He noted that it can be easily feigned, easily achieved, and exists as a “transient” state. Yet, Chipley painted a complicated picture of an appropriate response to drunkenness in medicine, the law, and society as he revealed some sympathy for the drunken offender for whom “the law mercifully recognizes the weakness of human nature.” He further conceded that drunkenness, defined neither as an excuse nor as insanity, can be used to "rebut the

presumption of malice” in a case of “passion.” There is a sense that Chipley’s argument was informed by a practical sense as much as a scientific one, and he was at least intrigued by, if not entirely convinced, of an expanded definition of insanity that encompassed immoral behavior. “I will readily admit,” he stated, “that all crimes are species of insanity; but I am not prepared to admit the plea of insanity as an excuse for violations of law” unless there is a true defect in the ability to know the difference between right and wrong. Similarly, the line between the habit, “one of the most powerful and controlling elements of our nature,” of drinking and “insanity resulting from the abuse of ardent spirits” is blurred. Early attempts to medicalize the drinking habit generally fell under the rubric of moral insanity, a theory increasingly under attack by a medical profession, some of whose members viewed it as potentially excusing crime and undermining their professional status and relevance to society. Diagnosing diseases related to chronic or heavy drinking became a minefield for physicians as it raised larger questions of morality and social order. This was particularly true in a society in which the temperance movement preached that the choice to have the first drink is an immoral one; then how does one excuse the later problems of irresistible habit or uncontrollable passion that may result?

Those physicians opposed to the acceptance of moral insanity found themselves in an awkward position. After Dr. Chipley’s paper was read, a prolonged discussion among various and prominent members of the AMSAII on the “legal responsibility of inebriates” commenced. One member of the society characterized moral insanity as “a

80 “In Court of Appeals,” 6-45. Chipley’s comments are limited to the decision of the appeal judge. He acknowledges in a later discussion of his paper in the same issue that he is unfamiliar with the testimony in the case. “Proceedings of the Association,” 133.
bug-bear in the meetings” and wished “that the Association would pass a resolution never to discuss this subject again.” John Gray was less concerned with the disagreement between his fellow members than he was with the way the subject was being handled in the courts: “It is by testimony, given by those who, though professional men, do not claim to be experts in such cases particularly, that discredit and odium are brought upon us.”

Physicians recognized that their authority was being undermined by both the suggestion that all immoral behavior was diagnosable as well as the public squabbling between physicians in the courtroom and in medical journals; even so the doctrine of moral insanity was significantly shaping the way questions of responsibility were understood and decided.

Chapter 5: “They are simply drunk” – Backlash against Dipsomania

Despite repeated pronouncements to the contrary, questions of state of mind in the law and medicine meant that drunkenness was increasingly argued as a defense to serious crime, but a key question was should it be used as an excuse for crime? The answer depended both on who was accused and who was passing judgment. Significant debates within the medical field, played out for the jury in our adversarial court system, meant that contradictory evidence of the defendant’s mental state was often presented as testimony. Judges also imposed their own interpretations of the law and the facts of the case; witnesses offered testimony as to state of mind, and juries drew on their own experiences as well as their impressions of the case. The law set up a structure that defined criminal action and responsibility, but exactly how the facts of the case fit into this structure varied within the specific context.

Defenses based on intoxication had exploded by mid-century as the causes and effects of chronic alcohol use more acutely became subjects of scientific study. Medical opinion earlier in the century, while noting the compulsion to drink, was more focused on the effects of drinking, with diagnoses limited to settled insanity brought on by long years of intemperance or delirium tremens as an unintended consequence of heavy drinking. Increasingly, over the course of the nineteenth century, physicians sought to medicalize the habit of heavy drinking itself. The lack of consensus in the ensuing years, as well as the influence of social and cultural variants, is only partially reflected in the wide variety of terms that emerged for “chronic drunkenness.” Mariana Valverde has studied various ongoing attempts to medicalize “diseases of the will” throughout the nineteenth and twentieth centuries, viewing these not as “an evolutionary line, but rather something like
a compulsion to repeat the same dilemmas.” Early in the nineteenth century, Benjamin Rush had characterized the compulsion to drink as a condition distinct from habit, rather a “palsy of the will.” Dipsomania meaning “thirst frenzy” entered the language in 1819 to describe an uncontrollable desire for drink although its use remained limited until mid-century. In the original 1838 publication of his Treatise, Isaac Ray included a discussion of the “imperious and irresistibile” craving for alcohol noted by Esquirol, but did not identify it as dipsomania until a later edition. Oinomania was used similarly, for a brief period, to describe a disease defined by the inability to resist alcohol, one in which individuals were “impelled by an overwhelming propensity to do that which they know to be wrong, and from which they derive no pleasure.” The term alcoholism was coined by Swedish physician Magnus Huss in 1849 but was only used sporadically until the twentieth century. By the latter part of the century, inebriety was employed to define a disease that affected the nervous system creating a morbid craving for alcohol. It was thought to especially affect the more advanced nervous systems of a better class of men to explain their inability to resist a craving for alcohol and other stimulants. The plasticity of terms for chronic alcohol use makes some sense for a condition that historically been seen as a hybrid of free will and habit, of vice and disease. One

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historian advanced the idea that the disease concept of alcoholism was “consciously metaphoric” in order “to give a scientific framework within which a condition seen as sin, failure, and disorder can be made more manageable.” However, the combination of an imprecise definition and plausible medical authority behind dipsomania and its related diagnoses made it a potential defense strategy for those who had committed violent crimes while intoxicated. It was rare to see a successful defense that was based solely on dipsomania, but it did sometimes give the jury something to “hang their hat on” if they were inclined at all to be merciful in their verdict. Public debates over the legitimacy of the disease concept also reveal a great deal more than just the complicated and incomplete process of medicalizing alcohol abuse; judges, physicians, jurors, the public and the press alike revealed their respective assumptions about society, crime and responsibility as they engaged in debates over the relevance of intoxication as a defense.

The justification behind the assertion that drunkenness could provide no excuse for crime was that the decision to drink was considered voluntarily in nature, and therefore the individual was responsible for any consequences. However, if an individual were to be diagnosed with a disease that created an “irresistible compulsion” to drink, it undercut the rationale that a sound mind had exercised free will in making the decision to drink. Physicians had expanded their purview over insanity generally and its relation to alcohol specifically; and, like most everyone else, they recognized that some individuals did form what appeared to be an intractable drinking habit. Was this the product of a diseased mind? Andrew McFarland, who had testified that William Hopp was insane

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when he killed his wife, certainly saw a relationship between his mental illness and chronic drinking. In rejecting the existence of the disease of dipsomania, he offered an explanation for the diagnosis: "So naturally does paroxysmal insanity ally itself with indulgence in intoxicating drinks, that some nosologists, under the title of Dypsomania, recognize their co-existence as a distinct disease."  

Today, one suspects that McFarland would have used terms like “self-medicating” or “dual diagnosis.” Isaac Ray similarly remarked on the difficulties of separating insanity and the compulsion to drink, “That insanity may sometimes be fairly attributed to drunkenness, cannot be doubted; but, considering the nature of maniacal impulses, and the abundant opportunities for gratifying the desire for drink, there is reason to suspect that the vice may be an effect rather than a cause; and farther inquiry often confirms the suspicion.”  

Even those who resisted defining the compulsion to drink as a separate disease were often left to wrestle with formulating an explanation for what seemed to be irrational behavior. Asylum superintendents, in particular, observed the connection between heavy drinking and insanity, although their conclusions as to the significance of that link differed widely. Dr. Kirkbride, superintendent of the Pennsylvania Hospital for the Insane, attributed “intemperance” as a cause of the insanity for 334 of 1953 patients with more than half listed as “unascertained.” The Alabama Hospital listed intemperance as a cause of insanity for 12 of its 94 patients, and 16 of 375 cases at the Central Ohio Lunatic Asylum were thought to result from intemperance.  

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establish an inebriate asylum in 1857 may have overstated in its conclusion “that fifty-five per cent of all of our insanity, and sixty-eight per cent of all our idiocy, springs directly or indirectly from inebriety alone.”⁷ As these statistics attest, habitual drinking was broadly recognized as a significant social problem, yet its status as a medical or moral issue was unresolved.

In an 1862 article, T. H. Tanner noted the increasing popularity of the term dipsomania to describe “cravings for intoxicating liquors” as a form of insanity. The implications of this line of thought posed a “danger to society,” he insisted, as heavy drinking is nothing more than a “degrading vice.” Noting the absurdity of characterizing “every act of wickedness or folly” as a disease, he suggested such individuals could easily be “cured” by restricting their access to alcohol – by legal detention if necessary.⁸ Providing a diagnosis for the bad behavior resulting from heavy drinking was criticized as being virtually synonymous with excusing immorality and crime. John Ordronaux, the New York State Commissioner for Lunacy, lambasted society’s fascination with “astounding crime” and the tendency to place blame elsewhere so that “Every vice, every crime is disease, nothing short.” Ordronaux, who was both an attorney and a physician, had been a vocal critic of moral insanity, and now he identified one of the worst examples as the “present attempt to extenuate habitual drunkenness as a special disease, removing its subjects from the sphere of moral accountability.”⁹ Historically, Albert Ernest Wilkerson has argued, the concept of alcoholism as a disease has “been used to

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neutralize moral connotations”; even as it may not rest easily in the diagnostic manual, it serves a higher purpose of recognizing a problem and legitimizing treatment. Viewing alcoholism through a scientific prism grants primacy to medical concerns over moral judgment. I would argue that those who rejected dipsomania and its related conditions in the mid to late nineteenth century feared just those implications and thereby consciously privileged moral concerns over a medical interpretation of this condition. Ascribing the alcohol craving and the habit of heavy drinking to a disease category meant removing some of the responsibility, and perhaps some of the stigma of drinking itself, from the actor. In an era of an influential temperance movement and a growing call for legal prohibition, few were inclined to go that far. Society would benefit more from discouraging drinking in the first place, and perhaps the fixed habit that resulted served a better lesson than it did a disease.

On October 17, 1857, James Rogers murdered John Swanston in New York City after an accidental and unfortunate encounter on Tenth Avenue. Swanston and his wife were returning from the market when Rogers, who was walking with two companions, reportedly bumped into Mrs. Swanston. Words were exchanged, and Rogers fatally stabbed Swanston. The perpetrator fled the scene and was later apprehended at his mother’s house in Woodbridge, New Jersey. The crime was indeed tragic, and the defense attorney’s picture of the married couple planning “happy schemes for the future” before the murder provided a stark contrast to the testimony of his widow “attired in black” and “bowed down by a tremendous grief.” Accounts of the crime demonstrated a

10 Wilkerson, “History of the Concept of Alcoholism as a Disease,” 3.
palpable concern over violent crime in mid-century New York, even as they evinced some sympathy for Rogers, a youth, who was intoxicated at the time of the murder.

