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## Irresistible or "Irresisted" Impulse?<sup>1</sup>

Wladimir G. Eliasberg\*

**A**FTER SO MUCH BICKERING between psychiatrists and lawyers, a court of appeals stated that the latest development, the *Durham* Rule, does not require a different examination by the psychiatrist, but only a different examination of the psychiatrist by the lawyer.<sup>2</sup> In another decision quoted in the same case, the court pointed out that "the value of an expert's testimony rests upon the material from which his opinion is fashioned and the reasoning by which he has progressed to his conclusion; the explanation of the disease and its dynamics, that is, how it occurred, *developed* and affected the mental and emotional processes of the defendant" (*italics added*).

It is the purpose of this paper to show that the requirements made on psychiatry have not changed in the least since the application of the *Durham* Rule. It will be shown that now and in the future as before, the demonstration of the development and the dynamics of the mental processes is what the psychiatrist has to offer. Questions of guilt are not in his province. Now as before this latter remains the prerogative and obligation of the finders of fact, not of the experts.

During those centuries when penal law was built on the concepts of the criminal intent, criminal culpability and guilt, there also was developed a kind of lawyers' psychology and psychiatry from which were derived the tests to exclude guilt. Exclusion of guilt would be the consequence of 'raving madness,' irresistible impulse, lack of knowledge of right and wrong. One

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<sup>1</sup> Permission has been granted by Psychiatric Quarterly to make use of a previous article in 21 (1) Psych. Qu. Suppl. 102 (1947).

<sup>2</sup> This decision quoted from Watson, *Durham Plus Five Years: Development of the law of Criminal Responsibility in the District of Columbia*, 116 Am. J. Psychiat. 291 (1959). This excellent paper gives a survey of the beginning change in the handling by the courts and the juries of cases in which the pleas of not guilty on account of insanity is interposed. Cases on the shift of the burden of proof, on the reluctance of the trial courts to accept the new rule, on the court's taking exception to the vagueness of the concept of irresistible impulse are quoted. This should make good reading for both psychiatrists and lawyers.

need not dwell on the history of these tests<sup>3</sup> because lawyers have come to acknowledge—often reluctantly—that with isolated tests little could be achieved. The hypothesis<sup>4</sup> that someone could be partially insane and otherwise responsible, that he could be intellectually insane and emotionally sane and vice versa, has had such grotesque consequences that, with a certain about-face, the lawyers now keep turning to the psychiatrists to say whether an indicted person is suffering from mental disease. If experts' opinions oppose each other—so much the worse. There seemed to be only the problem of having reliable experts render opinions. However, the question of objective criteria that would be understandable to laymen was abandoned too early.

The impulsive character of an action does not in itself render it unpunishable.

Table 1 shows that there are a great number of impulsive actions where no irresponsibility may be claimed and the guilty intent may be established by proving guilty intent or criminal negligence either for the complete crime or overt action at the stage of criminal attempt. The impunity of an impulse action which would otherwise be a crime can be established on the basis of certain objective criteria which in a single case need not all be present and not all in the same degree. The idea of the following sections then is to base the diagnosis on pre-existing facts, i.e., facts demonstrating abnormality before, and in no connection with, the crime. Likewise, a conscientious objector will not be believed unless he can prove that his attitude existed before induction.

**Table 1**

**Punishable and Unpunishable Impulse Actions**

**I. Punishable impulse actions**

- A. Punishable normal impulsive actions: many crimes for the purpose of gratification of impulse, carrying out a guilty intent.

<sup>3</sup> See, for the historical development—Weihofen, *Insanity as a Defense in Criminal Law* (1933) and Glueck, *Mental Disorder and the Criminal Law* (1935).

<sup>4</sup> (a) First published in Eliasberg, W. G., *Die abnorme Triebhandlung in forensischer Beurteilung*, 21 *Monschr. f. Kriminal psychol. u. Strafrechtsreform* (1930).

(b) See also same author: *The Acute Psychosexual Situation*, 33 *J. Crim. Law and Criminol.* 443 (1943); *Opposing Expert Testimony*, 36 *J. Crim. Law and Criminol.* (Nov.-Dec., 1945).

- B. The abnormal impulsive action with full accountability to law on the basis of "irresponsibility tests."
- C. Punishable negligence\* of persons who are no longer "beginners" who, suffering from strong (uncontrollable) nonpsychotic impulses, neglect to prepare for, or avoid, such situations in which impulses have become overwhelming.

