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In the opinion of this reviewer, Professor Ruth Lawson has provided, in one relatively small and inexpensive volume, a concise statement of fundamental documents otherwise not readily available to the busy scholar, practitioner, or informed citizen. Furthermore, her original thoughts and implementing material make this work much more than a mere collection of documents; but, rather, a significant primary source on world regionalism.

(Continued from preceding page)

10 July 1961, 16th Sess. See also A/C. 6/L. 493, 6 Dec. 1961; see in particular U. N. Gen. Assemb. 16th Sess., 6th Comm., Agenda Item 70, A/C. 6/L. 491, 15 Nov. 1961.

Kutner, World Habeas Corpus For International Man: A Code For International Due Process of Law (1962).

A. B. A. Committee on Peace and Law Through the United Nations, "Study Far-Reaching Changes in International Court of Justice," 7 Amer. Bar News 2 (1962).

Brennan, International Due Process and the Law, New York Law Journal, Aug. 21, 1962, at 4; reprinted in 48 Va. L. Rev. 1258 (1962).

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*Reviewed by George Liviola, Jr.**

LAW AND PSYCHIATRY, COLD WAR OR ENTENTE CORDIALE? by Sheldon Glueck. Published by the John Hopkins Press, 174 pp., (1962).

This volume is a frontal assault upon one of the most controversial of all medico-legal issues—the accused's defense of his crime by reason of insanity. The book includes a history of the development and evolution of the present rules governing this issue, a penetrating analysis of their weaknesses and strengths, and a courageous proposal for a new rule based on the author's scholarly experience.

Mr. Glueck examines the vital issues upon which psychiatrists and lawyers have frequently locked horns. The first is the fundamental controversy of freedom of the will versus the power of deterministic forces. Combined with this is the query as to the degree of responsibility each man shall be accountable for. Another issue pits social sciences against law, with the law deny-

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ing the psychological link between motive and hidden causes. Yet another is the requirement of the law that the present rules of evidence remain safeguarded, versus the psychiatrists' demands for a complete clinical exposé of the accused's sociological and psychological past.

Mr. Glueck cuts a pattern for a test of irresponsibility, related to mental disease, which the lawyer and the psychiatrist would be able to agree upon: The test must be in terms understandable to the jury; it must be in harmony with "authoritative conceptions" of contemporary psychiatry; it must permit the psychiatric expert witness to state his diagnosis of the accused's probable mental condition as an organic whole; and it must prevent the expert from committing himself to a conclusion regarding the legal and moral issue. Lastly the test must protect society by not discharging into the community "actually or potentially dangerous persons." Against this pattern, Mr. Glueck examines the tests now used by the majority of Anglo-American jurisdictions. He rejects them all. The M'Naghten rule fails on account of its ambiguity and its anachronistic psychiatric philosophy. The Irrestible Impulse rule is rejected because of the difficulty of proof of the actual irresistibility of a particular impulse. It does not cover such diseases as melancholia, where the "criminal act may be the reverse of the impulsive, yet it is the act of a madman." The *Currens* case rule is inadequate because it omits the *mens rea* factor of crime and limits guilt to the element of the *actus reus*. The Delusion rule is insufficient because it makes "responsibility hinge solely on the presence or absence of delusion."

In effect all these tests fail because they do not take into consideration the whole personality but are concerned with a few symptoms of a breakdown of the mental processes. The American Law Institute's Model Penal Code is rejected by Mr. Glueck because it is "apparently a rewording in more sophisticated language" of the M'Naghten and Irresistible Impulse rules.

In Mr. Glueck's opinion, the *Durham* rule[1] provides the best of all available tests. In essence, it says, "an accused is not criminally responsible if his act was the product of mental disease or defect." Glueck approves this rule because it embraces most of the various mental illnesses and permits a much wider and deep-

[1] Durham v. United States, 214 F. 2d 862 (D. C. Cir., 1954).

er scope of expert testimony. Also, it allows a continuous adjustment of the law to ever progressing concepts of psychiatry—in effect, as Glueck writes, "it resolves the major issues which for a great many years have been plaguing the field we are examining." Yet, the *Durham* rule has been adopted only in the Virgin Islands and Maine. It has been rejected by the United States Court of Military Appeals and the Supreme Courts of nineteen states. The chief criticism of the rule is that it "destroys the popular basis of moral accountability in the daily traffic of life," by failing to provide the necessary "intervening links between mental aberration and irresponsibility."

Mr. Glueck does not destroy the icons without an offer to replace them. He tenders his own solution to the problem in a hypothetical instruction to the jury. In his sample instructions, Glueck tells the jury that, if in their opinion mental impairment *probably* made it impossible for the defendant to control his act, he should be found not guilty on the ground of insanity; if they doubt that because of mental impairment it was probably impossible for the defendant to understand or control his act, he should be found only partially guilty; if they are convinced that the defendant was not suffering from mental disease, he should be found guilty.

This proposal fits into the niches that Mr. Glueck carved out in the requirements. He feels that the use of the word *probably* and the use of the *mid-verdict* of responsibility cure the inherent defect of the *Durham* rule, which in its present state handicaps the prosecution, because a mere scintilla of evidence permits the jury to consider the claim of insanity.

Mr. Glueck gives a preview of the Twenty-First Century and the changes in the philosophy of crime that will confront us then: *Retribution:* "neither the victim of the crime nor the state gains anything by emphasizing the element which is, in effect, socialized revenge." *Administration of Criminal Justice*: "The work of the criminal court should cease with the finding of guilt or innocence. The procedure thereafter should be guided by a professional Treatment Tribunal. . . ." Most of all, he sees the joining of forces of Psychiatry and Law caused by the "improvement of psychiatric research and insight . . . and the steady expansion of legal learning influenced by paralegal disciplines."

Perhaps there are only two adverse criticisms which can be made of this book. The first is the author's use of long, "Ger-

manized" sentences which sometimes make the reading slow and tedious. The other is the author's failure to mention parallel legal concepts in those lands where the English law and its branches are not the bases for their codes.

In all other respects, the work deserves praise and may well be viewed as a blueprint for the transformation of the criminal law.