

## BOOK REVIEW:

### INSANITY DEFENSE

Arens, Richard, *INSANITY DEFENSE*. New York: Philosophical Library, 1974. 328 pp.

At a time when terrorism has become commonplace, when names like the Munich Olympics or Dublin symbolize the seeming insanity of an age, and when the Soviets have been accused of placing political opponents in insane asylums, the topic of *Insanity Defense* takes on an air of immediacy to layman and lawyer alike. In the Philippines, where the defense of insanity is hardly ever used — one is tempted to ask if this is due to legal reasons or to the fact that an Oriental is better prepared to face the trials of daily life and to maintain his sanity — the book by Professor Arens will be of particular interest.

It would be singularly unfortunate if any reader allows the heavily jargonized and almost unreadable opening pages to turn him away from finishing this remarkably interesting book. Professor Arens gets off to a bad start — he compounds the jargonized gobbledygook of the legal profession with a rambling analysis of the different rules developed by American courts dealing with insanity defense. These defenses are traced from the antedeluvian “wild beast” rule (To be exempted from punishment, man must no more know what he is doing than does a wild beast), to the slightly more civilized M’Naghten rule (The test is the ability to distinguish between right and wrong), to the sophisticated Durham rule (an accused is not criminally responsible if his unlawful act was the product of mental disease or defect) and its modifications, until, as Prof. Arens puts it, we go back to Methuselah through the 1972 U.S. Court of Appeals Brawner doctrine (a person is not responsible . . . if he lacks capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law).

After the first few pages, however, Professor Arens develops a more relaxed style and displays an adequate and cutting wit, which he often turns upon St. Elizabeth’s, the District of Columbia Hospital to which psychiatric cases are exclusively assigned. As Arens notes: “It is not facetious to observe under the circumstances that in addition to the mentally healthy chronic drug addict, St. Elizabeth’s appears to have discovered the mentally healthy sexual molester of children.”

In discussing the issue of Insanity Defense, Arens does not confine himself to a surgeon's dissection of the different rules concerning a plea of insanity. Rather, he sews the book together using statistics, case studies, and an in-depth study of what occurs *before* and *after* a finding of not guilty by reason of insanity is promulgated. The basis of this preoccupation of both the courts and the bar with mental illness is the abhorrence over "the monstrous practice of punishing a product of mental illness." The difficulty initially lies in characterizing what involves mental illness. Many who welcomed the adoption of the Durham rule grew rapidly disillusioned by the inadequacy of psychiatric facilities and the peculiar psychology of fear and preoccupation with security which quickly transformed hospitals designed for treatment of mental illness into prisons — prisons in fact and hospitals in name. Indeed, there are those who would prefer prison to the horrifying existence of a psychiatric detainee. In the light of these inadequacies, it is not surprising, therefore, to read of the seeming failure of the legal system to provide treatment for the insane offender. As Harold Lasswell notes in the foreword, the Durham episode calls attention to the inadequate institutions for the administration of justice in the United States (as well as in many other countries). This failure, he believes, stems from the fact that there is no official responsible for a comprehensive picture of the administration of justice in the United States — the prosecutors, the police, and the health commissioner are much too concerned with their particular points of view and cannot be expected to have a balanced and realistic view of the case.

In addition to the cases described wherein the mentally ill are categorized fit to stand trial, there are the equally Kafkaesque cases of sane people sent to insane asylums. Arens gives a particularly chilling tale of Frederick Lynch, a one-time airforce lieutenant colonel who was arrested for violating the "Bad Check" Law — overdrawing his account by \$100, with his intent to defraud deemed inferable from his failure to make restitution within 5 days of notice — and who pleaded guilty but whose plea was not accepted because the prosecution insisted he was not guilty and sought his acquittal by reason of insanity. Lynch ended up committed to an insane asylum, while his case dragged in court, growing progressively more despondent until just after the Supreme Court reversed his committal and the public prosecutor announced his intention of fighting on, Lynch committed suicide, prompting one prominent psychiatrist to comment: "The government could now uncross its fingers. Frederick Lynch, the bad-check passer, was no longer stalking the streets of Washington."

Arens moves on to a ground even more fertile for debate. He analyzes the difficult quest for the impartial psychiatric expert; he probes into relationship between poverty, insanity, and justice; he proposes the defense of the drug addict as a mentally ill person.

All in all, Professor Arens' approach itself provides part of the interest of the book — that blend of law, political science, statistics, sociology, and righteous indignation which convinces even the skeptic. This analysis will certainly show that the debate on Insanity Defense is not over and the "settled doctrines" of judicial invention concerning insanity will probably have very short life expectancies until a more equitable way of providing the insane with justice in the court and proper treatment in the hospital is found.

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