## II. Unpunishable impulse actions

- A. Unpunishable normal impulsive actions
- B. Unpunishable abnormal impulsive actions
  - 1. Obsessive-compulsive actions within the frame of obsessive-compulsion if found combined with clinical psychosis, or disorder of consciousness, or dementia,
  - 2. Other unpunishable abnormal sexual actions.

The impulse action is observed rather early in life. It persists throughout life, little influenced by experience and social surroundings.

It should, however, be noted that for an action to be impulsive, it need not be congenital. Congenitality, or the hereditary nature of an action is difficult to prove in human beings. The results of maze experiments with rats can by no means be easily transferred to humans. That a certain disposition is congenital, does not in itself make it non-punishable. Neither does the fact that the deed is in keeping with the character guarantee impunity. The controversy has been whether a deed should be punished more severely because it is obviously in keeping with the character and thus proves the moral turpitude of the perpetrator or whether just because it is obviously a product of the evil-doer's nature and nothing more, should be dismissed as free of guilt. Cases where such controversies arise are those of sexual perversions, particularly of homosexual misdemeanors and felonies.

The normal urge shows developmental phases, as has been demonstrated particularly in the psychoanalytic teachings on the development of the sexual urge. The pathological urge often remains at the early infantile stage and cannot be sublimated.

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\* For the concept of negligence, its handling in court and in the theory of psychoanalysis and the right to punish negligence in impulsive actions, see Eliasberg, *Rechtspflege und Psychologie* (1933).

There is no formation of compounds between the urge and the other aspects of the personality, his aims and his social attitudes.

The pathological urge is marked by abnormal intensity, be it higher or lower than the average. It is not always easy to get indicators of abnormal intensity. However, there is not too seldom a strong tendency toward conversion into physical symptoms, dizziness, nausea, vasomotor reactions, fainting. Such conversions have rather indiscriminately been called hysterical.<sup>5</sup> F. Alexander<sup>6</sup> has drawn attention to the fact that not all of these symptoms are of conversional nature. There may be divergencies from the normal merely along the line of vasomotor abnormalities, with or without secondary psychoneurosis.<sup>7</sup> The better we learn to differentiate between hysterical conversion and other types of psychogenic abnormality, the more the interest of the lawyer will be served. However, there are types of increased intensity of the urge which resemble definitely the hysterical type in abrupt and sudden changes. There is also a type in which it is not some more or less conscious, i.e., psychological, urge which is carried into physical symptoms. In this type, it is primarily the physical symptoms—e.g., vasomotor ones—which only secondarily are reflected in consciousness, but which, by a short circuit, reach the vasomotorium.

Such a case was described by the writer.<sup>8</sup> This was a 29-year-old man who would form strong attachments to women of what he called his type, only to detest them utterly the moment that an affair became serious. He would then back out, only to do anything possible to get the same woman back; as a pleasant and good-looking fellow, he would repeatedly be successful. In him, a vasomotor-cyclothymic constitution was alloyed with a neurotic childhood attachment to his mother. This man, with all his feelings of guilt, has never become criminal. But with the distorted sex life he leads, the possibility exists that he might turn to such symbolic sexual actions as exhibitionism, which are beyond the threshold of the socially acceptable.

<sup>5</sup> Freud, General Introduction to Psychoanalysis (1920).

<sup>6</sup> Alexander, Fundamental Concepts of Psychosomatic Research, 5 Psychosom. Med. 205 (1943).

<sup>7</sup> See also: Romano, and Engel, Studies of Syncope: III Differentiation between vasopression and hysterical fainting, 7 Psychosom. Med. 3 (1945).

<sup>8</sup> Eliasberg, The Acute Psychosexual Situation, *supra* note 4; Eliasberg, Closeup of Psychosexual Gratification, 99 J. Nerv. Ment. Dis. 179 (1944); Eliasberg, Disorders of Male Sexuality. Psychiat. Quart. (October, 1944)—case 1.

In many cases, the abnormal urge is not more intense than the normal; on the contrary, it is abnormally weak. One may assume this to be the case with aged sexual criminals or with the sexual crimes of children and youthful offenders or with addicts or many homosexuals. The physical signs may be used without Lombroso's prejudice for the measurement of the urge. It should be anticipated that with general atrophy of the primary and secondary sexual characteristics, as is normal in old age or in menopause, there goes an abatement of general impulsiveness and particularly sexual urge. And it is the exception if

. . . Thou rebellious hell  
Canst mutine in a woman's bones.