Rogers was described as either seventeen or eighteen years old, “a steady and industrious boy” who “although rowdyish in appearance, is not of desperate aspect.” His two friends testified “that the prisoner had drunk beer with them twice during the evening, that he was intoxicated, and that they were trying to get him home”; once home, his family claimed he “fell upon the floor, and that they had to undress him and put him to bed.” There were multiple witnesses to the crime, including Rogers’ companions, and the defendant himself admitted he had committed the crime. The defense had little recourse but to argue that the crime was not premeditated; Rogers “was mad with liquor, and did not know what he was doing”; and at most, it was argued, he should be convicted of manslaughter. The jury disagreed, and returned a verdict of guilty of murder in the first degree after less than an hour’s deliberation.\(^\text{11}\)

There were those who, right from the beginning, supported a harsh sentence for Rogers. Alongside the more standard newspaper reporting on the verdict, an additional account appeared as “a warning to other youths of similar instincts, to pause in their career before it is too late.” For this writer, neither Rogers’ youth nor his intoxication served as mitigating factors: Rogers was “old in sin.” New York in 1857 was characterized by uncertainty and disorder. Just a few years before civil war would break out in the nation, the city itself faced mounting crime, gang warfare, a police riot between

rival forces, and a financial panic. Given these circumstances, it is not surprising that the author of this editorial urged, “Public security demands that rigid justice should be dealt out to that very class of youths of which Rodgers is the type; and if it is earnestly intended to cleanse the Metropolis from the stain of crime with which it is disgraced, it is necessary that the work should be commenced at once.”12

An account of the trial in the American Journal of Insanity was more sympathetic even as the author ultimately sided with the protection of society over individual mercy:

and although we have the humanity to sympathize with the victim whom it consigned to death, we are disposed to think it, in a general aspect, a subject of congratulation, that the prevailing wildness of youth should be checked by an awful example, showing that neither boyhood, nor the freaks of intoxication, are to receive sympathy from legal tribunals, or to be indulged in violence and crimes under the favor of a loose and misguided construction of the acts committed under their impulses.13

An interview with Rogers after the verdict painted him in a “pitiable condition.” He was described as “stunned’ and “stupefied” with no memory of the event whatsoever while his mother was “so prostrated with grief that she has been unable to leave her bed.” This reporter, however, also recognized the primacy of public safety suggesting there would be no clemency for Rogers “when every day the records of fresh murders, one crowding on the heels of another, successively appal (sic) our citizens.” Descriptions seemed to alternate depending on the point a particular writer was trying to make, and Rogers was variously described as a “boy-murderer” with respectable family connections or “rowdy” with “no rudiments of education.” The execution was set for January 15.14

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13 “Decision of the Court of Appeals, 260.
An appeal was filed that charged various errors including the failure of the judge to instruct that if “there was no intention or motive, by reason of drunkenness, to commit the crime of murder, that the jury should find a verdict of manslaughter.” The appeal made sense given the impreciseness of the law on issues of intoxication and intent even as the courts attempted to definitively rule on the issue. Justice Denio decried the lack of clarity in the law observing that, “The commission of crime is so often the attendant (sic) upon and the consequence of drunkenness, that we should naturally expect the law concerning it to be well defined.” He then proceeded to offer roughly a dozen precedents dating back to the sixteenth century that limited drunkenness from being pled as an excuse for crime. Ultimately, he determined that,

In the forum of conscience there is no doubt considerable difference between a murder deliberately planned and executed by a person of unclouded intellect, and the reckless taking of life by one infuriated by intoxication; but human laws are based upon considerations of policy, and look rather to the maintenance of personal security and social order, than to an accurate discrimination as to the moral qualities of individual conduct. But there is, in truth, no injustice in holding a person responsible for his acts committed in a state of voluntary intoxication...

Some physicians had feared that moral insanity, which they held as a controversial and unsupportable theory, and related forms of mental disease such as dipsomania were contributing to “these days of confusion and looseness of ideas in respect of morals and crime” and in turn diluting the system of law and order. In holding individual responsibility and the needs of the community above sympathy for the offender, Denio received praise from physicians who had opposed the prodigious employment of mental disease to excuse crime.15

In the end, James Rogers presented a tragic figure, but his crime was deemed inexcusable. A request for a commutation of sentence was made to Governor John King; but while the governor admitted that the “youth of the unhappy convict has pleaded strongly with me in his behalf,” he based his ultimate refusal to interfere on a “consideration of public justice and of private security.” Rogers was hanged on November 12, 1858. His case was later evoked after the commission of a similar murder the following July by “beastly, drunken rabble.”

Rogers had little standing or influence with which to make his case; and, in the end, despite some sympathy for Rogers’ youth, his execution was held up as a defense of morality and a bulwark against what was viewed as an “appalling increase of crime” in the city. Under different circumstances, however, a lack of public sympathy and an outright rejection of the idea of intemperance as a mental disease led to very different results for a man with greater access to influential members of society. On December 31, 1858, in Atlanta, Georgia, William A. Choice shot and killed Calvin Webb, a bailiff who had arrested Choice the day before on a charge of outstanding debt. It was reported that public outrage was such that Choice was almost lynched at the time, with a meeting of citizens crying out, “hang him! hang him!!” The prisoner subsequently remained under protection for fear of retribution by friends of Webb, a man described as a “respectable and peaceable citizen,” leaving behind a wife and several children. Choice’s defense was not guilty by reason of insanity, and evidence was presented both of an earlier head injury


and of intoxication at the time of the crime. The defendant, however, was found guilty
and sentenced to hang. His attorney, who it was claimed “firmly believed in the insanity
of Choice,” subsequently filed an appeal to the Supreme Court of Georgia. The opinion
on the case, written by Chief Justice Joseph Lumpkin, dismissed the general concept of
moral insanity which he argued “has no foundation in the law” and questioned the
specific disease of oinomania. Lumpkin’s view reflected little patience for Choice’s
attorney B. H. Hill whom he sarcastically called “the powerful and indefatigable
champion of the accused” as he questioned both his arguments and expertise. 18

The context of the perilous division between north and south, just months before
Lincoln’s election, provided a backdrop to the decision as Lumpkin described moral
insanity as “an offshoot from that Bohon Upas of humanism, which has so pervaded and
poisoned the Northern mind of this country, and which, I fear, will cause the glorious sun
of our Union to sink soon in the sea of fratricidal blood!” 19 Rather, Lumpkin’s
interpretation of drunkenness and insanity forthrightly rejected the disease model in favor
of what he most likely would have characterized as old-fashioned common sense. In fact,
he welcomed evidence from “non-experts,” and his decisions upheld the admissibility of
“opinions of persons not experts as to the sanity of the prisoner” and “opinions of
witnesses that the prisoner appeared to be drinking.” Lumpkin asserted,

As for myself I would rely as implicitly upon the opinions of practical men, who
form their belief from their observation of the appearance, conduct and
conversation of a person, as I would upon the opinions of physicians who testify

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18 “Horrible Tragedy,” Daily Morning News, January 3, 1859; Wallace Putnam Reed, History of Atlanta,
Georgia (Atlanta: D. Mason and Company, 1889), 298-9; Franklin M. Garrett, Atlanta and Environs: A
Chronicle of Its People and Events, 1820s-1870s (Athens: University of Georgia Press, 2011), 448-9;
“Choice v. State (31 Ga. 424.), In the Supreme Court of Georgia, August Term, 1860,” in The Adjudged
Cases on Insanity as a Defence to Crime, ed. John Davison Lawson (St. Louis: F. H. Thomas and Co.,
1884), 538-56.
from facts proven by others, or the opinions even of the keepers of insane hospitals.

He further rejected testimony that the family’s decision to limit Choice’s access to weapons was a recognition of a diseased mind, concluding instead that it was a prudent choice given that the defendant was dangerous “while in his cups.” Choice’s earlier gripe with his victim was interpreted as evidence of drunkenness rather than insanity: “A drunken man rarely if ever shoots or stabs another, unless he cherishes some resentment towards him. It is quite otherwise with the insane.”

Lumpkin also refused to entertain either the existence or the implications of the disease of oinomania: “Whether any one is born with an irresistible desire to drink, or whether such thirst may be the result of accidental injury done to the brain, is a theory not yet satisfactorily established. For myself I capitally doubt whether it ever can be.” Of course as a man of the law, Lumpkin accepted the exculpatory nature of insanity, but he agreed with Judge Bull, the original judge on the case, that there were only two options for the jury to consider: “that the killing was murder, or excusable on account of the insanity of the accused.” He thereby rejected the defense’s objection that Choice’s intoxication could serve as a mitigating factor and that instructions should have been given to the jury on lesser degrees of the crime. He asked, “what had the law of manslaughter to do with this case?” and suggested it would have been “a mockery and farce” to instruct on voluntary manslaughter. The appeal alleged a number of errors in the original trial relating to the significance of Choice’s intoxication to his culpability, including a failure to specifically instruct the jury on the disease of oinomania by which the defendant “was irresistibly impelled by a will not his own, to drink; and being so impelled did drink, and thus became insane from drink, and while thus insane he
committed homicide.” Lumpkin agreed wholeheartedly with Judge Bull who did not want to “confuse” the jury “by attempting to notice all these learned distinctions,” and dismissed the significance of Choice’s drunkenness to the question of sanity by stating that “an insane man is irresponsible, whether drunk or sober.”

The implications of recent psychiatric diagnoses related to drunkenness were here interpreted as suggesting a far-reaching destruction of responsibility under the law. Despite what appeared to be widespread agreement on the decision in this case and the testimony of six physicians that the defendant was sane, Choice’s attorney reportedly had some influence and was able to make an appeal to the state legislature and gain a full pardon for his client. Interestingly, the coverage of Choice’s trial and pardon at times appeared alongside reports of the trial and execution of John Brown. The effects of the social and historical context in this case were certainly palpable. Choice spent a brief time in an insane asylum and then became a sharp-shooter for the Confederate army with accounts noting he “made a brave soldier.”

Courtroom debates and judicial decisions reflected broad cultural trends just as surely as they highlighted significant debates within the medical and legal fields. John Gray recounted his experience of being subpoenaed in the trial of Ann Barry, charged with infanticide, who employed an unsuccessful defense of moral insanity:

"The woman received, I think, the punishment which she merited, the one which ought to have been meted out to her, that of imprisonment for life. There was no insanity in her case, it was simply a case of murder. She destroyed, by drowning, this illegitimate child, because it was inconvenient to her. She was perfectly brutalized, and brutalized in the face of society. Society saw it, and yet took no particular pains to prevent it; no pains to reclaim her. She had just served out a period of several months in the workhouse, and was turned out with twenty cents"

and an illegitimate child a few months old. She took this small amount and bought enough whiskey to get partially drunk, tied a string around the child’s neck, took off its clothes, which she subsequently pawned, and threw the child into the canal.22

Despite his recognition of the harsh social conditions that Barry faced, Gray’s account unequivocally denied that Barry’s actions were anything but criminal. The legal drama of Barry’s trial touches not only on issues of drinking and insanity, but it also sheds light on fundamental issues related to gender highlighted by the crime of infanticide and presumptions of class.

Initial accounts of the drowning death of a child in Rochester, New York, did not identify Barry as the perpetrator. The local paper, reporting on a “most shocking case of infanticide,” incautiously identified a young woman by the name of Cotter as a suspect assuring its readers, “Cotter and crime are synonymous terms. WE never knew man or woman by the name that was not a thief or a prostitute.” The next day, they sheepishly admitted their mistake and apologized having “been informed that there are respectable people by the name.” A week later they reported the arrest of Ann Barry who was caught at the train station ready to head west. The same paper later described her “of stout build, a gross amorous female.”23 At the time of her trial, Ann Barry was thirty-eight years old. Her marital status was unclear since she had married a man named Daniel Barry at some point in her twenties, but he was believed to be a deserter from the army who had not been seen for three years and was possibly deceased. She reportedly had been remarried


to a man named Frederick (also identified as Frank) Smith, but the legality of that marriage was in question, and she was not identified with his last name. The deceased child was purportedly the offspring of this latter relationship; Barry also had one other surviving child who was twelve years old. She had been arrested numerous times for crimes including petit larceny, and drunkenness and disorderly conduct, which caused her to be confined to the penitentiary on five different occasions. In early 1865, Barry was arrested for stealing clothes off a line of wash and sentenced to six months during which time she delivered a baby girl who was approximately five weeks old at the time of her release on July 10.24

The fact of Barry’s gender is obviously essential to an understanding of the crime itself, infanticide, but it is also significant to perceptions of her drinking and questions related to her sanity. The crime of infanticide became highly publicized in the 1860s as a means of drawing attention to the plight of women in circumstances so dire that they would take the lives of their own children in a marked violation of women’s most sacred duty. Sarah Barringer Gordon, in her study of a case that took place just three years after that of Barry, noted this paradoxical view of the crime of infanticide. Despite the recognition of the circumstances that drove women to this state, sympathy had its limits, and support for women’s criminal behavior, particularly the killing of babies, ultimately undermined the cause of social reform.25 Similarly, women drinkers did not fit easily into existing narratives of temperance. Women were generally portrayed as victims of

men’s intemperance, and women’s drinking was often a much heftier social transgression. Harry Gene Levine has observed that, “the restrictions against women’s getting drunk were so strong among Protestant middle class supporters of the temperance cause that the topic of women’s intemperance was itself almost taboo.” A rare mention of the problem appeared in Thomas Doner’s 1877 autobiography, Eleven Years a Drunkard: “Men can reform; society welcomes them back to the path of virtue…But, alas, for poor women who have been tempted to sin by rum, for them there are no calls to come home, no sheltering arm, no acceptance of confessions and promises to amend.”26

