
Book Review: Insanity Defence, by Richard Arens

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Book Review

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INSANITY DEFENCE, Richard Arens, (New York: Philosophy Library, 1974) Pp. 328 (\$12.50)

The insanity defence is the most complex and controversial area in the interface between Psychiatry and the Law. Professor Arens deals with one aspect of this defence in analyzing the failure of the Durham Rule¹ in the District of Columbia. He led a project to study the actual operation of this progressive new rule by defending clients in court. He describes the opposition encountered from the almost unchallenged authority of government psychiatrists in deciding criminal responsibility while using a very narrow definition of mental illness.

The author deals with Unfitness, and touches on whether the judge or prosecutor should be able to raise the insanity defence issue against the wishes of the defendant. He is critical of psychiatrists who say that drug addicts, sex perverts and psychopaths are not mentally ill.

He shows that a doctrinal change will be ineffective unless accompanied by a vast increase in resources for treatment. Legal, prison and hospital authorities tend to be punitive, despite lip service to rehabilitation and treatment.

It is good to read the work of one who obviously has had a good deal of experience in the field of mental illness and the law. The book is well-documented with readily accessible footnotes and is illustrated with actual case histories. Unfortunately the author pays little attention to Insanity as a defence in other jurisdictions, and briefly discards the advantages of deferring the Insanity issue to the stage of disposition after conviction.

Canadian readers will realize that the doctrinal changes introduced by the Durham Rule in 1954 were preceded in Canada by changing "know" to "appreciate" in 1893,² and the Royal Commission on Insanity as a Defence (1956)³ advised a broader interpretation of "disease of the mind". Psychiatrists are reluctant to see borderline cases as falling into the category of mentally ill, aware as they are that the existing treatment facilities would be swamped by a deluge of disturbed offenders.

Criminal lawyers and forensic psychiatrists will find this book very worthwhile. Even some judges might benefit!

by B. A. Boyd*

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¹ *Durham v. United States*, 213 F2d 862 (D.C.Cir. 1954) postulated non-responsibility whenever "the unlawful act was the product of mental disease or mental defect."

² 55-56 V., c. 29, s. 11.

³ Royal Commission on the Law of Insanity as a Defence in Criminal Cases (Hull: Queen's Printer, 1956). At present, "diseases of the mind" is restricted to major functional or organic psychoses.