—*Hamlet*

In a recent study<sup>9</sup> on non-neoplastic hypergenitalism it was found that in boys and girls with unusually strong and precocious development of the secondary sexual characteristics there was a certain passivity in the recreational interests. Delinquency, truancy, and larceny were as often represented as sexual irregularity. The general impression is that hypergenitalism does not run parallel to hyperexcitability of the sexual or other urges. Rather it seems to be the inhibitions that are disturbed.

Inhibitions of urges often are not of the specific type which we know as the interplay of the agonists and antagonists in muscle physiology. In contradistinction to this type, there is often an inhibitory character in which the actualization of urges in general and of any particular urge is inhibited. Inhibition, then, becomes a general set, a motivation which is built up, e.g., on the basis of the moral convictions of the personality or of some psychopathology; and, on the basis of such general moral inhibitions, are the specific urges inhibited.

It is the general inhibitory attitude which may deteriorate under the influence of destructive pathology or short-lived pathological processes or biological cycles. Such destructive pathology may, in turn, occur in cycles or phases. The best examples of this are organic epileptic deterioration or the so-called catastrophic reaction (Kurt Goldstein)<sup>10</sup> in the emotional "brainstorms" of brain disease. Apart from this periodicity, inhibitions, as noted in the foregoing, may be reduced chronically in organic brain conditions.

<sup>9</sup> Taylor, and Schaefer, Non-neoplastic Hypergenitalism, 5 Psychosom. Med. 10 (1943).

<sup>10</sup> Goldstein, K., The Organism 35 (1939).

From the preceding it has already become clear that the irresistible impulse should be discussed only in the context of the psychophysical personality as a whole and particularly in the context of pathological processes or stigmatizations. If we want to declare a person not guilty on the ground that he committed his deed because of an irresistible impulse we shall first have to think of an acknowledged and clinically diagnosed mental disorder which would imply a generally disturbed mentality. Notwithstanding this general remark, the details should be given full attention.

In the abnormal urge, the aim, the object of the libido is often abnormal. There is the longing for abnormal intoxications or that for the gratification of abnormal sexual desires. Abnormal aims may often be understood on the basis of comparative and developmental psychology. Criminal impulsive actions of single individuals of our civilization may point to the symbolic ritual in primitive societies. This holds true for certain forms of impulsive manslaughter. In our own society there are periods of lessened inhibition during which usually unacceptable or abnormal aims may be achieved. Such periodically or occasionally conditioned abnormality may originate in wartime, in periods of religious or political excitement, in election campaigns (election "crusades") in connection with superstition, under conditions when so-called superior white and inferior native cultures come into contact, in mass situations, in mass distress, among migrating uprooted hordes, in nostalgia, and many others. This catalogue shows that both the individual and the mass may be susceptible to such abnormalities. *Developmental psychology of crime* in general and of the impulsive crime in particular, may become an important contribution to knowledge in this field.

Both the abnormal and the normal urge and impulsive action are characterized through endogenous periodicity and phases of refractoriness interspersed between the manifestation phases. On examination, one may find the following characteristic type: Although opportunity for crime does not change, the abnormal criminal impulse action shows a specific periodicity, in women, for instance, coinciding with the phases of generative biology: menstruation, childbearing, confinement. Other periodicities of this type are those of the waking state and of sleep, and especially of the periods of falling asleep and gradually awakening. The latter two phases are especially liable to release impulsive crimi-

nality. There is also a periodicity in dipsomania, and other forms of addiction.

Such periodicity points to the fact that extrinsic factors like temptation and opportunity may not be decisive. However, mere periodicity may lack the power to influence, just as outward conditioning factors may lack it.

The periodicity may stem from the outward world or else from semi-outward influences. Diabetics may acquire hyperinsulinism in connection with overdose of insulin. Hyperinsulinism has been recognized lately as the cause of otherwise non-accountable crimes of violence. The periodic dependency on drugs, particularly the alkaloids, which so often leads to all sorts of crimes is determined equally by external and internal factors.

