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REVIEW BY NOTED AUTHORITY

Mr. William L. Clark Declares That the "Unwritten" or "Higher" Law Has no Place in the Law of New York-If That be the Foundation Upon Which This Case Rests the Remedy Lies-With Executive Clemency -The Degrees of Murder-The Defense of Insanity and "Irresistible Impulse"-The Latter Plea, According to High Authorities Has no Place in the New York Law-Authorities Cited.

Special to The Observer.

the importance of the trial of Harthe law on the subject has been pro-Law and Procedure, known and cited as cyc. and the author of well-known works on the criminal law. For the benefit of those who may be interested in the case and wish to follow the testimony as it is published from day to day here is his statement. He

unfair to the defendant to express Whether he is guilty or innocent must be determined, not on the facts which have been published in the newspapers, but on the facts as great, is not sufficient to reduce the they appear from the evidence which may be given at the trial, and the question will be decided by the jury on this evidence under the court's instruction as to the law. They cannot convict unless they are convinced of the defendant's guilt beyond a reasonable doubt, and a reasonable doubt as to his sanity at the time of the killing will require an acquittal. With respect to the law there can be little question. In the first place is perfectly clear that the so-called anwritten' or 'higher' law, in the sense in which the terms have been used in connection with this case, has no place in the law of New York.

kills another depends entirely upon the application to the facts of the established by the statute and judicial decisions of the State. course it is possible for a jury to disregard the law as laid down for their guidance in the charge of the court, and this is all there is to the this State jurors not the judges of the law, but of the facts only, and under their oaths they are required to decide according to the law as given them by the court. N. Y. Code Crim. Proc. | 419. If the law is harsh as applied to the facts of any particular case, then the rem-edy is by application for executive elemency. People vs. Silverman, 181

DEGREES OF MURDER. "Independently of statutory provislons, if a same man intentionally kills of another, he is guilty of murder, unless the circumstances are proven to des
have been such as to justify or exte

LAW IN THE THAW CASE cuse his act, or to reduce it, by reason of provocation, to manslaughter; and if a person intentionally fires a design being accomplished.' N. Y. pistol at another, an intention to kill Pen. Code, | 203, 205. See 21 Cyc. is presumed. As it is concisely said 794, 812, 826. in the Cyclopedia of Law and Procedure, malice is implied in every intentional and premeditated homicide. if there are no circumstances serving to mitigate, excuse, or justify the act. 21 Cyc. 708. Under the New York statute, assuming that Thaw was sane, his killing of White was murder in the first degree, unless it was justifiable or excusable, if it was committed either (1) from a deliberate and premeditated design to kill, or (2) by an act imminently danger-New York, Jan. 31.-In view of ous to others, and evincing a depraved mind, regardless of human life, although without a premeditated dery K. Thaw for the killing of Stan- sign to effect the death of any indiford White and the great interest it vidual. N. Y. Penal Code, | 183. The excites, not only locally but through- killing was murder in the second deout the country, and even abroad, a gree if it was committed with a destatement of the law by which the liberation or premeditation. N. Y. guilt or innocence of the accused Penal Code, 184. While it is necesmust be determined will be of inter- sary to murder in the first degree, under the statute, that there shall be est not only to lawyers who make no both deliberation and premeditation, special study of the criminal law, but in addition to the intent to kill, all to laymen as well. A statement of that the law requires is that the killing shall not be the instant result of impulse, and it is sufficient if there viewing editor of the Cyclopedia of is some thought and reflection on the as the result of such mental action. People vs. Hawkins, 109 N. Y. 408;

"Under the supposed facts and circumstances of the killing it seems as to manslaughter. At common law, "It would be both improper and a homicide is not murder, but manany opinion as to his guilt at this slaughter only, although intentionally committed, if it is committed in the heart of passion caused by adequate provocation; but passion, however killing to manslaughter, if the provocation is not in its nature adequate in the eye of the law, or if there has been time after the provocation was given for the passion of a reasonable man to cool, whether it does in fact cool or not, since the safety of the community requires that persons shall reasonably control their passions. And, although there has been some tendency to leave the question in such cases to the jury, the law has long been settled that mere suspicion. or even actual knowledge, on the part of a husband of past or even contin-ning illiest relations between his wife and another man is not such provocation as will reduce his killing of the man from murder to manslaugh-ter. 21 Cyc. 751-753. A fortiori, suspicion, or even knowledge, on the ing pursued or annoyed by another would not be such provocation as to reduce a homicide to manslaughter. Furthermore, under the present stat-

Cyc. 726.

