

evidence, must be that George Gardney was, at the time of the tragedy, and is now, insane. I take it that the alienists do not intend to say that he is not now, and never was, a distracted person, or person of unsound mind. Evidently they do not make conclusions as to what the law deems insanity.

The affidavits and the report of the alienists give us some of the facts. We apply the law. From these meager facts, I am convinced that we are dealing with an insane man, as contemplated by the Statute. Even though convinced against his will" the prosecutor should ^{not} continue of the "same opinion still". He should not try to feel away from the cold facts.

All this is without taking into account hereditary insanity, which I am informed, I believe reliably, can be shown beyond peradventure.

Must we measure by the "wild beast test", or apply the humane standard of Lord Hale? Civilization has repudiated the "wild beast" test, and adopted Lord Hale's humane standard. Lord Hale measured insanity by the standard of mind of a boy of fourteen years, notwithstanding his environments, and the fact that he was the scion of bloody English.

Utah should follow the standard fixed by the almost unanimous idea of modern authorities of the civilized world. This idea of civilization has abandoned the "wild beast" test ^{that} measures responsibility by the knowledge of right and wrong. Modern civilization insists on the addition of a further element; ^{unless there is volition,} ~~otherwise the intent is not present.~~ Guided by the authorities of civilization, before a person will be held responsible for crime, he must not only be able, ~~but~~ intelligently, to distinguish right from wrong, but must have will power sufficient to resist the wrong impulse. This condition must, of course, be induced by unsolicited disease, not brought on by narcotics, intoxicants, or voluntary abuses.

On this measure of insanity, without citing numerous authorities, I will presume to ask the Board, prayerfully to read the notes to case of Smith vs State, 27 L. R. A. U. S. 461, and the dissenting opinion (1469), on irresistible impulse, as excuse for crime, where produced by mental disease affecting volition.

My standard of goodness, and decent civilized government may be a little off, ^{if} but I understand aright, the premeditated shooting of insane folks by cool sanction of civilized law, is much worse than the shooting by one who is insane from disease, whose smoldering insanity is fanned into flame by the sudden heat of passion.

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