

**Insanity as a Defense in Criminal Law.** By Henry Weihofen. New York: The Commonwealth Fund, 1933. Pp. 524. \$3.75.

The first step toward resolving a state of confusion obviously consists in a clear exposition of the facts about which the confusion exists. While much has been written on the topic of insanity as a defense in criminal law, nearly always the writer has had some personal ax to grind, some solution to promote or some immediate purpose to be served. The volume under review has evidently been planned with the object of providing a severely impartial survey of the facts. The author has succeeded in this purpose admirably. So well, indeed, has he accomplished this end that there is little for the reviewer to discuss, and one is almost tempted to criticize the very impartiality and complete suppression of self and personal views which have been achieved. Yet obviously this is a chief merit of the work.

One accomplishment, which fills one who has made some study of this subject with deep admiration and appreciation, is the clear, concise, and simple exposition of the complex facts, with the wealth of confusing and often contentious opinions and practices that have obtained. The simple directness of the presentation should do much to establish that a solution of the tangle is possible.

The task of the author, a lawyer, was made immensely more difficult by reason of the fact that the questions raised concern the views not only of jurists but also of psychiatrists. Much has been written of the divergence that is said to exist between the views of these two groups. No physician can read this book, however, without, in the first place, admiration for the excellent grasp of medical attitudes and terminology shown by the author and, in the second place, a realization that the two professions after all are fundamentally not far apart. Such differences as exist concern not the meaning of mental illness or insanity but rather the practical aspects of the behavior that results.

It is striking that the author finds that the lawyer, like the physician, would willingly dispense with the use of the term insanity, and for identical reasons. Courts, too, in the main have reached the conclusion that there are no "tests" of insanity, a conclusion with which every psychiatrist will agree. The problem for the courts is not one of sanity or insanity but rather of "responsibility" of the individual to society. The problem of the physician, on the other hand, is treatment to be applied to a man who is sick. In this respect there is a divergence not of views but of outlook; the fact of ill health, its definition and the means for its recognition are difficulties that are common to both, which are met by similar methods when due consideration is given to the ends to be served and the safeguards to be provided. The data presented by Dr. Weihofen should go far to establish proof for the physician that a community of purpose actuates the two professions. The safeguarding of the interests of the social group must control the practice of the courts, and one cannot read the historical review of the evolution of legal machinery without recognizing that jurists have given full recognition to the data established by physicians. It is fully as important for the psychiatrist to understand the purpose behind the conclusions reached by the jurist as it is for the lawyer to understand the physician if a satisfactory solution is to be reached.

No stronger proof could be offered of the need of reform and mutual understanding, both as to viewpoint and in procedure, than is contained in this unemotional, scientific presentation of the facts. Stripped of all commendation and condemnation, the bare facts stand for themselves and should go far toward bringing a way out of the tangle

which is so clearly portrayed. The author and those who have made possible the completion of this laborious task deserve the highest commendation of the American public.

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*Cases on Criminal Law.* 3d edition. By William E. Mikell. St. Paul: West Publishing Co., 1933. Pp. 775. \$5.00.

Students of criminal law are too well acquainted with Dean Mikell's casebook to make any general description or comment necessary. For this reason the present review will be confined, to a large extent, to a comparison of the present edition with its immediate predecessor.

Dean Mikell's book has long stood for the orthodox arrangement of the case material. So far as possible it was previously grouped under general headings illustrative of the corresponding general principles supposed to run alike through all the specific crimes. Then followed a number of chapters devoted to specific offenses, to bring out the individual problems applicable only to the offense then under examination. Yet in actual fact there are very few such general principles everywhere equally and alike true, regardless of the nature of the offense raising the problem. Instead any such general treatment is almost certain to run against the inquiry, In what offense are you trying to apply the principle? And its meaning varies accordingly. Mr. Mikell has now yielded some slight ground to this viewpoint. Thus the subsection on consent has been broken up and its thirteen cases distributed among the particular offenses to which they belong. Likewise the section on negligence disappears and the cases are moved over to the manslaughter section, where they clearly belong, as the conclusions worked out from them are obviously valid only for that crime and have no general bearing, as, e.g., for battery or for rape. Besides the above, a number of chapters on general topics are lifted bodily from the beginning of the casebook and are placed at its end, so as to follow, instead of precede, the chapters on specific offenses.<sup>1</sup> Such shifting of entire chapters seems, however, of less moment, as it will be the rare teacher who will not in any event rearrange the order of topics to suit himself. Beyond this there are no structural changes of any significance.<sup>2</sup>

With so few real changes a descriptive review then necessarily becomes a chronicle of more or less subordinate changes. About thirty-six cases have been dropped and about thirty new ones added—almost always to the definite improvement of the teaching material.<sup>3</sup> The footnotes accompanying these new cases are in the main new. Besides that there are two new footnotes in the book, and forty-six lines (approximately)

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<sup>1</sup> So chapter II (except sections 1 and 2 (I)) becomes chapter 19; chapter IV becomes chapter 18; chapter V, section 2 (II) becomes chapter 16; chapter V, section 2 (III) becomes chapter 17; chapter V, section 3, becomes chapter 20; chapter VI becomes chapter 21.

<sup>2</sup> Five cases in chapter III are moved into the chapters dealing with their respective particular offenses. Some of the section headings in this chapter are, wisely, suppressed. Chapters VIII and IX on False Imprisonment and Kidnaping, and Abortion, respectively, are gone. As these chapters had a total of only four pages, the change is not an important one. It may be queried, however, whether kidnaping does not call for increased, rather than lessened, space.

<sup>3</sup> Many will probably regret the disappearance of *Reg. v. Pembleton*, which gave a fine illustration of the complete indefiniteness of meaning of the word "maliciously."