While upper class women could acceptably partake of patent medicines (many of which contained alcohol) or opium products, conspicuous drinking represented an association with the lowest level of behavior from which she could not be redeemed. The only temperance narrative to focus on a woman, “Confessions of a Female Inebriate” was presented as the autobiography of a “lady,” although it is widely believed to have been written by Isaac F. Shepard. The contravention of social norms of the main character’s drinking was emphasized in the story through her “fraternization” with the servants as well as through neglect of her role as wife and mother. While such behavior might have led to a powerful redemptive story for a man in a similar position, the author notes:

O how wide the difference with the heart of a woman! She may be forsaken, abused, trampled on, but amid all, the thought of separation does not enter her heart; if the whole world scorn and forsake him, it is the reason why she clings more closely to the wreck, but let the wife be scorned and forsaken of the world, and the husband will not bide the disgrace.27

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Thus very different assumptions about gender and drinking provided the backdrop to Ann Barry’s trial. In fact, other than some sympathy for the conditions of her situation, there was little evidence in the trial of redemptive value. Barry appeared as neither a good mother nor a good wife; and in fact, she was possibly a bigamist. The only acknowledgement that she might have had a sense of regret for her crime was her statement that, after seeing her child struggle in the water with a stone around its neck, “she felt sorry and would have rescued it if she could have done so at the moment,” but was scared off by some approaching men.28

Barry confessed to the crime and was assigned counsel by the court due to her impoverished circumstances. At the trial’s commencement, it was critical to establish that Barry was indeed the mother of the child that was found, and a great deal of testimony corroborated the fact that the defendant had given birth and left the penitentiary with a healthy child – and that the deceased child was indeed the same one. This point of fact was essential not only to the facts of the crime, but because, as Gordon has noted, in cases where juries were inclined to be sympathetic to a mother who killed her child, they looked for “a sense of plausible doubt about the cause of death (thus the exercise of compassion would not be based on an obvious ruse) and on the desperation of the accused (who presumably, therefore, acted out of panic and despair rather than as a calculating murderer.)” Given the extensive evidence provided by various employees

and supervisors of the penitentiary, a witness who saw her at the canal, and Barry’s own confession, there was little question as to the act itself. 29

Another possible defense existed, however, in that the horrific nature of the act itself, as well as a history of Barry’s criminal and deviant behavior, could be used to justify a defense of insanity. Both her drinking and the murder of her child might perhaps prove aberrant enough, particularly in light of typical gender conventions, to convince a jury that no sane woman could conduct herself in such a manner. A history of drinking could provide further support: “Delirium from habitual drunkenness (sic) would make her an irresponsible person – but the plea that she was drunk or under the influence of liquor at the time she committed the act would be no defence.” The defense elicited testimony that was presumably intended to demonstrate that Barry’s long history of drinking was somehow medically deranged in its nature. Initial questioning along this line was at first challenged by the prosecution who asked what the defense “expected to show by this testimony.” Her attorney responded that “he was proposed to show that the defendant was insane continuously from the habitual use of intoxicating liquors, and they also proposed to show that from blows she received on the head at certain times she was at times insane.” The defense was allowed to proceed with this line of questioning, but much of the testimony was unclear, especially the question of whether her husband had caused her injury, and a great deal was possibly detrimental to Barry’s character. The initial decision to drink, it was argued, was not Barry’s, who was described as “a decent girl before her marriage”: numerous witnesses testified that her first husband “forced” her to drink on numerous occasions. It was not uncommon to portray women’s drinking as

29 “Trial of Ann Barry,” February 21, 1866. There was some dispute that the confession was made “under a threat or promise”; Gordon, “Law and Everyday Death,” 63.
yet another ill effect of men’s intemperance on the domestic ideal. Afterwards, Barry’s behavior was described as decidedly less feminine. Witnesses recounted how Barry often “looked wild”; she “took hold of her mother and threatened her”; she spoke out to her dead father, laughed at her brother’s funeral, and kissed another woman who “could not get away from her.” Despite objections, witnesses were allowed to speculate not only on Barry’s behavior but as to whether or not she was actually insane, with several relatives and friends declaring her to be of “unsound mind” as well as specifically suffering from delirium tremens.30

The testimony of four different physicians for the defense lacked agreement on the concepts of insanity and legal responsibility. Dr. Preston threw in everything but the kitchen sink, stating an individual could be made insane by drunkenness, blows upon the head, repeated incidences of delirium tremens, or dipsomania; although he did admit that the act of infanticide was not in and of itself a sign of insanity. Another stated he did not see evidence of insanity, but that he considered “every drunken person insane, temporarily.” Resolved that there was no evidence of “insanity proper,” a writer for The American Journal of Insanity criticized these physicians in an 1868 article titled “Drunkenness and Crime” maintaining that their testimony “showed that confused understanding of the limits of legal responsibility in such cases, which has tended to bring medical opinions on these subjects into disrepute.” The significance of this statement in the Journal is apparent when we consider that Dr. Gray, superintendent at

the State Lunatic Asylum at Utica and well-known opponent of the doctrine of moral insanity agreed to testify for the prosecution. While he acknowledged that habitual drunkenness could lead to dementia or mania or a temporary state of delirium tremens, he absolutely rejected the argument that excessive drinking was in and of itself a disease significantly affecting mental status. He stated in language likely to be well understood by the jury, “I do not recognize the disease called dipsomania; it is intemperance. I do not consider a person insane when intoxicated; they are simply drunk in my opinion.”

Ann Barry thus was not a patient, but an immoral criminal.

In the end, it is unclear what, if any, impact this testimony had on the actual verdict rendered. Ann Barry was found guilty of murder in the second degree and sentenced to life at the State Prison at Sing Sing. The local newspaper, which it must be noted had been quite severe in its opinion of Barry, reported that, “The jurors, or the larger number of them, unhesitatingly stated that they were fully convinced that Ann Barry, with premeditation, took the life of her offspring, and that she was sane when she committed the deed.” Their agreement on a verdict of murder in the second degree, rather than first degree as charged in the indictment, was based on an “abhorence (sic) to hanging a woman” on the part of two of the jurors who were then able to convince the others. The question of capital punishment had been raised earlier when it was reported that there was some difficulty in compiling a jury because so many potential jurors resisted rendering a verdict that would lead to the death penalty. It was observed that, “The gallows is evidently growing very unpopular if the jurors are to be credited in their

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Degrees in the charge of murder had been instituted in part due to objections to the death penalty, and while intoxication was frequently cited as a relevant mitigating factor in making such a determination, it is unclear to what extent the jurors considered it in their decision. In this case, the reluctance to execute Barry seemed to stem more from her gender than from her defense.

A close reading of the aforementioned cases reveals that determining what influence medical ideas on intoxication versus prevailing social biases had on an eventual verdict and sentencing is both challenging and variable. The M’Naghten rule had been an attempt to create greater consistency in the way in which the insanity defense was employed in criminal cases by defining insanity as a question of law relevant to establishing guilt. Even though Ray’s concept of mental illness had provided support to the ruling in this case, the resulting formulation of the right and wrong test cast insanity as a legal rather than a medical determination. The result was a more rigid definition of criminal responsibility than that suggested by the theory of moral insanity which was much more open-ended – not only as it separated the intellectual and emotional aspects of behavior, but as it included temporary conditions and newer definitions of mental disease. The M’Naghten rule had engendered controversy from the beginning with its proponents lauding the workability of a clear legal test and its critics arguing that this test failed to capture the complexity of the behavioral consequences of mental disease. Despite the considerable influence granted to the law in this rule, a number of judges considered its definition of insanity too rigid and the determination of insanity as a question of law misplaced. While moral insanity continued to be debated within the medical field, it

offered new possibilities for understanding mental illness that did not sit comfortably within the rubric established in the M’Naghten case. In the United States, some courts reached an uneasy compromise by adding the “irresistible impulse” test to legal definitions of responsibility.\(^{33}\)

A well-regarded justice of the New Hampshire Supreme Court, Charles Doe, drew heavily on Isaac Ray’s theory of moral insanity when he introduced, in 1866, what became known as the “New Hampshire rule.” In formulating this interpretation of legal insanity, Doe believed that the M’Naghten case had made an error in characterizing mental disease as a question of law rather than as a question of fact to be decided by the jury. Doe was greatly influenced by Ray’s theories of moral insanity, as evidenced by a substantial record of correspondence in these years, and had largely based his 1868 dissent in the testamentary case of Boardman v. Woodman on Ray’s suggestions. However, Doe shied away from referencing Ray too extensively for fear of courting additional controversy. Consistent with his interpretation of the law, Doe did not seek to enshrine moral insanity within the law, but rather to create a place in which changing understandings of insanity could be debated, by medical experts and lay witnesses alike, as matters of fact for the jury to determine.\(^{34}\)


Doe argued for a much more malleable definition of insanity that could simultaneously adapt to the latest medical theories and incorporate the experiences of non-experts. At the same time, he questioned the special status that mental disease held under the law asking, “Why should the law say that delusion is a test of any form of mental disease, when the law will not say that certain other symptoms are the tests of gout or small pox?” He feared that legal rules, such as the test of right and wrong, were too rigid and potentially mired in outdated theories; citing the pronouncements of seventeenth century legal scholar, Sir Matthew Hale, on witchcraft to make his point. Such precedents, once established, remained products of past history and social practices that were often no longer relevant. His approach, he argued, was one which “takes off the shackles of precedent and authority, - opens the subject to be decided in each case as an entirely new subject. Juries may make mistakes, but they cannot do worse than courts have done in this business…” Some critics had insisted that complicated points of law and confusing judicial instructions meant that juries were already making decision based on “horse sense” rather than the law. This was particularly true in cases involving intoxication in which unsettled medical debates, entrenched cultural assumptions, and weighty social consequences made for a slippery medical and legal argument determining legal responsibility. Given Doe’s insistence on an evolving definition of insanity, alongside his emphasis that jurors were best suited to decide a defendant’s mental condition, it is not surprising that the case most significant to establishing the New Hampshire doctrine, State v. Pike, was based on a defense of a fairly recent and decidedly

36 Reid, “Understanding the New Hampshire Doctrine of Criminal Insanity,” 373-4; Reik, “The Doe-Ray Correspondence,” 188-91 (see also footnote on p. 191).
controversial diagnosis – dipsomania.

On May 7, 1868, in Hampton Falls, New Hampshire, Josiah L. Pike assaulted Thomas Brown and his wife, both in their seventies, with an axe in the course of a robbery. The crime, described as “one of the most revolting, cold blooded crimes ever recorded,” shocked the community. The couple was still alive after the attack when a farmhand reporting for work the next morning was greeted by Mr. Brown “covered with blood,” and his wife, barely conscious and shielded with rugs by her husband. Six or seven hundred dollars was reportedly stolen, and Pike, a former employee of the defendant, was arrested shortly afterwards with “part of the plunder upon him,” including new clothes and a watch. It was reported that Pike had confessed his guilt to the sheriff, although he later denied it.37

Pike’s trial was at the end of October before Chief Justice Perley and Judge Doe. His defense hoped to prove that he was insane, specifically that he “was a victim of dipsomania (an insane thirst for intoxicating liquor), consequently was mentally diseased and morally irresponsible.” The challenge for the defense was not only to establish that Pike was not guilty by reason of insanity when he committed the crime of murder and robbery, but to convince the jury that his drunkenness should be characterized as dipsomania, a mental disease that excused from responsibility. The evidence against Pike was strong, and his defense made little attempt to refute the facts of the case. The newspaper reported that the testimony of a “score” of witnesses for the state “tended to

fasten beyond doubt the murderous act upon the accused, which fact was evidently accepted by counsel for the defence, as there was little attempt by cross-examination to invalidate the testimony.” Rather Pike’s defense to this “shocking act” was that he was suffering from what was described as “insanity caused by drunkenness – a disease called dipsomania by physicians which rendered the party irresponsible for his acts.”