The outward or phenotypical aspect of the impulse action may be noted by either the subject or an observer or both. One may deal first with the aspect that appears in the consciousness of the subject himself. He may realize the emotion of the abnormal and of the normal impulsive act. The writer has described the acute psychosexual situation as one which resembles in general the reaction of living matter to a stimulus. Such a reaction is never a direct, simple and true-to-life picture of the stimulus. There may be quantitative overcompensation; the reaction is often, qualitatively different from the stimulus. Nor is stimulation a passive stage. It is, on the contrary, in the organic process preceded by an active phase of *Reizsuche*, or at least by an active selection among stimuli. After the passive stage the biological response includes a stage of overcompensation which corresponds to the final aggression of the sexual action. All this can be easily distinguished from the anorganic response, which—although not without exception to the rule—resembles the stimulus in the way counterpressure resembles pressure; i.e., counterpressure is not overcompensation. Counterpressure only restores the equilibrium without any aggression (overcompensation) and generally without an exhaustive or refractory phase. To put it briefly, the graphs of the sexual action follow those of the biological organic response. There develop as characteristic patterns in every adult, male or female, successions of masochistic and aggressive phases and collapse. Whenever there is a succession of amorousness and violence, tenderness and hate, gift and wound, a quick succession at that, with or without final collapse, one may diagnose a fully developed or developing psychosexual situation. This criterion has been made use of as corroborative evidence in cases against



adults in which a child is the only witness.<sup>11</sup> The graph of the emotional concomitants of the impulse action as experienced by the subject or more or less indirectly observed by a third person, resembles the emotional response.<sup>12</sup> That man does not enjoy what he possesses is stressed by all the pessimistic philosophies; the moment the wish is fulfilled, the possessed object no longer satisfies. In other words, neither the aggressive nor the masochistic phase can survive collapse and exhaustion; and there is no lasting gratification. Every impulse is of short duration, particularly if gratified. Even if not gratified, it is short lived. While this holds for gratification of an impulse, gratification through the achievement of a volition may last longer.

The characteristic difference between the normal volitional act and the (normal or abnormal) impulsive act does not consist in the full consciousness of the phases of the former (motive, deliberation, decision). On the contrary, in the normal volitional act, or rather in volitional orientation, there is much automatism, and this is the more so as the volitional act reaches out for remote aims. O. Kulpe has, therefore, formulated a law of the "automatized intermediate phases of the successful volition," and J. Lindworsky in his survey<sup>13</sup> of experimental investigations of the will has pointed to the general confirmation by nearly all workers in this field. The motives themselves also may become automatic and this, as will be seen later, is a characteristic of motivation as an habitual pattern and of our actions in habitual and ordinary situations. The difference, then, between volition and impulse rests with the remoteness of the aim in the former and the narrow space, the split-second relationship in the latter. It is not known whether in the abnormal impulse action the time factor is different from that of impulse action in general. One difference which is known is that in cases where discharge is combined with dimming of consciousness, the normal consciousness usually recurs immediately after the discharge. This leads to the phenomena accompanying the dimming of consciousness which may be connected either with complete amnesia or twi-

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<sup>11</sup> *Supra* note 4(a).

<sup>12</sup> This has been discussed in Eliasberg, *Graphology and Medicine*, 100 *J. Nerv. Ment. Dis.*, 381, 392 (1944). For literature, see Luria, *The Nature of Human Conflict* (1932) and Ebaugh, *Association-motor Investigation in Clinical Psychiatry*, *J. Ment. Sci.* (1936). Further references are noted in the article by Eliasberg.

<sup>13</sup> Lindworsky, *Der Wille seine Erscheinung und seine Beherrschung*. Barth. Leipzig (1923).

light states or depersonalization or any form of mental dissociation.

Biologists have doubted the true dimming of consciousness. If there is an inflexible urge, the whole *milieu* narrows down. The individual's contacts are fewer. While the biologists may be right with their theoretical objection, one may state that consciousness is basically changed if fewer facts are grasped and that there is also a physiological aspect of this.

In cases of dimming of consciousness the subject might not experience the feelings which are characteristic of the obsessive compulsions, i.e., that there is some strangeness, that there is an active "non-ego," and so on. Phenomenally then, there is a striking difference between the consciousness of the compulsion and that of the impulse action.

