

because every judge who has been on the bench in England within the last two hundred years would prescribe the favorite common law remedy of hanging for the disease; melancholy, because of a soul conscious of its deed, and struggling in vain to resist the impulse it abhors.

Gentlemen, the legal test of insanity laid down by the prosecution is not law. Our own Supreme Court has repudiated it in the case of Baldwin. Knowledge of right and wrong is possessed by the sane and the insane. I grant it was for several hundred years, the only test for the common law. The obstinate ignorance of the English Bench yielded to the genius of Erskine, what it denied to the experience of lunatic hospitals, and granted in Hadfield's case the existence of insane delusion, under cautious limitations. The existence of "irresistible insane impulse," known wherever insanity is known, is yet, I believe, unknown to the common law. That system of criminal jurisprudence left out one part of man's nature—the noblest part—the will, the essential element of responsibility, here and hereafter. What if we do know "right from wrong," if we have not the freedom of will to choose between them? Without this capacity our acts can be neither vicious nor virtuous. Without volition, we are no more responsible for our action than the earth if imbued with reason would be for its revolution around the sun.

I shall appeal to this Court, and I shall not appeal in vain, to instruct you that "the power to distinguish between right and wrong," is not the legal test of insanity in this state. Our law recognizes an insanity in which this knowledge exists as a complete exemption from human punishment. This legal issue must be met by you, if not by the prosecution; humanity and law demand this much at your hands.

Jurors, I have felt it to be my duty to try at least to free your minds from some errors, which are logical results of the opening speech of the prosecution. I have been thus moved as well by my interest as a citizen as by my duty as an advocate. The law of murder in this state has been presented to you without any reference to the element of malice; the law of insanity has been blurred in your presence, and misstated.