As was often true in these cases, witnesses for the defense painted a picture of a man who was “frenzied” and “dangerous” when intoxicated. Two of Pike’s brothers “testified to his uncontrollable appetite for liquor and his apparent necessary want of the same” to the extent that they had to lock him up to keep him from drinking. The jury had to be convinced that Pike’s behavior met the level of mental disease rather than the type of drunken behavior that was likely familiar to most of them. As such, these witnesses further testified “that liquor did not effect (sic) his body to enfeeble it, but strengthened and stimulated, for he was never known to stagger or reel like other men under the influence of liquor.” When intoxicated, Pike was described as “unconscious of what he was doing, acting with all the cunning and madness of an insane man.” His brothers further noted their father had exhibited similar behavior, perhaps alluding to early theories on the hereditary character of insanity, and one newspaper suggested that Pike had “inherited his father’s weakness.” Drunkenness, as an inherited trait, could provide support for dipsomania; however, the transmittal of undesirable traits was often portrayed more ominously as a threat to the community. Speaking on the “dangerous classes,” T. Edwards Clark, professor of chemistry, noted that “habits” often “find permanent record in our descendents, (sic)” and “children are found following in the footsteps of dissipated parents” with profound consequences to society. “Drunkenness,” in particular, he
continued, “often descends in some other form, and shows itself in crime and vice.”

Certainly the history of Pike’s father, apart from his son’s crime, would not have seemed out of the ordinary. He drank heavily and was purportedly “particularly violent,” causing his wife to be “afraid of her life” and in a “continual state of fear.” Eventually she left with the children, and her husband “died a drunkard.”

It is unclear where a jury, or the general public for that matter, would draw the line between the violent and immoral behavior associated with drunkenness as a vice and the violent and immoral behavior associated with drunkenness as a disease. The question of vice versus mental illness was rampant in medical debates on the existence of diseases, such as dipsomania, that explained habitual drinking. The thoughts of the consequences to society as well as to the medical profession itself were never far removed from the discussion. Those who accepted the disease concept seemed at a loss to explain the “morbid desire for intoxication” apart from classifying it as a physical and mental disorder. Given the alarming consequences of heavy drinking to ordinary men, noted in the past by the Washingtonians and temperance advocates, surely, it was often believed, the sufferers of a disease would exhibit even more outrageous symptoms. Utilizing the term “methomania,” Stephen Rogers cataloged a variety of symptoms that indicated a diagnosis of this form of insanity including an “irresistible desire” to drink, concealment of drinking, drinking alone, and drinking without regard to taste or quality. He recounted


some of the horrific effects of this loss of “self-control,” brought on by “insane hallucination, or by the frenzy of tormenting desire.” The story of a methomaniac who was unable to obtain alcohol after being placed in an almshouse was presented to illustrate the depth of the desire for intoxicating drinks:

He went into the wood-yard, seized an axe, and, placing his hand upon a block, cut it from the arm at a single blow. With the bleeding stump raised, he ran into the house crying, ‘My hand is off! Get some rum! get some rum!

In the confusion of the moment, a bowl of rum was brought, and, plunging the bleeding member of his body into the fluid, he raised the bowl to his mouth, drank freely, and then exultingly exclaimed, ‘Now I am satisfied!

The unique craving for alcohol and resulting loss of control formed the crux of the diagnosis and raised the question of whether or not such an individual could be legally responsible for his actions.40

Pike’s defense was well-buttressed by medical testimony that assured the jury that the defendant was not legally responsible for his actions and that the disease of dipsomania was an accepted medical finding. Dr. Hurd, of the Insane Hospital at Ipswich, was convinced that Pike was “a victim of dipsomania, as much as any patient he ever attended for insanity.” Dr. E. A. Perkins of the Inebriate Asylum in Boston, presumably concerned with establishing the legitimacy of the diagnosis, spoke hypothetically on the case concluding that “the presumptions were strongly in favor of the prisoner’s mind being diseased with dipsomania, and that he was morally unaccountable for what he did when in a state of intoxication brought on by this unnatural, uncontrollable and insane appetite for liquor.” Other physicians concurred. The state similarly used medical experts in an attempt to challenge this testimony, but

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their strongest controverting evidence may have been non-expert witnesses who testified that Pike “acted like other drunken men.” Despite the general ubiquity of the insanity defense, Perley’s instructions to the jury that he had never known a defendant to put in a plea of dipsomania suggests the newness of the diagnosis and the untried nature of the defense. Dipsomania was not only controversial; it was unfamiliar to many. Newspaper accounts included definitions for the term ranging from “an insane thirst for intoxicating liquor” to “in a word a crazy drunkard.” The jury remained unconvinced, and Pike was found guilty of murder in the first degree and sentenced to be hanged. Upon Pike’s conviction, it was reported “Dipsomania not a sufficient plea for homicide” and that “the Judge did not consider it a good excuse.”\(^{41}\)

Several points related to establishing a successful insanity defense were contested upon appeal with the decision highlighting ongoing debates over the rules for determining insanity as well as an as-yet tenuous acceptance of intoxication as a form of mental illness that could excuse from crime. Justice Perley had instructed the jury that the symptoms and tests of mental disease, and even the existence of the disease of dipsomania itself, were to be decided as matters of fact, rather than as matters of law as the M’Naghten rules required. Reflecting Doe’s interpretation of the law and establishing what would be known as the New Hampshire doctrine, the court ruled that “Whether there is such a disease as dipsomania, and whether a respondent had that disease, and whether an act done by him was the product of such disease, are questions of

Indeed, it appeared that the relatively recent nature of research on this disease was a key factor in upholding this point as the court noted, “If there are any diseases whose existence is so much a matter of history and general knowledge that the court may properly assume it in charging a jury, dipsomania certainly does not fall within that class”; and thus the existence of the disease itself, let alone whether or not it was a factor in Pike’s guilt, was left to the jury to decide. Yet the judges disagreed on the type of evidence that the jury could consider in making such a determination, seemingly dividing over the degree to which intoxication could be viewed as a medical condition. During the trial, non-expert witnesses testified for the state, describing various incidents concerning Pike’s behavior and state of intoxication, but the defense was not permitted to call non-expert witnesses to testify as to Pike’s insanity. The appeals court upheld procedure stating that “Any witness may testify, that a person was intoxicated, or under the influence of intoxicating liquor”; although “The opinion of a witness, who is not an expert, as to the sanity of a respondent, is incompetent, although formed from observation of the respondent’s appearance and conduct.” Doe dissented on the latter point arguing that the testimony of non-experts should be given consideration. Of course as the distinction between intoxication and sanity was, by definition, unclear in the case of dipsomania, a witness’s testimony on intoxication likely blurred into a judgment of Pike’s sanity.43

The defense based on dipsomania in this case held significant consequences within the legal field as Pike’s case significantly helped to define the New Hampshire

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doctrine which rejected the test of insanity created in the M’Naghten rule. Yet the legal significance of the case was irrelevant to Pike’s fate. Josiah Little Pike was executed on November 9, 1869, in Concord, New Hampshire, for the murder of the Browns. His last words belied the defense of dipsomania which had failed to absolve him of criminal responsibility as Pike warned others from a similar fate: “But I wish to leave a warning in my last words to those who are inclined toward intemperance. It has decided my fate and ruined my soul. I entreat those who deal in intoxicating drink to stop that dreadful work; and O, I implore their victims to stop before it is too late.” In focusing on the compulsion to drink, rather than just the effects of intoxication, diseases such as dipsomania shaped medical, legal, and even popular understandings of the alcohol habit, but their potential to excuse crime and inflict harm on society remained troubling.

In 1873, the third edition of Wharton and Stillé’s *Medical Jurisprudence* appeared in print. Despite the fact that physician Moreton Stillé had died prior to the publication of the original 1855 edition, his name continued to appear next to that of attorney Francis Wharton as a testament to the collaboration between the medical and legal fields that had been lacking in other similar works. The text quickly became required reading in medical and law schools with both its popularity and numerous revisions providing a sense of the changes in medical jurisprudence in the second half of the nineteenth century. Questions of responsibility as they related to insanity and drunkenness were addressed in the first volume of the text dedicated to “mental unsoundness.”

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44 The New Hampshire doctrine was formulated through the decisions of three cases – Boardman v. Woodman (1865), State v. Pike (1869), and State v. Jones (1871). Interest in the doctrine was renewed in the 1950s with the application of what would be known as the Durham rule as a modification to the still controversial M’Naghten test of right and wrong. See Reid, “Understanding the New Hampshire Doctrine of Criminal Insanity,” 367-420.

surprisingly, the first edition presented a more optimistic vision of the impact of medical testimony in the courts. The use of competing medical witnesses had not yet become standard in such cases, and the premises of “moral insanity” were not yet under significant attack. Wharton noted that prior to the 1860s, “there had been no positive and final repudiation by psychological science of the theory of criminal monomanias” – a fact he quickly sought to remedy in his third edition by characterizing this theory as “almost an unbroken denunciation of a scheme of psychological romanticism which sober-minded men have learned to feel is as repugnant to science as it is hostile to society.” He praised some of the judicial reform affecting the adjudication of the truly insane, but he warned of the “enlargement of irresponsibility” that “enfranchised a dangerous class of outlaws, too insane to be punished for crime, and yet too sane to be restrained.” Using “drunkenness” as an example, Wharton advocated for an interpretation of law that avoided the “extremes” of execution or acquittal such as was found in the German system of “diminished responsibility” and in the American system that weighed intent and degree of crime.

Questions of responsibility, by and large, were fungible; yet American society remained reluctant to extend the exculpatory consideration of intemperate behavior too far. In the same year that Wharton published the third edition of his Treatise, the case of the State v. Johnson in Connecticut was heard. The defense had failed to convince a jury that Johnson was not guilty of murder because he was suffering from the disease of

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dipsomania which “had affected his nervous organization, and which rendered him more easily affected by intoxicating liquor,” and a verdict of guilty of murder was reached. In a subsequent appeal, the jury’s decision was overturned because it was decided that the original judge did not sufficiently mediate the implications of that charge. The appeals judge was concerned that when the jury “was told that ‘drunkenness does not excuse a party from the consequences of a criminal act,’ it is probable that they did not distinguish between excusing a crime and showing that the specific crime charged had not been committed,” specifically murder in the first degree. “The danger,” he continued, “is that the jury, while making up their verdict, excluded from their minds the subject of intoxication altogether. The jury rightly should have considered evidence of the defendant’s intoxication to decide whether the prisoner “was incapable of deliberation.” A new trial was ordered, and Johnson was then convicted of murder in the second degree. This verdict was upheld on appeal with the court noting the “implied malice” in this charge as intoxication combined with killing is “a crime against society.”48 The trial and multiple appeals in Johnson’s defense reflect both the impact and limits of a consideration of intoxication on criminal responsibility as the courts sought to balance justice for the offender alongside protection of the social order.

48 “State v. Johnson (40 Conn. 136.), In the Supreme Court of Errors of Connecticut, April Term, 1873” in Lawson, 603-608. 603-11.
Chapter 6: “Represented as framing an apology for sin and for crime” – The Problem of Establishing a Disease Concept of Inebriety

In the anniversary address of the first issue of the *Quarterly Journal of Inebriety*, Theodore L. Mason, president of the American Association for the Cure of Inebriates (AACI), congratulated his organization on its advancement of the disease concept of inebriety. He recalled how the association’s members had been attacked as “not only utopian but immoral” for daring to consider inebriety a disease, and he strove to distinguish their goals from those of the moral reformers who felt that “(t)o speak about inebriety as a disease was represented as framing an apology for sin and for crime.”

Formed in 1870, the AACI consisted of a small group of inebriety specialists, physicians who believed that the habitual use of alcohol was a specific disease that could be cured through treatment in a specialized hospital. This centerpiece publication of the AACI, which appeared six years later, continued to further the growing interest in and treatment of inebriety. In that same year, the American Medical Association included a session on alcohol and drug inebriety at its annual meeting. By 1891, a large number of medical libraries and asylums, as well as over 2000 individual doctors, subscribed to the journal.

Belying Mason’s optimism, however, assessments of habitual drunkenness continued to occupy a space somewhere between vice and disease. The concept of inebriety was not revolutionary in its theories, having significant historical precedent in

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the rhetoric of both physicians and clergymen. Members of the AACI were not the first to call the alcohol habit a disease, nor were they the first to point out the seemingly addictive nature of various stimulants; and in some ways, the early writings of the inebriety specialists did not differ significantly from those of temperance advocates in their emphasis on the social costs of the abuse of alcohol. Temperance advocates had described chronic alcohol use as a disease, citing the addictive nature as well as the physical and mental health consequences of drinking for years, even as they warned the public from the vice of “demon rum.” The inebriety specialists were similarly concerned with the “habitual use of alcohol potations” and the broader effects of “drunkenness” on society.  