In many cases of impulse action there will be no consciousness of reasons, purposes, aims, motives, difficulties, counterveiling factors or wrongfulness. In the impulse action one may not expect the evil-doer to take precautions, to see to it that there will be an alibi. The really impulsive sexual criminal will not buy candies in advance to lure children; and one will not be able to prove that he often repairs to places where he might find children.

A general connotation, then, of the phenomenal sphere of the urge is that the urge is experienced passively, that there is no *Reizsuche*. The acute urge as such does not cause dimming of consciousness; an urge which is normal even if most acute may be excluded, whenever the dimming of consciousness can be reliably proven.

There are some difficulties in the application of this rule. Our experiences with others or with ourselves leave traces. We evaluate our actions in the past, and we orient ourselves on our own actions. This occurs not only with the fully conscious intentional attitude but also with the impulsive and even abnormal pathological action. Thus one can observe that people take precautions, such as avoiding alcohol, if they know that sexual, impulsive, punishable actions will be carried out under alcohol. An elderly teacher, sensing the reawakening of homosexual urges, applied for retirement before he again committed punishable acts. Self-prophylaxis is only possible, however, with impulsive actions which are touched off in certain situations. Self-prophylaxis is impossible if the factors of intensity and periodicity are unfavorable. It is, unfortunately, the

most dangerous impulsive criminal who thus cannot apply self-prophylaxis, apart from the fact that his low level of personality and self-aspiration usually will not favor the formation of self-prophylactic motivations.

In addition to the difficulty just mentioned, i.e., human experience becoming multi-dimensional, there are also clinical facts which must be kept in mind. In certain twilight states, the appearances of purposeful action may be preserved. However, in such cases, there are bound to have been previously known and provable twilight states, often in connection with epilepsy. The significance of such twilight states, then, will be admitted only if they are related to pathological processes which have existed independently of the delinquency at hand.

One should in this respect, always think of the early stages, which offer difficulties for recognition and diagnosis in psychiatry as in every other branch of medical science. If the diagnosis is not easy, that does not exclude the early stage from the picture of the pathological processes. The beginnings of a definitely diagnosed psychiatric disease have the same legal consequences as the fully developed case. But there is a difference between the early stage, which is a reality, and the so-called disposition which, in psychiatry, is so often postulated as the cause of the later disease. *The disposition cannot excuse; the disease in its early manifest stage can.* The difference between manifest early stage and theoretical disposition must be stressed.

Empathy, the subjective aspect as experienced by a third person, the observer, also belongs to the phenomenal aspects of the impulsive action. The observer will, in his consciousness or in his emotional setting, be able or unable to understand impulsive actions of the evil-doer and will react to them. One must consider misuses of this criterion. One misuse consists in calling "impulsive" everything we do not understand and cannot grasp emotionally. Another misuse is that of calling "impulsive" what we grasp only with a shudder. We are astonished that we can grasp such things at all, and we let the evil-doer pay for our apparent shortcomings by sentencing him all the harder. Classical examples may be found in Dostoevski's description of the Karamazov murder. Third, the method of spurious empathy should be mentioned. It consists in rationalizing emotions and in this way eliminating them. Thus an emotional crime is interpreted in the usual criminalistic way. "Would the criminal not have thought of effacing the traces?" "Why should he have left the envelope on

the floor?" "He could not possibly have beaten this person for any other reason than to slay the witness of his first murder."

Consider the psychology of the expressions of the impulsive action. The abnormality of the criminal, abnormal impulsive action can often be found precisely in the fact that it is not directed toward achieving an objective aim. Rather than attaining an object, some sort of symbolism prevails largely. In other words, the expressive component which is present in any action is abnormally stressed; examples are exhibitionism, fetishism, certain forms of "mad" manslaughter. As has just been said, the component of expression, of picturing, of abreaction of tension, is present in any action; however, the abnormality in the impulsive action is that to a very high degree it is bare of rational motives. The impulsive action is not directed primarily toward pleasure either; the pleasure, if any, originates from lack of tension. Only on the basis of experience may pleasure be sought in such constellations; and, if this is the case, the expressive factor is gradually reduced. It has been shown in many cases that the symbolic component becomes so strong because the psychophysical energy in general and the intensity of the urges are too weak for the achievement of realization.