or justifiable either at common law or under the New York statute,

be classed as musiaughter, except when there was no design to effect

the crime is murder in one of its de-

grees, unless it is excusable or justi-fiable, N. Y. Penal Code, | 188, 189,

when that purpose is present

there was 'imminent danger of such

THE INSANITY DEFENSE. "With respect to the defense of insanity, if Thaw was insane when he killed White, he not only cannot be punished, but he was guilty of no crime, and this is true although he may have been sane before he committed the act and may be sane now 12 Cyc. 165; 21 Cyc. 663. Whether or not he was insane is of course a question of fact which must be determined by the jury from the evidence; but there are certain tests established by law in this State, as elsewhere, for determination of the question whether, if he was to some extent insane, his insanity was sufficient to exempt him from responsi-

"In the first place it is everywhere

the settled law, in New York by ex-

press statutory provision, that if Thaw, at the time he killed White, was so insane that he did not know the nature and quality of his act, or that he did not know the act was wrong, he is not responsible, and must be acquitted. N. Y. Pen. Code, 20, 21, 12 Cyc. 166; 21 Cys. 663. In the second place, it is equally well settled that mere moral or emotional insanity, or frenzy produced by anger, jealousy, or other like passion, is not such insanity as will exempt People vs. Barberi, 149 N. Y. 256; 21 from responsibility, where the person knew the nature and quality of his act, and that it was wrong; and this is true, it has been held, although he clear that there can be no question may be unable to control his passion. and even though some mental defect makes him more liable to yield to passion than if he were mentally sound. 12 Cyc. 170; 21 Cyc. 666. Proof of such a condition, however, by excluding the elements of deliberation and premeditation, if the evidence shows that it did so, but not otherwise, will reduce the homicide to murder in the second degree. People vs. Barberi, 149 N. Y. 256; 21

"Perhaps there may be such thing as genuine insanity produced by anger, jealousy or revenge, and if there is, which is a question of fact to be determined from the evidence, then it is a defense to the same extent as insanity produced by any other cause; but it must be genuine insanity as distinguished from 'turbulence of passion produced by a desire for resenge' (People vs. Foy, 138 N. Y. 666, 667), and it must, as is expressly required by section 21 of the Penal Code, have been such as to render the accused incapable of his act or of knowing that it was wrong. The heat of passion and feeling produced by motives of anger, hatred, or revenge is not insanity and affords no ground of exemption from responsibility. People vs. Foy, 138 N.

A GROUND OF EXEMPTION.
"In some States a phase of insanity known as insane irresistible imfiable, N. Y. Penal Code, | 188, 189, or disease, is recognized as a ground 193; People vs. Beckwith, 103 N. Y. of exemption from responsibility for a crime committed under its influ-"Nor was the homicide excusable ence; it being held in these States that if an insane impulse so overor under the New York statute, for, masters the will of a person as to to be excusable, it must have been irresistibly impel him to the comcommitted by accident in doing a mission of a homickle, he is not relawful act, and to be instifiable, it sponsible, although he may know must have been in the lawful defense the nature and quality of his act and of Thaw or his wife, when there was may know that it is wrong. If Cyc. reasonable ground to apprehend a 169; 21 Cyc. 665. In other States, design on the part of the person slain however, this doctrine is not recogto commit a fellow, or to do some nized, and it has no place in the law.

Y. 666, 667.

great personal injury,' etc., and when of New York. In this State it is expressly provided by statute that a person is not excused from criminal liability as an insane person 'except upon proof that, at the time of committing the alleged criminal act, he was laboring under such a defect of reason as either, (1) not to know the nature and quality of the act he was doing; or (2) not to know that the act was wrong; 'and further, that 'a morbid propensity to commit prohibited acts, existing in the mind of a person who is not shown to have been incapable of knowing the First Quarter. Lesson V. Genesis wrongfulness of such acts, forms no defense to a prosecution therefor. N. Y. Penal Code. | 21, 23; and see 12 Cyc. 169; 21 Cyc. 664.

> "In the Carpenter case (102 N. Y 238), where the defendant had killed request to charge the jury that 'if some controlling disease was in truth the acting power within him (the prisoner) which he could not resist, or if he had not sufficient use of his reason to control the passion which prompted the act,' he was not responsible. Chief Justice Ruger, writing the opinion of the court, said that 'the principle of this request is not only impliedly condemned by sections 21 and 23 of the Penal Code, but has been held to be untenable by the express decision of this court,' citng the Flanagan case, 52 N. Y. 465, and quoting the following language of Judge Andrews therein, namely: Indulgence in evil passions weakens the restraining power of the will and conscience, and the rule suggested would be the cover for the commisdoctrine that a criminal act may be excused upon the notion of an irresistible impulse to commit it, when the offender has the ability to discover his legal and moral duty in respect to it, has no place in the law."

