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# Insanity as a Defense in Criminal Law, by Henry Weihofen

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## BOOK REVIEW

*Insanity as a Defense in Criminal Law*, by Henry Weihofen, 1933, pp. 524.

Criminal law does not deal with normal individuals for persons normalis do not commit crime; it deals with the abnormal class—enemies of society, asocial and antisocial beings, moral oligophrenics, moral idiots and imbeciles. Lombroso did not solve the problem as to society's treatment of this class but he did initiate the study and treatment of the criminal in place of the simple repression of crime. As a result there is a general demand for changes in our criminal codes which admittedly are inadequate to cope with the problem of the administration of criminal justice. The most general demand has to do with the defense of insanity. It was no doubt in response to this demand that the Legal Research Committee of the Commonwealth Fund made a grant to the faculty of the University of Chicago Law School to undertake a study of the state of law governing insanity as a defense to crime. The faculty of the University of Chicago committed the work of collecting and preparing the material to the author and the book here under review is the result of his task.

The book is not merely theoretical, but it is catholic in its scope. The author has studied every reported case bearing upon the subject of insanity as a defense, and the book is made practical and useful in the most utilitarian sense, in that it states the law of the subject as it now exists. Practically all suggestions of reforms are left for the last chapter.

Both the substantive and the procedural phases of the subject are covered. The many conflicts in the various rules, e. g. as to the test of irresponsibility, as to the burden of proof, etc., are set forth and by notes and citation of cases it is indicated just how many jurisdictions support each conflicting rule. Throughout are many references to views of authorities in forensic psychiatry.

In the chapter on The Legal Tests of Irresponsibility the historical development of the right and wrong test is treated, and the leading case, the opinion of the Judges following M'Naughten's case, the interpretation, modification and degree of acceptance of the test of this case by our courts, are handled in a scholarly manner. The medical, as well as the legal basis, of the irresistible impulse test, and the acceptance or rejection of the test by the various courts, its relation to the right and wrong tests, together with a table showing the position of each jurisdiction with reference to these tests, discloses that "the right and wrong test (plus the irresistible impulse test in some seventeen states) is held to be the sole criterion of criminal responsibility, applicable in all cases and to all forms of mental defect or disease".

Then follows the different special rules in cases involving insane delusions, forms of mental unsoundness, mental disorder as ground for reducing punishment, the burden of proof, the presumptions of sanity

and insanity, witnesses (expert and nonexpert), admissibility of evidence and pleading and practice. A special chapter is devoted to the subject of insanity present at the time of criminal proceedings, but absent at the time of the criminal act.

The busy lawyer will be pleased with the very practicable but nevertheless scholarly discussion of the law as it actually exists and with the digests following three different chapters to which he may readily turn and find the decisions of his own state upon any one of the conflicting rules. If he is at all socially minded or interested in the improvement of our system of administering criminal justice, he will be interested in the last chapter in which the author discusses—not as a doctrinaire however,—the suggested reforms.

The book is a job well done. Every lawyer practicing criminal law needs it as a text, and it should be read by all lawyers and social workers interested in the problem of crime.

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