Concerning motive and motivation, there is the assumption that an action can be adjudged non-impulsive if a clearcut motive can be made out. However, isolated motives are another psychological specter, as anything can be motive, and an understandable one at that. The husband who traps his wife *in flagrante* with her paramour may kill the intruder or the wife or himself or may forgive one of them or both or silently close the door and go out, or may take an ax and hit the couch, and he may or may not bring divorce action. Each of these actions is perfectly understandable from the angle of an isolated motive and this shows that this is a sham understanding. Whether there are or are not isolated motives, impulsiveness cannot be adjudged present or not present.

But this does not hold true of real motivation. A motivation is an average attitude developed in a lasting situation, either by an individual, or a group or nation or a civilization, at a certain historical moment. The situation to which the motivation is directed is as important as that motivation itself; in other words, a motivation is not identical with the character of the personality or the group. Change the situation, and the motivations change or become senseless and wither away. Come peace, and the moti-

vation of the soldier in the combat zone becomes senseless, a pretense of motivation if not worse. This is one of the reasons why so-called tail-gunner philosophy can have no place in peaceful democratic life.<sup>14</sup> The individual must be able to change his motivations to develop new ones, often a very painful process. The individual must—which may be even more painful—harbor in his chest a number of motivations according to the various situations in which he has to move, to live, to learn, to act, and which he feels he has to accept or to dodge, to further, to give in to, to promote by commission or omission, to avoid or to eradicate.<sup>15</sup> The consequence of this concept and of the facts about the irresistible impulse is that it is not some isolated biological fact with no sociological aspect. We would not be able to diagnose the irresistible impulse if we did not take into consideration the situation and the fact that in this given situation the average individual has built up motivations—that he has gotten himself to play a certain role within the situation or that he should have achieved such role. Thus, the driver who causes an accident and points to his color blindness could nevertheless be punished for negligence, because as a driver, and as an adult, he is supposed to have built up in himself, motivations which—since he knows that he is color blind—should rightly prevent him from driving. Again there is clinical experience with persons with certain character dispositions,<sup>16</sup> suffering from certain clinically-known disease entities, as neuroses, psychopathies, psychoses, who would

<sup>14</sup> Eliasberg, *Psychiatry and Propaganda*, 101 *J. Nerv. Ment. Dis.* 225 (1945).

<sup>15</sup> That such tensions are not spared individuals living under more primitive conditions than our own has been stressed by Useem, *The American Pattern of Military Government in Micronesia*, 51 *Am. J. of Sociol.* 98. "Even within the same individual, the traditional and newer modes exist side by side, resulting in mixed emotions and contradictory behavior patterns."

Since 1926 the present author has directed his attention to the inter-relationships between social conditions under which the individuals of a group or a people live on the one hand, and the individual character-formation and neurosis-formation on the other. See Eliasberg, *Des Zwangs-erlebnis und der Sociale Zwang*, 126 *Z.f.d. Neurol. Psych.* 417 (1930).

The interest was centered upon the questions as to how abnormalities of the individuals impress themselves on the social institutions and, vice versa, on how social institutions are contributory forces in the shaping of the individual abnormalities. My own investigations were based on the material gathered by the anthropologist, Richard Thrunwald in his paper, "Ethnologie und Psychoanalyse" in Hans Prinzhorn, "Auswirkungen der Psychoanalyse in Wissenschaft und Leben." *Der Neue Geist Verlag, Leipzig* (1928). In 1939 Abram Kardiner published his book, "The Individual and his Society" (Columbia University Press, New York) which took up similar problems; he based his investigation on collaboration with the American school of anthropologists.

<sup>16</sup> Eliasberg, *Rechtspflege und Psychologie* 127 (1933).

be lagging in the build-up of their motivations, or would—as one of their symptoms—suffer from regression to lower levels of motivation.

There are two principal groups of such cases, one in which the crime is directly understandable from lagging behind, and one in which the relationship must be found indirectly. A typical example of the first kind is found in an hysterical crime, i.e., the lying of a kleptomaniac; the second case is much more difficult to understand and much more important. We have, e.g., to deal with a man who, in the situation of a subordinate official, does first-rate work, is reliable, honest and efficient, but—as soon as he becomes independent—defrauds and goes into criminal bankruptcy. It may be understood that this man needs the strings of a certain dependency and supervision<sup>17</sup> and it may be found that this trait is connected with a certain neurotic development, with certain strong ties to his mother or attachment to his wife. Our man must not interpose the plea of irresistible impulse. His is a lack of motivation of neurotic origin.