This view has been adhered to in the later cases, as in People vs. Ferraro, 161 N. Y. 365, 377; and People in the first degree was sustained, although the evidence showed that the the world has never forgotten. defendant had been eccentric, motestified that he was insune. court, in an opinion by Judge Cullen, held that whatever may be the fs known to the law, namely, that proved found in | 21 of the Penal Code, man at above quoted, which is but a statutory declaration of the law as it had long prevailed, and that when the evidence affords no reason for doubt that the defendant knew both the nature and quality of the act done by him and that the act was wrong, he is justly held by the jury to be responsible for his crime, whatever may have been his eccentricity conduct, or whatever abnormal his

disposition. "The learned judge suggested that while the defendant's 'previous malady and infirmities of temper' were insufficient to affect his legal responsibility, their might warrant a mitigation of his punishment and his relief from suffering the supreme penalty

THE LESSON FOR SUNDAY had its door shut to behind him by the vironment. A boy can keep his lips NOAH, THE ARK AND THE FLOOD

No Bolder or More Tragic Picture in all the Scripture Than This-The Flood a Great Mercy and an Oblect Lesson Which the World Has Never Forgotten-The Resplendent Faith of Noah-The Preservation of the Good Seed-Analysis and Key and the Teacher's Lan-

(Copyright, Davis W. Clark.) in the incomparable picture galry of the Scriptures there is no canvas like that which presents the ark his wife by repeatedly stabbing her and the flood. It is too bold and tragwith a knife. in the presence of a le to be passed. It arrests and stirs number of people, in the open street, the most indolent mind. Once caught and in broad daylight, the Court of upon the sensitive plate of a child's Appeals held that the trial court did memory it will never fade. Its unnot err in refusing the defendant's speakable horror is mercifully mitigated by such gentle incidents as the door shut by God's own hand, the dove with olive branch, and the rain-

bow spanning all. The Noachian deluge only precipitated the inevitable. It was an act of divine mercy as well as justice. In the great conflict foretold in Eden between the serpent seed and the to God. seed of God the former were ascendant. The conditions were aggravated by intermarriage. The sons of God, his fears with the assurance that the the descendants of Seth, were lured by the siren daughters of Cain, so that they chose their wives irrespective of the divine will. All the pro- ruption; human life should have a followed. The very physical hardihood of the offspring made their moral obliquity more deadly. Every sion of crime and its justification. The seed of God was reduced to a pairry contingent. It was on the verge of extinction. The whole race, in fact, was committing suicide. It was destroying itself. Earth would have soon been like a desolate island whose sanguinary population had consumed itself through lust, murder and cannibalism.

The flood was a great mercy. It vs. Sliverman, 181 N. T. 235. In the shortened the irretrievable misery latter case a conviction of murder of the race then living. It kept the seed alive. It was an object lesson God's election to salvation is based rose, and of bad temper, and had upon the moral qualities of those been treated in a sanitarium a little whom He chooses. There is striking more than a year before the homi- illustration of this in the character cide, and although some physicians of Noth. He found grace in the The sight of the Lord, not through caprice and favortism, but because in a wicked and adulterous generation opinions of medical experts as to the he shone like a light, and lovingly insanity of a person charged with held forth to a dying race the word if received, proved life to them. He was a just man and upright, and walked with God. He was fit to be the second Adam, the progenitor of a new and hopeful race. And to this end God Noah's race shines resplendent

apon the rayless irreligion of his lay. He showed his faith by his stupendous work. On dry land and far from the sea he built-his colossal ship. He preached righteousness to the gaping and gibing crowd which curiosity brought from afar to his shippard. He was persistent. He kept right on building and preaching kept right on building and preaching for one hundred and twenty years. He built precisely according to the model shown him. He gathered in the supply of food for man and beast requisite for his long voyage. He selected and admitted the beasts and made to shine against the univ lected and admitted the beasts and made to shine against the universely as God directed. With seven degeneracy of his times. It processes he entered his strange prison, one can be good in spite of one's

Invisible Hand, and tarried in his seven days passed before the first raindrop pattered upon the roof. Sublime those with whom he is thrown faith, that!

voyage is very brief. It takes only strument of good to his fellows. twenty-seven verses to narrate the novel and thrilling experience of agination must be trusted to uncover

As Noah at length emerged from his generous heart. Earth's desolafor the sound of a human footfall. of the world before the flood. Not even a footprint is left. He finds relief in worship. He builds an altar on the dripping rocks of Ararat. has saved only a few specimens of places, and see that the species did life everlasting. not become extinct. When the fragrance of that whole burnt offering came up before the Lord, He knew that Noah intended it should signify

As a pitying Father, God responded to the suppliant patriarch, allaying cataclysm just passed should never be repeated; the beneficient regularity of the seasons should know no interverbial sin, and sorrow of misalliance safeguard. God delegates His judicial power to man to this end. The first principle of human government is here irradiated in the statute. "Whose conceivable lust was rampant. The sheddeth man's blood, by man shall his blood he shed."

