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Unconscious Crime: Mental Absence and Criminal
Responsibility in Victorian London (review)

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"Aboriginal" revealed little sense of much influence, apart from a few references to reports from, among others, travelers William Bartram and Peter Kalm.

Such a paucity of information on native usage contrasts with an extraordinarily wide array of individuals quoted by Bigelow, many from across the Atlantic. I was particularly interested in the numerous American writers referenced, many of whom have not reached the pantheons of medical histories. In fact, many names are mentioned only once by Bigelow, such as Dr. Anderson of New York, and Professor Ives of New Haven who wrote to Bigelow in 1816 about bloodroot. This was not the Dr. A. W. Ives of New York who was commended by Bigelow for his work on hops that promised economic improvement in the brewery industry.

What is also striking, and certainly deserving of further study, is the stamp of approval that Bigelow accorded some of the information he received. Thus, with respect to hemlock for jaundice, he wrote: "Dr Fisher, President of the Massachusetts Medical Society, in his paper on the narcotic vegetables, bears unequivocal testimony in favour of the efficacy of Hemlock in this complaint" (p. 119). Such bestowals, with the authority of Bigelow's own reputation, give some indication of the potential of the three volumes to shape therapeutic practice at the time. To be able to pursue quickly what would otherwise necessitate tedious and time-consuming searches in a library copy (with one eye on closing times!) makes the CD-ROM of inestimable value.

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Joel Peter Eigen. *Unconscious Crime: Mental Absence and Criminal Responsibility in Victorian London*. Baltimore: Johns Hopkins University Press, 2003. xii + 223 pp. \$39.95 (0-8018-7428-9).

Unconscious Crime builds on Joel Eigen's previous work wherein he traced the development of the insanity defense from the trial of Earl Ferrers in 1760—the first case in which an alienist or mad doctor testified for the defense—up until the trial of Daniel McNaughtan in 1843. In *Witnessing Insanity*, Eigen demonstrated that prior to the 1800s, the Common Law's test of insanity was the "will to harm" defined cognitively: first, the lack of understanding as embodied in the "Wild Beast" test; then, the inability to distinguish "Good from Evil" and, eventually "Knowing Right from Wrong." To be sure, delusion played a central role in establishing total insanity. However, beginning in 1812 the mad doctors, encouraged by defense counsels, began to assert that partial insanity, a "lesion of the will," often compelled the prisoner to commit monstrous acts devoid of reason. Indeed, many attorneys, with the assistance of the mad doctors, were successful in this type of defense.

In *Unconscious Crime*, Eigen is interested in how the Victorian criminal court

treated cases of split personalities, which were distinct from ordinary insanity cases. He examines how ideas of “splitting, of multiplicity, of fugue states evolve and how have the common law courts” (p. 3) handled these cases when defendants pleaded “missing” instead of “not guilty by reason of insanity.” He opens his book by presenting the 1950 Australian case of *King v. Gogden*, which immediately confronts the reader with the richness of this “variation” on the insanity defense for an analysis of criminal responsibility. Sleepwalking, amnesia, and other fugue states become an alternative to the insanity defense—and one that leads to acquittal and freedom rather than to forced hospitalization in a secure mental facility.

Once again, Eigen returns to the Old Bailey Sessions Papers (OBSP), pamphlets containing precise accounts of cases heard before London’s central criminal court. He examines the years 1844 to 1876 to see how the McNaghtan Rules (1843) functioned to restrict medical testimony, and how London’s Central Criminal Court handled defendants who argued that they were not legally responsible because their behavior was involuntary—an *automaton* had committed the crime.

After introducing the reader to the theoretical and conceptual development of “Double Consciousness in Nineteenth-Century Thought”—a beautifully crafted and tightly reasoned intellectual history—Eigen accomplishes his goal by selecting several cases that serve as detailed examples of previously introduced concepts. This approach adds real intellectual sophistication and precision to his analysis, while also providing the reader with interesting narratives to illuminate key concepts. This is what makes the book an engaging read, for the trials themselves are fascinating. Eigen is an excellent storyteller who has the ability to move back and forth between the concrete and the abstract.

This book is exquisite. Eigen writes clearly, and his organization is excellent. He is also fair, scholarly, and unbiased. In the final chapter, he does a nice job of bringing the main issues back together by discussing their legal significance for the understanding of split personalities as they related to the criminal law. In the last few pages, he deftly brings us up to date, turning his attention to how “dividedness”—the prospect of a “missing” defendant, what today we would call Multiple Personality Disorder—jeopardizes the integrity of the legal concept of criminal responsibility. This book will make a lasting contribution to the field and will still be read a hundred years from now. It is first-rate scholarship.

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