Mason acknowledged the association of disease with vice in attempting to counter some of the criticism against inebriety, asserting that “sin was no less sin because it was followed by disease as its direct consequence, so disease was no less truly disease because it was caused by a sin or a vice or both.” Joseph Parrish, one-time superintendent of the Pennsylvania Sanitarium and Maryland Inebriate Asylum, was also clear that he viewed inebriety as a disease distinguishable from the ordinary vice of drinking. In his study of “alcoholic inebriety,” he utilized numerous clinical cases to draw the line between the “vice aspect” and the “crime view” of inebriety. “Professional criminals,” he noted are “too shrewd to become intoxicated”; whereas the inebriate exhibits characteristics such as “timidity, incautiousness and inefficiency” which tend to

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4 Mason, “Anniversary Address,” 18-9; For similar attempts to differentiate between vice and the disease of inebriety, see N.S. Davis “Pathology of Drunkenness – Is it a Disease or a Moral Delinquency?” Chicago Journal of Nervous and Mental Disease 2 (October 1875): 503-4.
limit the commission of crime. Unlike the moral reformers, the bailiwick of the inebriety specialists was in treating the repeated or habitual use of alcohol and the resulting propensity to disease rather than focusing on the initial decision to drink. Drinkers and their actions were defined as patients rather than sinners or common criminals.

Inebriety specialists advanced a view of excessive drinking that was not diagnosed as a form of insanity, per se, but rather as a dysfunction of the higher nerve centers. In this, they were influenced by George M. Beard’s theories on nervousness and neurasthenia. In fact, Beard’s Stimulants and Narcotics: Medically, Philosophically and Morally Considered was first published in 1871, predating his better known works on “neurasthenia” and “American nervousness.” Drawing a correlation between American civilization and nervousness, Beard suggested that nervous disease, a “deficiency or lack of nerve force,” was a product of modern times. “The chief and primary cause of this development and very rapid increase of nervousness,” he observed, “is modern civilization, which is distinguished from the ancient by these five characteristics: steam-power, the periodical press, the telegraph, the sciences, and the mental activity of women.” Among the various symptoms of nervousness, Beard noted a “susceptibility to stimulants and narcotics and various drugs, and consequent necessity of temperance; increase of the nervous diseases inebriety and neurasthenia (nervous exhaustion).”

Beard furthermore insisted that different causes could apply to different classes of men:

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“Drunkenness as a vice, among the better classes of civilized lands, is then decreasing, while drunkenness as a disease, inebriety, is increasing,” although “among the lower grades of social life, the *vice* of drunkenness abounds in its most revolting aspects.” The prevailing, if unresolved, distinctions between drinking as a vice and drinking as a disease frequently rested on an overt sense of class distinction. As one physician proclaimed, “There are many such men who are inebriates – men of learning, integrity and piety – which is only another proof that inebriety is a disease.”

Ultimately, however, the association with Beard was doubly unfortunate for the inebriety movement. While neurasthenia made a significant impact upon its introduction, the diagnosis became vague and diffuse by the start of the twentieth century. Additionally Beard lacked credibility among the next generation of neurologists emerging in the 1870s and 1880s. He was often perceived as arrogant, and his scientific theories were often viewed as unsophisticated by his peers; he was even referred to as the “Barnum of American medicine” by one prominent neurologist. His involvement in the defense, based on insanity, of Charles Guiteau for assassinating President Garfield certainly did not endear him to much of the public as that trial reflected some of the worst fears many held about physicians providing an excuse for violent crime.

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Inebriety, like dipsomania, suffered an uneasy relationship with medico-legal interpretations of insanity. By the 1880s, debates within the medical field over responsibility and intoxication may be best represented by two individuals: Thomas D. Crothers, an acknowledged leader of the inebriety movement, and Edward C. Spitzka, a prominent neurologist. Crothers was the superintendent of the Walnut Hill Asylum (later the Walnut Lodge Hospital) in Connecticut, professor of nervous and mental diseases at the New York School of Clinical Medicine, and the editor of The Quarterly Journal of Inebriety. A staunch advocate of promoting a disease model of addiction and treatment for alcoholism, he remained well aware of the difficulties in applying a medical model to excessive drinking. “Even Dr. Crothers,” observed one historian, “although fanatically devoted to the cause of medicalizing drunkards, admitted that the prospects for medicalizing drinking through an analogy with lunacy were not good, given the state of public opinion.” Yet this project was challenged by more than public opinion. The temporary nature of drunkenness proved challenging to physicians who had admitted intoxicated patients into asylums only to face a sober and seemingly sane individual after only a few days. While unfailingly advocating for treatment and expressing faith in a cure, Crothers reminded his readers that the inebriate appeared “to be in possession of his mind,” although he rightly existed “on the other side of that mysterious border-line of mental health.” In one example reported in the New York

13 Thomas D. Crothers, “What Shall We Do With the Inebriate?” Alienist and Neurologist 2 (1881), 175; Mason, “Anniversary Address,” 19-20; Brown, “What Shall We Do with the Inebriate,” 50-1. For a broader study of the complex social negotiations between physicians, policy makers, patients and their families, see
Times, Hermann Albert challenged his detention at Blackwell’s Island on the grounds that he “was not a lunatic in any proper sense of the word.” Although his father testified that his son “had no control over himself after he had taken a couple of glasses” and had, on prior occasions, “beaten him while in a condition of inebriety,” the patient was discharged. Judge Ingraham stated he did “not put much confidence” in the medical testimony and instead encouraged Albert to reform his habits. Once sober, there was little evidence that the defendant’s behavior had been anything outside unruly drunkenness with the judge concluding, “if this man could be held, under the evidence, in the Lunatic Asylum, on Blackwell’s Island, then a large portion of the citizens of this City should be there also.”

The next generation of physicians who came of age professionally in the wake of the debates over moral insanity had to navigate the promise of medical professionalization alongside the simultaneous decline of optimism over providing viable treatment and achieving an effective cure for what was often viewed as ordinary vice.

Edward Spitzka, described by one historian as “brilliant, acerbic and highly controversial,” represented a new class of neurologists, possessing a sophisticated European education in medicine and an expanded faith in the influence of hereditary factors on insanity. A graduate of the Medical Department of the University of the City of New York, Spitzka became a rising star in the field of neurology and practiced as a surgeon at Mount Sinai Hospital and was a consulting neurologist at numerous other institutions.

Sarah W. Tracy, Alcoholism in America from Reconstruction to Prohibition (Baltimore: The Johns Hopkins University Press, 2005).
institutions. He variously served as president of the New York Neurological Society, American Neurological Society, and acted as editor to the American Journal of Neurology and Psychiatry. To the general public, Spitzka was most famous (or infamous) for his participation in the defense of Guiteau at his murder trial. However, while convinced of Guiteau’s mental incompetence, Spitzka vigorously opposed any attempt to expand the definition of insanity to include what was termed “moral insanity.” And despite agreeing with physicians such as John P. Gray who had vociferously rejected moral insanity, he often found himself at odds with asylum superintendents as he embraced heredity and downplayed the significance of organic changes as causes of insanity.16 Spitzka was also quite cautious about the connection between mental illness and heavy drinking. He argued for a clear and lengthy etiology of “chronic alcoholic insanity” that was to be differentiated from the state of intoxication that resulted when one voluntarily chose to drink. Even as he recognized “certain mental disturbances of a character peculiar to alcoholism,” he cautioned that “not all forms of mental disorder found in such subjects properly belong to the group of dementia or insanity ‘from organic disease.’” Spitzka recognized the insidious nature of the alcohol habit that was characterized by “a marked enfeeblement of the will that at first manifests itself in “the inability of the inebriate to resist the temptation to drink.” However, it was only with “continuance of the vice,” leading to the emergence of “positive signs of the disorder of a somatic character” and “deterioration of a neurotic character” that a “well-characterized

psychosis can be confirmed.”\textsuperscript{17} Crother’s description of the symptoms of inebriety, which included “moral prostration” or “paralysis of the will,” was suggestive of what Spitzka would have viewed as out-of-date and discredited formulations.\textsuperscript{18}

Attempts to reconcile psychiatry and the law, a relationship historian Janet Tighe has compared to a troubled marriage, were increasingly apparent in the proliferation of professional organizations by mid-nineteenth century. Disputes arose not only between, but often within, the medical and legal fields. One of the earliest and most influential of the medico-legal societies in this period was the New York Medico-Legal Society (NYMLS) formed in 1867 under the guidance of attorney Clark Bell. Focusing on a need for reform in the insanity defense as a means to expand its influence and attract membership, the NYMLS found itself mired in debate by the 1880s.\textsuperscript{19} A good number of the papers and talks presented by the organization focused on the relationship of inebriety to insanity and criminal responsibility. Already a hot-button issue in society and a legal morass, the subject became a point of debate between Crothers and Spitzka after the former presented a paper on “The Trance State in Inebriety” at the November 2, 1881 meeting.

Crothers described a trance state following inebriety characterized by a “loss of memory or consciousness,” that provided “clear evidence of profound disturbance of the higher brain centers, and is of necessity followed by impaired judgment, and lessened responsibility.” Contrary to earlier assumptions, he noted the condition was “very

\textsuperscript{17} E. C. Spitzka, \textit{Insanity: Its Classification, Diagnosis and Treatment} (New York: E.B. Treat, 1889), 251-3.
“common” and “present in a greater or less degree” in “all chronic states of inebriety.”

Crothers made a renewed plea for the recognition of inebriety, and its resulting conditions, as a disease that requires diagnosis and treatment by qualified medical professionals rather than punishment:

Lastly, standing on this border-land, and looking back at the monstrous injustice and legal crime that is daily committed in this punishment of inebriates, who are practically insane, I am convinced that the time has come for a revolution of sentiment and practice, in which both the inebriate and the community must be held responsible, not alone for his acts, or the consequences of them, but the causes and conditions which have developed in this way; then the victim will be forced to avail himself of every means for prevention, restoration and recovery.

His study of the “trance state,” which he viewed “of the greatest practical importance to medico-legal relations” rested on a series of cases, including “cases in which the criminal impulse was prominent.” A telling observation highlighting the nature of the trance was the “lack of recollection” by the perpetrator and “purposeless character” of the crimes.

Crothers’ analysis of some of his cases, however, proved a bit unsophisticated, such as his conclusion that a horse-thief was to be believed that he forgot his crime based on the fact that he helped the owner look for the missing horse; or the assertion that a bank teller must have been in a trance state when he forged a note because he claimed to have been later “amazed” at the presence of money in his pocket. Contributing to an unclear significance of this type of insanity, he further cautioned that the condition might not be “distinct enough to be recognized by court or jury.”

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Reporting on the meeting, *Science* derided the “alcoholic trance” as a condition in which inebriates “were supposed to commit all sorts of ridiculous, or injurious, or even criminal actions, without a subsequent recollection of what they had done.” After his talk, Crothers was directly challenged by Spitzka who criticized the third party nature of the evidence and the lack of expected physical symptoms accompanying the mental state of the patients. He concluded that Crothers’ evidence of “trance-like states” was merely the “ordinary everyday and characteristic symptoms of chronic alcoholism.” It is unclear how seriously Crothers’ views were considered by anyone other than Beard, who took the floor to defend the validity of “unconscious states.” His position was offhandedly dismissed by the author of the *Science* article who stated he was unable to follow Beard’s remarks which “wander(ed) off to the fall of a Swiss mountain and to Astronomy.”

Crothers’ paper presented a challenge to both science and the law. It was reported that Spitzka “regretted to say that instead of science being behind in its views on the question of alcoholism, it was the paper which was far from being up to the science of the day.” Another physician also disagreed with Crothers’ conclusions “that alcoholism, aside from its effect in producing chronic insanity, should constitute an excuse for crime.” At least one attorney was supportive in acknowledging the need for a clearer legal definition of the “habitual drunkard,” and the article concluded with Crothers’ statement “that our knowledge of alcoholism was not at all perfect,” and conceded “that his views were an addition to science, notwithstanding what had been alleged that evening.”