The Noachian covenant was now ready for its seal. God took the very substance which had destroyed the earth, and transmuted it into a royal signet to attest His promise never again to whelm the race. There it stood in all the dazzling sipender of its prismatic colors—an arrowless bow, bent toward heaven, the very vastness of its sweep signifying "wideness of God's mercy." generations the ineffable and assuring words which first fell upon Noah's cars have resounded, "This token of the covenant."

ANALYSIS AND KEY, The flood: bold and tragic picture, Mercy as well as justice of it. Race exterminating itself through

Ground of Noah's election to life. His moral qualities. His resplendent faith. Preparations for the flood. The log-book of the Ark. Noah's sacrifice: God's promise. The token of the Covenant,

Flood save the seed of God.

sin.

THE TEACHER'S LANTERN.

Rivet fidgety scholars this paragraph certainly will; it is so seemed the fairly teaches itself. The natural method is to describe the condition of the race before the flood; the superlative wickedness which made that wholesale destruction an act of mercy wholesale destruction an act of mercy that wholesale destruction are act of mercy that wholesale destruction are act of mercy that wholesale destruction are act of mercy that who can be supported to the condition of the new cotten mill started will be an act of mercy that who can be supported to the condition of the new cotten mill started will be an act of mercy that we have a support of the crow sentting and property that the crow sentting and expects to he the new cotten mill started will be a mercy that the crow sentting and expects to he new cotten mill started will be a mercy that the crow sentting and expects to he new cotten mill started will be a mercy that the crow sentting and expects to he new cotten mill started will be a mercy that the crow sentting and expects to he new cotten mill started will be a mercy that the crow sentting and expects to he new cotten mill started will be a mercy that the crow sentting and expects to he new cotten mill started will be a mercy that the crow sentting and expects to he new cotten mill started will be a mercy that the crow sentting and the crow senttin raph certainly will; it is so scenic. as well as of justice; how the irretrievable misery of the human family, which had doomed itself, was cut short, and a chance

Noah's upright character can

unsullied, though the air around him weird environment undaunted, though is blue with profanity. He need not lle, nor cheat, nor gamble, though school, shop, or store all do. If he The "log-book" of that unparalleled keeps upright, he will prove God's in-

Implicit and persistent was Noah's three hundred and sixty-five days. obedience. He showed his faith by Much riches are in little room. Im- his works. He never grew weary in well-doing under circumstances calculated to try him to the uttermost. So his name richly deserves to be the ark, an inexpressibly sad and or- engraven on that tall obelisk, Hebrews phaned feeling must have affected xi, reared to the heroes of faith. His very character and course was in ittion, how utter! In vain he listens self an indictment and condemnation

Heir to two worlds, Noah stepped out of the ark sole monarch and pro-Again his faith exemplifies itself. He prictor of all he surveyed with the natural eye, and beyond that the clean animals; but he prepared to better inheritance, even the heavenly. offer some of them, with the full as- So God rewards-a hundred-fold in surance that God would supply their this life, and in the world to come

A bone of contention has ever been the question whether the flood was universal or not. The arguments the complete devotion of himself, his pro: (1) Natural conclusion from descendants, and the renewed earth language of Scripture. (2) No evidence to prove that he population of earth was confined to a limited locality. (3) Impossibility of piling the waters up in such manner as to cover mountains. (4) No need to take birds into the ark, if deluge was only local. Arguments contra: Universal deluge unnecessary to complish the end designed. (2) Ark could not have given room for every species. (3) To cover mountains, water must needs be five miles deep. Ten miles added to the diameter of earth would destroy the equipolse of the system. (4) versal prevalence would have duced change of climate. (5) Overflowing of salt water would destroy plant life, and fresh water animal

> Still pending is the case, with the however decidedly in favor of a local deluge. The rocks bear the inc trovertible testimony to the poand reality of such a flood as Genesis describes. Huxley, in his Lay Sermon, No. IX, graphically describes such a cataclysm. M. Figuier affirms that he Asiatic deluge occurred after the appearance of man. A vulgar infidelity has had its laugh at Noah and his ark; but he laughs best who

Corresponding to the testimony of the rocks is the testimony of tradition. Humboldt says that ancient traditions of the flood are dispersed over whole surface of the globe.

New Monroe Cotton Mill Soon to Be-

Special to The Observer.

Monroe, Jan. 31.-The new mill company, which has taken the Crow Knitting Mill prope

The officers are: Charles president and genral manage Lee, vice president, and