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Delusion's odyssey: Charting the course of Victorian forensic psychiatry

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1. Introduction

To any observer standing in the 1859 London courtroom, the case of John Francis for the willful murder of fellow prisoner Thomas Hall must have seemed a rather run-of-the-mill insanity trial. After supplying the court with a narrative of the events leading up to the killing, the defense attorney called an array of character and medical witnesses who attested to the accused's tragic history of family lunacy and personal years of manic hysteria. Under the care of a medical officer when confined on board a hospital ship, the defendant had "remained insane during the whole of that period . . . laboring under the delusion that someone intended to do him some personal injury." With a documented history of confinement, vivid tales of family derangement, and medical testimony that employed delusion—the most frequently invoked courtroom term to define Victorian insanity—there seemed little to distinguish the trial of John Francis from that of other allegedly insane men and women who appeared at the Old Bailey, London's central criminal court.

Little, that is, until the prosecutor elected to call a medical witness to rebut the medical man's characterization of the defendant as delusional. The state's surprise witness was Alexander John Sutherland, who, "by the direction of the Government" visited Francis in Newgate jail "with a view to ascertain. . . the state of his mind." Asked by the prosecutor to comment on the "facts proved" (i.e., the evidence) at trial, Dr. Sutherland was immediately kept from speaking by Judge Baron Alderson, who "objected to the judgment of the witness being substituted for that of the Jury." The prosecutor rephrased the question: "Upon the facts that have been proven . . . are you enabled to form any

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judgment as to the state of the prisoner's mind at the time he committed the act in question?" When the judge interrupted a second time, expressing "[his] opinion that that question cannot be put," the attorney sought to end the interruptions by referring explicitly to the *McNaughtan Rules* (1843), a set of guidelines that had regularized the plea of insanity in the English courtroom. If the attorney thought that citing the famous verdict and accompanying rules would end the matter, he was sadly mistaken. Together with the jury and full complement of courtroom bystanders, the prosecutor was treated to the following display of judicial pique.

I am aware of [*McNaughtan*], and am quite sure it was wrong, and the sooner it is corrected the better. What are "the facts proved?" Is Dr. Sutherland to be the judge, or the Jury and I? It implies that the facts [i.e., the evidence of insanity] are proved; there are no facts proved of present. . . . The way to examine a scientific witness is to put general questions to him, such as "What are the symptoms of insanity? In what way do you judge such a symptom to be one of insanity, or the reverse?" and the Jury will apply his hypothetic answer to the facts before them; if it agrees on the facts, they will apply the opinion; if not, it goes for nothing. If you wish to ask his judgement upon what he saw on the [jail visits], you may, but my difficulty is, that your question implies that the facts are proved.¹

Judge Alderson's difficulty with the prosecutor's question touched on a fundamental element of 19th-century jurisprudence. Earlier in the century, the fear that the opinion of the medical witness in an insanity trial would substitute for the jury's own finding prompted a judicial advisory that expert witnesses were to confine their testimony to the general symptoms of insanity.² But even if medical witnesses had tried to restrict their testimony to broad statements about insanity—avoiding wherever possible specific inferences about a particular defendant—attorneys *and* judges were in the habit of explicitly asking medical practitioners if they indeed believed the defendant to be a responsible being. It was this question, and comments given in support or denial of such a finding, that raised the stakes for forensic-psychiatric witnesses. Although all expert witnesses run the risk of usurping the decision-making function of the jury, physicians, surgeons, and apothecaries who treated the mad were more likely than most to find themselves confronted with questions that addressed ultimate issues of culpability.³

That Judge Baron Alderson also took exception to the prosecutor's characterization of trial testimony as "the facts proven" is especially noteworthy for the historian of forensic psychiatry. Uttered in court just 6 years after *McNaughtan*, the judge's eagerness to undo the "errors" that accompanied the acquittal of the celebrated defendant suggests that medical personnel were not the only courtroom participants who chafed at the *McNaughtan Rules*. Most often, the dissatisfaction surrounding the Rules centered on the resulting criterion of "knowing right from wrong," found by medical men to be an untenable lens with which to assess the intention of the accused. But Judge Alderson was voicing a different reason for objecting to the Rules: the grounds for expert opinion. Specifically, could a witness base his opinion on evidence heard in the trial itself? To give a medical witness such latitude was tantamount to surrendering all courtroom "facts" for the *opinion* of the expert. Thus, the judge's exasperated question, "Is Dr.

¹ OLD BAILEY SESSIONS PAPERS (hereafter, OBSP) 49 (1849–50, First Session).

² *Rex v. John Wright*, (1821) RUSSELL AND RYAN'S CROWN CASES RESERVED, 456.

³ For the historical grounding of expert opinion in the common law, see John Henry Wigmore, EVIDENCE IN TRIALS AT COMMON LAW 4 (1985), 4th ed. See also James Bradley Thayer, A PRELIMINARY TREATISE ON EVIDENCE AT THE COMMON LAW 47–182 (1898).

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