While there was general agreement that inebriety constituted a disease, the more practical aspects of its relationship to legal responsibility remained unresolved. In 1888, the Medico-Legal Society of New York published a volume of papers, dating back twenty years and related to the “medical jurisprudence of inebriety,” that revealed a continuing debate over the medical versus moral interpretation of heavy drinking. Not surprisingly, those physicians associated with asylums continued to be the strongest advocates of a disease model, and they presented themselves as the torchbearers of medical knowledge regarding the disposition and treatment of the inebriate. Edward C. Mann, superintendent of the Sunnyside Medical Retreat in New York, saw little inconsistency between existing law and the present state of medical knowledge: “The present law holds drunkenness to be no excuse for crime. The disease of dipsomania is not drunkenness. The state of intoxication is merely one of many symptoms of the disease.” He urged that the “law should respect and accept the teachings of science,” which offered evidence that the dipsomaniac was not responsible for his action “because he is not master of his desire to drink.” The mind, he noted, was accurately understood through the workings of the brain, arguing that this type of patient “is perverted in the exercise of his psychic powers by abnormal conditions of his brain and centric nervous system.” Emphasizing the hereditary causes of inebriety, Mann’s theories bordered on biological determinism as he called for laws forbidding inebriates to marry so as to “stamp out the hereditary descent of organically defective persons.” In the meantime, however, he saw no reason that “sick men should be punished,” viewing such patients as
Physician T. L. Wright also argued that inebriates should not be legally responsible for their crimes. Utilizing language reminiscent of the temperance advocates, he declared that “the drunken man is not his own master.” This statement was less a warning than it was a medical conclusion as Wright continued to recount how the “redundant fibrous substance in the drunkard’s brain shrinks” and causes the nerve cells to perish and the nerve fibres to be torn apart. This “physical degeneration” explained “misconduct as the child of disease, rather than of criminal will.”23 Reverend William Tucker, however, adamantly refused to allow biology to detract from moral obligation arguing that, “The brain is the instrument, not the cause, of mind.” Despite “limitations caused by heredity,” he implied that a higher law governing human action must be followed. “While man is not under obligation to do that which he has no ability to,” Tucker insisted that, “he is under obligation to try or make the effort to that which he has not the ability to do.”24 More often than not, it was the moral, rather than the medical, conclusions of the inebriety specialists that subjected them to both professional and public skepticism.

The contentious status of the insanity defense, and especially the backlash against moral insanity in the second half of the century, created an even greater hurdle to arguing for chronic alcohol use as a disease that mitigated criminal responsibility, and the concept of inebriety was quite vulnerable to attack. The medical field had failed to establish any broadly accepted sense of the relationship of chronic alcohol use to insanity, with the

23 T. L. Wright, “Personal Responsibility as Affected by Alcoholic Influence,” in Medical Jurisprudence of Inebriety, 74-81.
exceptions of permanent insanity or delirium tremens. And drinking was still considered a vice, perhaps more so than at any time in the past. By the 1880s, the Woman’s Christian Temperance Union had grown in influence and contributed to the already established premise that men’s drinking was a threat to home and family. The temperance movement, in the last few decades of the century, began to more fully embrace legal prohibition, focusing on the saloon and exploiting its connection to societal fears of urban crime and degeneration.25

The dispute between Crothers and Spitzka on the responsibility of the inebriate took place in 1881, the same year that Charles Guiteau assassinated President Garfield and pled insanity as a defense. The details of that crime and subsequent trial provoked a sensational public conversation on the causes and consequences of insanity as debates between psychiatrists and lawyers were reported extensively in the papers. Despite some notable support for the idea that Guiteau was indeed insane, there were greater fears that the public would be “cheated” out of vengeance and that the “vile assassin” would escape responsibility if he were declared legally insane.26 An examination of two murder cases, whose crimes also occurred in 1881, can provide some additional insight into the backlash against the insanity defense and the use of drunkenness as an excuse for crime.

On a clear and cold morning, just three days into the new year of 1884, two men were hanged in the courtyard of the county jail in Newark, New Jersey. On the front page

26 Rosenberg, The Trial of the Assassin Guiteau, 76-9, 238-41.
of the January 4th edition of the Newark Morning Register, images of the two men were displayed prominently. A quick glance at their pictures sitting side by side might lead one to believe that they had been accomplices in a single crime. In truth, their crimes occurred six months apart, and no indication exists that the two men knew each other prior to their trials. Reading the text under their pictures provides very different first impressions of the two men. Of Martin, the first to die, the caption reads, “He meets death firmly”; whereas Graves, we are told, was “carried to the gallows.” Graves’ picture is also less detailed, less flattering than that of Martin, and the first line of the article states, “Graves was always an avowed infidel.”

The trials of the two men had been covered extensively in the local press. Martin shot and killed his wife and young daughter in June, 1881; Graves used his pistol to mortally wound a neighborhood boy in December of the same year. Both men attempted an insanity defense at trial and failed. Neither succeeded at appeal; nor was either successful in obtaining a last minute reprieve. In one sense, these executions can be said to represent the reluctance of the legal system and the general public to accept what was often referred to as the “insanity dodge” as an excuse for crime. Yet, behind this confluence of circumstances, the two men were widely separated by class and circumstance – and Robert Martin was intoxicated during the commission of his crime.

In a manner typical of the sensationalism that had come to characterize the nineteenth century press, Martin’s crime was reported as “(o)ne of the most appalling murders known in the annals of crime in this city.” Martin had come home on the

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27 “Executed!” Newark Morning Register, January 4, 1884; “Jas. B. Graves,” Newark Morning Register, January 4, 1884.

28 “Terrible Tragedy: Double Murder Last Night,” Newark Morning Register, June 16, 1881.
evening of June 15, at the end of a day in which he “drank about seven glasses of beer, two glasses of gin and four glasses of brandy.” After arguing with his wife over the whereabouts of his son, Martin followed her down the stairs and shot at her three times as she held their eighteen-month old baby. Sarah Jackson Martin died almost immediately; the baby, Nellie, suffering from “two ghastly wounds in the abdomen” died several hours later. Despite the “shocking” nature of the murders, a certain familiarity with the connection between family violence and intoxication, a narrative of seemingly idyllic domestic life destroyed by alcohol, was revealed in the papers. The crime was described as taking place “in a comfortable, and what had been a happy home.” The couple led “a happy life until within a short time, when he became addicted (sic) to strong drink. She, being a temperate woman, was, of course, opposed to his drunken excesses. Usually he was a kind man and he was very fond of the murdered child, who was his pet.” Early reports of the crime made note that Martin most likely had not intended to kill his young daughter who was hit by a bullet that “flew wide of its mark.”

In the press, characterizations of the intemperate “family man” wavered between sympathy and vilification. One paper editorialized,

we pity the man who allows himself to become such a slave to intoxicating drink that he loses all love for wife and child of any comfortable home with its humanizing influences all love of God and fear of man, and becomes a fiend incarnate ready to bear the assassin’s knife or pistol against those that ought to be dearest to him of all in earth.

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29 “The Martin Trial,” *Newark Morning Register*, October 13, 1881.
30 “Terrible Tragedy: Double Murder Last Night,” June 16, 1881.
33 “Wednesday Night’s Murder,” *Newark Morning Register*, June 17, 1881.
34 “Newark’s Double Tragedy,” *New York Times*, June 17, 1881.
Alcohol provided a familiar and often dramatic example of perhaps how thin a veil of civilization separated man from his bestial origins. “Civilized” men participated in society based on their ability to assert their will in controlling their baser passions. As one temperance physician explained, the influence of alcohol threatened one’s ability to participate in the “grand masquerade” of civilization. In an increasingly industrialized society, the “drunkard” was also likely to be associated with a failure to get ahead, to be labeled, in the credit terms used by Scott Sandage in his study of failure in America, as a “third-rate man.”

Furthermore while familial violence and loss had often been presented by the Washingtonians, just a few decades earlier, as a symbol of the misery and degradation to which the alcoholic had sunk; by the 1880s, women were more likely to use these stories to condemn men’s drinking. As temperance advocates lost faith in the powers of moral suasion, women turned increasingly to alternative solutions as they advocated for increased legal rights and easier access to divorce. One study of divorce records in this period concludes that “intemperance was a deciding factor in over one-quarter of American divorces between 1887 and 1906” indicating an increasing “impatience” with men’s drinking. Despite the fact that Martin’s domestic life was typically portrayed as happy, there were indications that his family had been affected by Martin’s intemperate habits. At least one newspaper reported that he had beat his wife some years earlier when they lived in Cuba and that he became “irritable” when drinking. Additionally, in the hours after his arrest, Martin reportedly confessed to his crime.

recounting how his wife had “upbraided me for squandering my time and money which she said belonged to the family” and proclaimed that she “deserved to die.”\textsuperscript{38}

In Martin’s case, the strategy of the defense reflected multiple views of intoxication. While the defense was to be insanity, the definition of just what that meant in relation to the use of alcohol remained unsettled. It was unclear if the physicians for the defense were testifying that Martin suffered from a permanent state of insanity brought on by years of alcohol use or a temporary state, albeit one that went beyond the anticipated results of intoxication. One physician who testified to having known Martin for several years “came to the conclusion that he was suffering from chronic alcoholism; I mean by that that he was in the condition of a man who had been indulging in intoxicants for some time.” Dr. Hewlett, who spoke to Martin shortly after the crime, testified that the prisoner had identified himself as “Champagne Charlie” and “began to sing.” In his opinion, “Martin did show to me signs of aberration of mind; I mean he acted differently than other men would under the circumstances; he acted like a crazy man.” The prosecution, on the other hand, countered the idea that Martin’s behavior was due to anything more than intoxication resulting from his decision to drink. In his opening arguments, the prosecutor characterized Martin as returning home “after being out drinking, but not drunk.” Police Surgeon Read assured the jury that he “was not in doubt as to his (Martin’s) sanity that night; I was on the alert to detect any signs of aberration of mind, and did not detect any signs of insanity; there were no doubts in my

mind that he was sane, except that aberration which might originate from the continuous intemperate use of alcoholic stimulants.”

At the opening of the trial, Martin’s counsel suggested a lack of intent because Martin was not conscious of his actions. He described his client:

He had his faults; he used intoxicating drinks in large quantities; sometimes he got more than he ought to have, and it made a madman of him so that he would not be conscious of what he did, but among all who knew him he was known as generous, clever, gentlemanly, never hurting or wrongdoing any one.

He attributed Martin’s condition to recent sickness as much as to intoxication and suggested an alternative possibility, unsupported by testimony, that there was no intent because Martin’s actions were accidental:

When he got home he has no recollection of seeing his wife; went up to his room and was getting ready to go to bed; while he was thus preparing himself for bed, and was putting some money in an iron box behind the door, he heard his wife in the hall, and not meaning any harm, pointed the revolver around the door, and said: “See here,” and the pistol was discharged. The report filled him with terror, and what happened after that he did not know. When he took up the pistol he had no idea it was loaded, and did not know that it was cocked. He had no intention to shoot anybody. After that he was a wild man not responsible for what he did. Why he went out he did not know or where he was going. Some one came to him and said: “You have shot your wife and child.” From that time the words were ringing in his ears. While he was in Station House he did not see what was going on about him. It would appear that he had no motive to commit a murder, that he had no feelings of revenge against his wife to gratify. He had suffered beyond what we can imagine. This was more an accident than a crime.

The description echoes the cases of “alcoholic trance” presented by Crothers.

Somewhat paradoxically, considering the efforts to portray Martin as insane and thus irresponsible under the law, the defense tried to paint a picture of Martin as a good

41 Ibid.
and upstanding man. Such assurances made sense in light of the possibility of acquittal based on insanity. A sympathetic portrayal also may have been enough to convince the jury to find for second degree rather than first degree murder, thus sparing Martin’s life. Thus, in closing arguments, the defense reiterated that Martin’s behavior under the influence of alcohol in this case was out of the ordinary, emphasizing Martin’s “weakness” due to recent disease, his lack of intent, and a history of “affection” for his family. His decision to drink was portrayed as an almost admirable quality reflecting his social nature. “Now, gentlemen,” his attorney asked the jury, who are the men who become victims of drink. Are they the mean men who grasp pennies? No, they are the kind, generous men. Martin was one of those. He could not go out in the street without meeting a friend and hence the difficulty of keeping sober.”