In the practice of the courts, the motivation of the defendant is often used by the prosecution as additional circumstantial evidence, a famous example for this being the speech of the prosecutor in Dostoevski's *The Brothers Karamasov*. One must indeed concede that the motivation as described by the prosecutor makes it highly probable that Karamasov is the culprit. There is such a strong self-indictment in the motives; e.g., Dimitri Karamasov thinks the father wants to lure away the son's beloved with the money for which the father had cheated the son. And there are all these antecedent letters and notes and sinister threats immediately before the deed; no verdict within the frame of human insight could be different from that which is handed down by the jury. Another instructive example may be found in Dreiser's *American Tragedy* where again the concatenation of the motives into a clear-cut motivation is shown with almost no link missing. How should one believe that in the last moment death was an accident, while there is such a mass of evidence to prove the guilty intent?

The latter example is theoretically interesting because it shows that there might be in the last moment an irresistible impulse toward *not* committing the crime and that is what the

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<sup>17</sup> *Supra* note 16.

defense wants the jury to believe.<sup>18</sup> The irresistible impulse, then, can be proved to a certain degree through a close examination of the character and the situational attitudes of a given character, i.e., the motivations. Motivations will not, however, allow us always to rule out irresistible impulses toward (a) committing a crime and (b) not committing it. As an example for the former, consider so-called double-existences,—where a man who otherwise leads a 100 per cent honest life by day, has a second life where he is connected with underworld gangs. The problem is often incurred in sexual criminology.

The general result of our present knowledge of the irresistible impulse is that there is nothing mystical about it, that it can be diagnosed as to its clinical appearance, etiological relationships and facts from the prehistory just as any other condition is diagnosed in clinical medicine and in psychiatry as a branch of clinical medicine. The following factors were pointed out.

1. Developmental factors: early appearance; infantilism; no integration with the personality; no sublimation; no relationship to the *milieu*.

2. Peculiarities of the aims of the urges; analogies in comparative psychology.

3. Periodicity (stereotypic repetition); intensity; peculiarities of inhibitions; constitutional factors; biological factors including age; pathological processes.

4. Phenomenology; the irresistible impulse in psychological experience; (a) emotional graph; (b) consciousness; restriction of the biological *milieu*; (c) multi-dimensionality; self-evaluation; self-control; (d) characterology; (e) characterological inheritance; (f) the observer's empathy; (g) expressive psychology of the impulse action.

5. Motive, motivation and irresistible impulse.

6. The question has been raised by the jurists as to the degree to which a given psychotic condition may be considered the cause of a given criminal action. This question has been discussed

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<sup>18</sup> There is a parallel irresistible impulse to confess crimes that were or were not committed, therefore the well-known fact of the untrue confession. For the clinical circumstances of the untrue self-incrimination, see Eliasberg, "Psychology of Proof and Evidence" in Smith, "Scientific Proof and Relations of Law and Medicine," edited by the department of legal medicine of the Harvard Medical School. This appeared under the title, "Forensic Psychology" in 19 So. Calif. L. R. (1946).

particularly in cases of paranoid crimes of violence. While one may assume that competence can be found divided or directed,<sup>19</sup> criminal responsibility should always be considered absent in a proven psychotic condition. This tenet of psychiatry also holds for the irresistible impulse. If we can prove that the irresistible impulse has arisen from the soil of demonstrable abnormality, the question of the degree in causation becomes senseless and must be discarded.

7. Method of establishing the various factors under 1-5. Every medical diagnosis is based (a) on facts perceived by the medical observer himself and (b) largely on hearsay, i.e., on information received by the physician from other persons often not available for testimony and cross-examination at the time when the physician testifies. Contrary to refreshing his memory from his notes, which is not hearsay, the physician, if he relies on the case history, has to tell the court that no diagnosis can be made on the mere basis of his perceptions. It is wrong for the court to reject as hearsay, facts from the case history observed by laymen or other physicians or quotations from books by other authors. The court, rejecting references to anamnestic material of the described type, is in error about the nature of a medical diagnosis and the method of arriving at it. It must be pointed out that the expert testimony is radically different from the lay witness's testimony in that the latter should as much as possible rely on his own perceptions, while the former must be allowed to make plausible inferences from the perceptions of others not available for cross-examination.

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<sup>19</sup> Eliasberg, *Competency Divided or Directed*, 45 (6) J. Crim. Law. & Criminol. (March-April, 1955).