Numerous historians have noted the important cultural functions that drinking served for men in this period. Despite the influence of the temperance movement, many men of the jury may not have necessarily viewed drinking, especially social drinking, as a vice.

One can get some sense of the reaction of the jury and the public to this characterization of Martin’s actions by looking at events after the close of the trial. In his instructions to the jury, Judge Depue allowed that while intoxication did not excuse crime, it could “reduce the grade of crime.” However, he reminded the jury that this doctrine “should be applied with caution, that no undue and dangerous immunity or

42 “The Martin Trial,” Newark Morning Register, October 14, 1881.
license be given to crime by persons whose passions are inflamed by drink.”  According to the paper, the jury originally stood at seven for murder in the first degree and five for murder in the second degree before unanimously agreeing that Martin should be convicted of the more serious charge which carried a penalty of death.  Within months, however, supportive public sentiment swirled around Martin. His pastor characterized him as “another case of a real good fellow doomed by drink.”  Somewhat unbelievably, a petition requesting a commutation of sentence was reported as being “signed by many of the Grand Jury that indicted Martin, all the jury that tried the case, almost every prominent lawyer in Essex county, many clergymen and a host of our best citizens.”  Martin’s class most likely played a significant role in contributing to his depiction as an upstanding citizen. Descriptions of Martin’s home suggest a middle-class lifestyle. He was also reported to have been a machinist but had made enough money when he worked in Cuba so he no longer had to work. Outrage at the nature of the crime was tempered by a recognition of alcohol’s insidious effects on what appeared to be an otherwise decent man although most still expected that Martin would serve a life sentence.

It would not have been too surprising if Martin’s verdict had been set aside considering the necessity of proving intent when making the charge of murder in the first degree. In fact, a writ of error was granted because the word “deliberate” did not appear in the indictment. Reporting on Martin’s reprieve just days before his scheduled

45 “The Martin Trial,” Newark Morning Register, October 15, 1881.
46 “Robert Martin,” Newark Morning Register, March 6, 1882.
47 “Martin the Murderer,” Newark Morning Register, February 11, 1882.
48 “Shocking Double Murder,” June 16, 1881.
hanging in March 1882, one paper reported that “as the news became known on the streets general satisfaction at the result was expressed on all hands, and many persons who never saw Robert Martin in their lives, shook hands warmly and expressed hopes that the month of life granted to the poor man by the Governor may be indefinitely extended.”

It was not. The *New Jersey Law Journal*, which had indicated its support for Martin on several occasions, reported that they were “surprised and pained at the determination of the Governor not to commute the sentence. It seems to us plainly a case in which the verdict ought to have been murder in the second degree…”

While not addressing Martin’s case specifically, Crothers had argued against capital punishment for what the *New York Times* characterized as “drunkard murderers,” calling it “a legal fiction to suppose that a crime committed while under the influence of alcohol was the voluntary act of a sane man.”

Citing a number of recent cases in which judges refused to recognize drunkenness “as any possible excuse for crime,” he suggested these are “dying theories” that would soon be modified by scientific knowledge. “The plea of irresponsibility by reason of intoxication,” he argued, “should be accepted not as an excuse for crime, but as a fact showing the incapacity of the accused to control himself or enjoy the liberty of a man in sound mind.”

Crothers was particularly disturbed at the system of punishment for inebriates who committed crimes. He argued, that in the case of inebriates, it was not unusual to find a series of past crimes, ranging from theft to assault and “finally murder” committed by such men for whom the “fear of the law and

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50 “Robert Martin,” *Newark Morning Register*, March 1, 1882.
53 “Treatment of Inebriates Legally,” *Times and Register* 21 (August 9, 1890): 126; *The Disease of Inebriety from Alcohol, Opium and Other Narcotic Drugs*, 265-6.
the consequences of acts make little impression.” Despite noting that only ten percent of inebriates are convicted of crime each year, his portrait of the inebriate could be viewed as quite troubling as he described one individual, who, “under the influence of alcohol, commits assault to-day, will do so to-morrow, and next year, and so on, as long as his inebriety continues. No legal punishment of fines and imprisonment can stop him.” Punishment, however, did not provide an answer as the resulting degradation and impoverishment of the inebriate and his family, Crothers argued, further perpetuated crime. In fact, one of the arguments against executing Martin was to save his sons from the “disgrace” of their father’s sentence.54

Crothers assured his readers that inebriety was an involuntary condition resulting from “(t)he use of alcohol to excess, at intervals or continuously” which “numbs and paralyzes the higher operations of the brain” to the point of being “incapable of accurately comprehending the nature of acts and the relation of surroundings when under the influence of alcohol.” In such cases, the insanity is clear, and the punishment both cruel and often contradictory to its stated purpose:

All crime by inebriates will be found associated with concealed or open delusions, morbid and epileptic impulses, and sense deception. In all these cases the brain is unsound and cannot act rationally and clearly. There are present in these cases either insanity of inebriety or the inebriety of insanity. The inebriety of the prisoner has merged into insanity, or some concealed insanity or brain degeneration has developed into inebriety or dipsomania. The death penalty to such cases has no horrors. It is rather welcomed. The struggle for life is the attractive publicity that makes a hero of the man, and the mystery of the end of life intensifies the interest to the last moment.

54 “Inebriety and Crime”; Crothers, “Should Inebriates Be Punished By Death for Crime?” 473-5. The Disease of Inebriety from Alcohol, Opium and other Narcotic Drugs, 265-294; “Martin, the Murderer,” Newark Morning Register, February 11, 1882
Crothers rather called for a “change of public sentiment and law” affecting criminal inebriates and challenged current policy asking “does the State bring to life the murdered family by simply going through the accustomed forms of judicial procedure”? Calling court proceedings “a mere mockery of justice,” he argued that the “only true and enlightened policy for the State is to provide asylums for this class of insane.” He disagreed with public trials “where the details of the trial are made prominent, or the farcical questions of sanity are publicly tested.” Rather he urged “private inquiry” and life-long care in an appropriate facility.55

Martin’s hanging was scheduled to coincide with that of another murderer, James Graves. As Graves’ attorneys mounted a last chance bid, just days before his scheduled hanging, to obtain a pardon, they called on Spitzka to examine Graves. Contrasting the case of Graves with that of Martin, Spitzka stated,

> It may be well to state, as a unit to enable the formation of an estimate of the Court of Pardons, that while the application in the case of Graves was unanimously denied, the vote to grant a like commutation to a man who had brutally murdered his wife and child was evenly divided, the distinguished chancellor and three judges voting to grant it, while the governor and three other judges voted against it. However, it may be said in their behalf that they correctly represented the popular sentiment, which was indifferent regarding Graves, while the sentimental part of the community made itself heard in numerous petitions on behalf of Martin and visits of morbidly inclined females to the jail.56

For Spitzka, Graves represented a case of legitimate insanity; Martin did not.

The *Newark Morning Register* introduced Graves’ crime as “(o)ne of the most cold-blooded, deliberate and cruel murders that has occurred for some time.” On the


night of December 20, 1881, Eddie Soden, aged thirteen, was on his regular route lighting lamps with his friend, Willie Hawthorne. The boys were familiar with Graves and spotted him in front of a cork store. When Soden reached Market Street, near Lawrence, to light a lamp, Graves moved towards the boy and shot him in the back with a pistol. Soden was brought to a nearby pharmacy and then to his home where he died one and a half hours later. Graves, aged sixty-three, had a history of conflict with the Soden family who lived upstairs from where he had once boarded and continued to take his meals. The children sometimes obstructed the stairs to his door and were heard to have called him “Monkey Graves.” Graves had been arrested previously for waving a revolver and threatening to shoot members of the Soden family. According to the local paper, Eddie’s mother said to her dying son, “the villain has killed you at last, my darling; he said he would two years ago and he has kept his word.”

Graves, described as “a low sized man with very sharp features,” confessed immediately and presented a defense of insanity for his actions. Evidence of a long history of mental defect included testimony that Graves sometimes wore a mask in public, talked to himself, and had a habit of chewing his tongue. Dr. Dougherty, the only physician to testify for the defense, described him as “an emaciated, weakly, pale, man,” who had a “constant habit of licking his lips, showing a great deal of nervous excitement.” One of the key pieces of evidence in the case for insanity was a journal

57 “Murdered in Cold Blood,” Newark Morning Register, December 21, 1881; “A Brutal Murder,” Newark Daily Advertiser, December 21, 1881. These early accounts put Eddie’s age at 13; some later accounts state that he is 14. In the court transcript, his father states he was 13, “James B. Graves vs. The State of New Jersey,” New Jersey Supreme Court, April 8, 1882: 19.
60 “New Jersey Supreme Court: James B. Graves vs. The State of New Jersey,” New Jersey Court of Errors and Appeals 80 (1883),120-1.
kept by Graves that documented his practice of “self-pollution” dating back forty years.61 Dougherty affirmed to the court that such habits make men “debased and degraded.”

Another physician, while recognizing “traces of this habit” and acknowledging that Graves possessed “a nervous temperament” and “weakness of mind,” resisted declaring him insane stating, “I do not believe in the insanity that comes when you put your finger on the trigger, and ceases when you kill your victim.”62 At the end of arguments, the jury deliberated on the case for a little over two hours before returning a verdict of guilty of murder in the first degree. One paper congratulated the jury, assuring the public that, “There was no room left for honest minds to doubt, and, although public opinion is not always a safe expression of what is right, there was no room left for cavil in the case of Graves.”63

Throughout the trial, there had been ample comparison to the Guiteau case whose proceedings sometimes overlapped with those of Graves. One newspaper remarking on Graves’ indictment suggested that, “The insanity plea will not probably be pressed as far as in the case of Guiteau. But it is the ready and convenient excuse framed for a city officer who has betrayed his trust, and why should it not be made available in the case of Graves?” The writer cast further aspersions on the medical witnesses in such cases, declaring “there is not certainty that half the so-called ‘experts’ are not themselves the victims of some delusion of their own.”64 Spitzka, who was described as “the gentleman who got such a world-wide though unenviable, celebrity through his testimony in the

61 “New Jersey Supreme Court,” 123. The prosecutor in the case made a request to the judge that all females be excluded from the court room when the journal was read. The judge stated he only had the power to exclude children, see “The Graves Murder Trial,” Newark Daily Advertiser, January 23, 1882.
62 “New Jersey Supreme Court,” 123-25
64 “Editorial Mention,” Newark Morning Register, December 24, 1881.
Guiteau case,” remarked on the references to Guiteau during the trial emphasizing they were understood by all except the prisoner himself.65 The American public, he observed, was in a state of reaction against a time in which the “mere assertion of insanity in the case of a criminal was sufficient to diminish, if not to abolish, his penalty.” Yet speaking before the New York Neurological Society a few months after the execution, Spitzka expressed his fear the pendulum had swung too far in the opposite direction:

That, however, it is not impossible to render a person deeply sunken in dementia a proper subject for the gallows, it was left for the Governor and the Court of Pardons of a neighboring state to demonstrate within the past month. The features attending the denial of a reprieve, and the execution of James Graves, recently hung in Newark, are so startling and constitute such a significant commentary on the fallacy of certain attempted reforms in our expert system that I may be permitted to occupy your time this evening with a history and commentary of them.

He provided evidence to his readers that Graves demonstrated clear signs of long-established dementia that were supported by his physical appearance, his past and present behavior, hereditary factors and the results of autopsy. For Spitzka, insanity was confirmed by the specialized knowledge, such as autopsy, that a trained physician could provide, not by questionable medical experts and public opinion.66

Disagreeing with Spitzka’s assessment, Sanford B. Hunt, in his dual role as editor of the Newark Daily Advertiser and physician who testified as to Graves’ sanity, praised the actions of his state in the Graves case. He compared what he viewed as a just result in this case to the goings-on in Washington during the trial of Guiteau: “Juries in New Jersey take their law from the Judge. A requisition from Governor Ludlow would perhaps, bring Guiteau to Monmouth county for trial and there would then be none of this

65 “At the Jail,” Newark Sunday Register, December 30, 1883; Spitzka, “The Case of the Insane Murderer Graves,” 101.
long delay which has occurred in Washington.” He appealed to the public fear that insanity that excused from crime could be easily feigned,

In both the plea of insanity is urged, the evidence of the insanity resting only on the absence of reasonable motive, each assassin proclaiming himself insane at the moment and sane in his previous and subsequent action. The only difference, morally, is that in Guiteau the meanness was guided by an educated mind. In Graves it was only ignorant and grovelling. (sic) Both chose a public place with the same purpose – the show of recklessness which might be considered evidence of insanity.67

Spitzka expressed nothing short of contempt for Hunt and his claims to medical knowledge, referring to Hunt as “this expert editor, or editorial expert.” He assured his audience that his examination ruled out the possibility of simulation. He established what he saw as strong medical proof of insanity, providing details of a post-mortem conducted on Graves which “were more than usually startling and confirmatory of the theory of dementia.”68 For Spitzka, Graves’ diagnosis was supported by verifiable medical evidence in a way that Martin’s intoxication could not be.

If the association with vice had not already doomed alcoholism as an excuse, the increasing influence of the prohibition movement and greater skepticism towards the insanity defense provided the final nails in the coffin. Ultimately, despite some recognition of addiction and problems of establishing intent under intoxication, juries limited the significance of intoxication. By the end of the nineteenth century, it was no longer accurate to say that “drunkenness” never provided an excuse for crime, but it was a last-ditch, poor excuse.

68 Spitzka, “The Case of the Insane Murderer Graves,” 103, 110-1. He also attempted to further discredit Hunt by pointing out that in his editorial of January 4, he had questioned the results of the autopsy before the report was even made, p. 114.
Epilogue

In a paper read before the Medico-Legal Society of New York in 1887, its founder, Clark Bell, addressed the “present legal status” of inebriety and the significant differences between civil and criminal law in their respective assessments of the intoxicated individual. Under civil law, he noted, “habitual drunkenness” was viewed as “prima facie evidence of the subject’s incapacity to manage his affairs” and concluded that “the law has always regarded and treated intoxication as a species of mental derangement, and has considered, and treated the habitual or other drunkard, as entitled to the special care and protection of courts of equity in all matters relating to his civil rights.” He praised civil law for providing a “protecting arm and shield” around those who are “so addicted to drink as to seriously interfere with the care of his estate…for their presumed good.” However, when it came to criminal relations, he observed that the law was “harsh” in its treatment of the inebriate. Here Bell noted that the law and society ascribed to a different set of priorities when determining the responsibility under civil versus criminal statutes. In the case of civil law, the goal is to protect the drunkard from himself; however, in criminal relations, “it is the weal of society which is to be conserved and protected.” A staunch advocate of the view that inebriety is a disease, Bell urged for a modification of the present law so as to protect both society and the inebriate, expressing optimism that this would be accomplished through the cooperation of the medical and legal fields.¹

Bell likely would be disappointed as today we continue to grapple with many of the same issues. An interesting question to consider is not why a defense based on intoxication succeeded only rarely and intermittently, but rather why such a defense was ever considered in the first place? The key distinction between civil and criminal law, as Bell noted, is whether an injury is to oneself or to someone else. Society, more or less, is willing to protect the alcohol abuser from self-harm but draws the line when others are in harm’s way. In fact, a strong argument can be made that there should be zero tolerance for crimes committed by those under the influence because the need to protect society is paramount. Prior to the nineteenth century, courts refused to entertain evidence of intoxication if the decision to drink was made voluntarily. Early precedent suggests a strict liability interpretation of the law, one that viewed mens rea as irrelevant, and could have been applied to crimes committed while intoxicated. In fact, such a model exists today for crimes such as statutory rape and even drunk driving.\footnote{James B. Jacobs, \textit{Drunk Driving: An American Dilemma} (Chicago: University of Chicago Press, 1989), 74-77.}

Instead, a number of factors, medical, legal and social, contributed to a messier history of the use of intoxication as a defense. American courts, by the early nineteenth century had accorded an expanded exculpatory value to intoxication as a defense to crime; however, this trend began to reverse itself in the last third of the nineteenth century. The medicalization of alcohol use from delirium tremens to dipsomania to inebriety created categories of mental illness from which to argue for limited or even absent responsibility under the law, but an increasing skepticism towards the insanity defense led to disillusionment with medical theories of alcohol abuse to explain behavior most viewed as ordinary vice. The status of medical professionals had grown over the
course of the century, for many through their roles as experts on medical jurisprudence; but, by the 1880s, few were willing to risk that status by promoting controversial theories that seemed at odds with the best interests of society. American law, by the early nineteenth century, began to afford greater recognition to the issue of intent in crimes, in particular, creating statutory degrees of violent crimes that were dependent on establishing appropriate mens rea. Historically, a conviction of first degree murder generally meant death, a punishment that could seem quite harsh given the complicated circumstances of crimes where the perpetrator may have been youthful or seemingly distraught over what he characterized as an “unintended” crime. Evidence of intoxication could be used to disprove intent and thus lower the charge to second degree. The cautionary tale of a good man ruined by the effects of alcohol was an important tool used by the early temperance movement as it sought to curb the pernicious effects of drinking in a nation rife with alcohol. However, while groups such as the Washingtonians in the 1830s relied on these narratives to foster redemption for the alcoholic, temperance women utilized decidedly less sympathetic accounts of violence and abuse to emphasize the threat of men’s drinking to women and families. Additionally, organized opposition to the saloon, the association of drinking with immigrants and the lower classes, as well as the growth of hereditary theories on race and ethnicity contributed further to an atmosphere in which drinking became more closely associated with vice, crime, and hereditary degeneration.

The viability of intoxication as a defense continues to wax and wane with social changes and cultural shifts. In 1996, the U.S. Supreme Court, in Montana v. Egelhoff, upheld Montana’s legal code which significantly limited the exculpatory value of
voluntary intoxication. The crime itself was a typically horrific one in which James Allen Egelhoff, after a night of drinking with two friends, was discovered in the rear of a car “yelling obscenities” as his two companions lay dead in the front seat, each of a single gunshot wound to the head. Egelhoff’s blood alcohol content later measured at .36 percent, a fact that Montana statute held as irrelevant “in determining the existence of a mental state which is an element of the offense.” Egelhoff was found guilty at trial and sentenced to 84 years’ imprisonment. The Supreme Court of Montana then reversed that decision on appeal finding that the “respondent’s voluntary intoxication was ‘clearly(ly) …relevant to the issue of whether (respondent) acted knowingly and purposely.’” 3 In reviewing the case, the Supreme Court limited their decision to Montana’s statute rather than the relevance of intoxication to the law, ruling,

The people of Montana have decided to resurrect the rule of an earlier era, disallowing consideration of voluntary intoxication when a defendant’s state of mind is at issue. Nothing in the Due Process Clause prevents them from doing so, and the judgment of the Supreme Court of Montana to the contrary must be reversed. 4

The rulings of the various courts who heard the case reflect a lack of consensus over the question of if, and to what extent, intoxication should have exculpatory value for the perpetrator of a violent crime. A general ambivalence on the issue is further reflected in the 5-4 decision, and the opinion, written by Justice Scalia and joined by Chief Justice Rehnquist, Justice Kennedy and Justice Thomas, who represented only a plurality of the court. While the ruling fails to provide a satisfactory sense of resolution, the arguments within the decision further demonstrate what little headway we have made on this

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4 Ibid.
question. Scalia cites “historical practice” as his guide, starting with a 1992 case and moving back through Hale, Blackstone, and Coke all the way back to the sixteenth century decision in Reniger v. Forgossa that states, “(i)f a person that is drunk kills another, this shall be Felony, and he shall be hanged for it, and yet he did it through ignorance, for when he was drunk he had no Understanding nor Memory; but inasmuch as that Ignorance was occasioned by his own Act and Folly, and he might have avoided it, he shall not be privileged thereby.”\textsuperscript{5} The reference is remarkable, not just for its age, but for its historical context. One legal scholar expressed “astonishment” at any substantial consideration of “the views of Coke, Hale, and Blackstone on peneological policy.” He reminds his readers that “These are the same gentlemen who believed, among many other quaint beliefs, that an age of majority (and thus criminal responsibility) ranging upward from seven years old is acceptable,” and who operated within a legal system that included more than “200 capital offenses and under which individuals as young as ten were executed for stealing necessities.”\textsuperscript{6} The opinion of the Supreme Court acknowledged not just the complicated (and far-reaching) legal background, but the complicated historical background of the relationship between intoxication and responsibility in stating, “The doctrines of actus reus, mens rea, insanity, mistake, justification, and duress have historically provided the tools for a constantly shifting adjustment of the tension between the evolving aims of the criminal law and changing religious, moral, philosophical, and medical views of the nature of man.”\textsuperscript{7} In fact, the Supreme Court’s decision in this case is just one example of a trend, begun in

\textsuperscript{5} Ibid.
\textsuperscript{7} Montana v. Egelhoff
the 1980s, towards even stricter limitations on the exculpatory significance. While the context is one in which society accords victims greater recognition and rights, it is an approach based on the precedent of “common law.” And thus the intoxication defense continues to swing like a pendulum in the winds of social consideration always tethered by the maxim that “drunkenness is no excuse for crime.”

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BIBLIOGRAPHY

Primary Literature

Popular Press

Articles in the popular press were invaluable in providing editorial opinions, descriptions, and, as noted above, often transcripts of the trials themselves. Physical research for articles was conducted through a variety of libraries predominantly Rutgers, the Newark Public Library, the National Archives, and the Library of Congress. Some articles were located through the databases “Nineteenth Century U.S. Newspapers” and “Proquest Historical Newspapers.”

Key articles are listed in the footnotes. What appears below is a listing of publications and respective years that were consulted.

Boston Courier (1828, 1851)
Boston Daily Atlas (1851)
Boston Daily Journal (1868)
Boston Investigator (1835)
Chicago Daily Tribune (1862)
Christian Register (1832-1835)
Christian Secretary (1828)
Christian Watchman (1828)
Concord Patriot (1868)
Connecticut Courant (1835)
Daily Morning News (1859)
Hampshire Chronicle (1790)
Hartford Daily Courant (1869)
Jackson Citizen (1868)
Louisville Daily Democrat (1864)
Lowell Daily Citizen and News (1868)
The Massachusetts Magazine (1790)
Newark Daily Advertiser (1881-1882)
Newark Morning Register (1881-1884)
Newark Sunday Register (1883)
New Hampshire Patriot and State Gazette (1868)
New York Daily Times (1851-5)
New York Herald (1857, 1868)
New York Spectator (1829-1835)
New York Times (1855-1888)
Ohio Observer (1835)
Portsmouth Journal of Literature and Politics (1868)
The Quincy Whig (1868)
Raleigh Register, and North-Carolina Gazette (1829)
Rochester Daily Union and Advertiser (1865-1866)
Sources for Court Transcripts

Transcripts for court cases were derived from a variety of sources including archives, Lexis-Nexis, and printed collections. Transcripts related to the 1835 trials of Theodore Wilson were provided by the Maine State Archives. Material on Commonwealth v. Robert Smith, tried in the Jefferson County Circuit Court in 1864, was provided by the Kentucky Department for Libraries and Archives. Complete transcripts of the trial of James Graves were printed in *New Jersey Court of Errors and Appeals* 80 (1883), located at the New Jersey State Archives.


It was not possible to locate original transcripts in all cases, but it was not uncommon to find significant excerpts or even full accounts of trials published in medical and legal journals as well as popular newspapers.

Other Primary Source Materials


Clair, Henry St. The United States Criminal Calendar, or An Awful Warning to the Youth of America. Boston: Charles Gaylor, 1833.


Crothers, Thomas D. “What Shall We Do With the Inebriate?” *Alienist and Neurologist* 2 (1881): 166-189.


“Mr. Sprague’s Speech.” *Journal of the American Temperance Union* 3 (April 1839): 50-1.


“On a Particular Form of Insanity, with a Case in Illustration.” *American Journal of Insanity* 8 (July 1851): 1-17.


“Wm. Hopps on Trial for Murder.” *Chicago Medical Examiner* 3 (November 1862): 700-5.

Secondary Literature


