

LAW AND PSYCHIATRY. By Sheldon Glueck. [London: Tavistock Publications. 1962. ix + 181 pp. £1 18s. 0d.]

This book consists of a series of four lectures delivered by Professor Glueck, at the School of Law and the School of Medicine of Tulane University in April, 1962 under the Isaac Ray Award of the American Psychiatrist Association.

In his first Chapter, "Dilemmas in The Partnership of Law and Psychiatry", the author distinguishes between the judicial and psychiatric attitudes to the defence of insanity and at the same time calls upon the legal profession to take a lead in bridging the present gulf which exists between the legal and psychiatric approaches.

The present criminal law of insanity rests upon the well-known rules laid down in England in 1843 in the M'Naghten Case (10 C & F 200). With minor modifications, these rules to this day govern the most important part of the law on insanity in relation to criminal responsibility. Of the several rules the most important one is the following, "to establish a defence on ground of insanity, it must be clearly proved that, at the time of committing of the act, the party accused was labouring under such a defect of reason, as not to know the nature and quality of his act, or if he did know it, that he did not know he was doing what was wrong".

It is this statement which has raised fundamental issues concerning the relationship of insane persons to criminal responsibility. Professor Glueck in his two Chapters, 'From M'Naghten to Durham' (Chap. II), and 'Durham and Beyond' (Chap. III), examines the above statement and points out the varied interpretations which could be given to the concepts "disease of the mind", "not to know", and "nature and quality". Professor Glueck emphasises, at the same time that not only are the 'M'Naghten Rules', vague and uncertain, and not only do they embalm outworn medical notions, but they are also thoroughly illogical, inefficient and unsound instruments in determining the responsibility of insane persons, because "the rules do not take into account disorders that manifest themselves largely in disturbances of the impulsive and affective aspects of mental life." The author rightly comes to the conclusion that the "M'Naghten test of irresponsibility has the rigidity of an Army Cot and the flexibility of a Procrustean Bed".

Professor Glueck also deals with the recent attempt made by the American Law Institute (draft of a Model Penal Code 1962) to improve the test of insanity. The author admits that although the A.L.I. test is apparently a rewording in a more sophisticated language (as it carries the important modification that instead of "substantial capacity", it provides "adequate capacity",) yet to "make the A.L.I. formulation operate as an improvement, it will be necessary for the judge to bring out the deeper and more comprehensive meaning of the concept 'appreciate', to an extent that will counteract the average jurymen's interpretation of it as an equivalent to simple and superficial cognition".

The author also deals with the procedural provisions drafted by the A.L.I. for the administration of the tests. They have for example provided that when notice is given of intention to plead insanity the court must appoint at least one qualified psychiatrist or request the superintendent of the local hospital to designate a psychiatrist, to examine, and report upon the defendant's mental condition. The A.L.I. draft also provides that the court may order that the accused be committed for a period necessary for the examination, and may direct that a qualified psychiatrist who has treated the defendant participate in the examination.

Although the author admits that the A.L.I. formulation deserves credit for setting down forward-looking procedures in respect to the psychiatric examination and testimony, yet he admits, and rightly, that the reform is not possible as long as the mental issue is tried by a jury of laymen. Professor Glueck is of the opinion that one of the best means of solving the procedural dilemma would be if the jury were permitted to pass judgment only on whether or not the accused committed the act charged, leaving the insanity issue to be dealt with later by a panel of psychiatrists. This procedure, in the author's opinion, is desirable despite the constitutional objections regarding the right to trial by a jury on the mental as well as the behavioural aspects of irresponsibility. In the reviewer's opinion the above changes are also

desirable especially when we realise that our present prevailing tests of irresponsibility of the mentally-disordered person contain not only grave faults, but are also out of date from the point of view of modern psychiatry.

Professor Glueck also subjects the *Durham v. United States* (214 F. 2d. 862) decision of the United States Court of Appeals for the District of Columbia, to a thorough examination from the viewpoint of psychiatry, law and morality. The facts of this case are as follows: Durham had a long and varied record of imprisonments for thefts as well as commitments and treatment for mental illnesses, including discharge from the Navy because he was found to be suffering from "profound personality disorder." After attempted suicide, he was transferred to a government hospital for the mentally-ill where his condition was diagnosed as "psychosis, with psychopathic personality." Discharged as "recovered" he soon got into more trouble passing bad cheques, and was found by a jury in a 'lunacy inquisition', to be of unsound mind. Readmitted to the government hospital, he was this time diagnosed as "without mental disorder, psychopathic personality." Upon discharge after treatment, he was arrested and tried for house-breaking.

The trial judge rejected his defence of insanity and Durham was convicted. On appeal, the conviction was reversed. The Court held "the psychiatric testimony was unequivocal that Durham was of unsound mind at the time of crime." The Court then enunciated the famous Durham rule which is simply "that an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect."

The Court of Appeal in the Durham case also dealt with the question of proof. The Court pointed out that whenever some evidence exists that the accused suffered from a diseased or defective condition, the trial Court must provide the jury with guides for determining whether the accused can be held criminally responsible. In respect of such guideliness, the Court said that the instruction should convey to the jury the sense and substance of the following:

"If you...believe beyond reasonable doubt that the accused was suffering from a diseased or defective mental condition at the time he committed the criminal act charged, you may find him guilty. If you believe he was suffering from a diseased or defective mental condition when he committed the act, but believe beyond reasonable doubt that the act was not the product of such mental abnormality, you may find him guilty. Unless you believe beyond reasonable doubt either that he was not suffering from a diseased mind or defective mental condition, or that the act was not the product of such abnormality, you must find the accused not guilty by reason of insanity."

Professor Glueck points out the following advantages of the Durham Rule. First it widens the scope of the relationship of various mental illnesses to irresponsibility. Secondly, by broadening the area of mental illness related to non-responsible behaviour, it permits correlatively a much wider and deeper scope of psychiatric testimony. It thereby allows the outsider to present his assessment of the offender to the jury comprehensively and in his own terms, as he would were he in a clinic, diagnosing and discussing a patient not accused of crime.

The author is much happier with the Durham rule than the M'Naghten rule, because the Durham decision "does succeed in resolving the major issues which for a great many years have been plaguing the field we are examining".

In his last chapter "Wider Horizons", Professor Glueck recommends that in order to deal effectively with the problem of insanity, it would be advantageous to have the accused first examined by a psychiatrist, before resorting to any court procedure. This procedure spares "many ill defendants and their relatives the stigma and humiliation of criminal proceedings". The author also recommends the setting up of well-staffed psychiatric clinics to which persons accused of serious offences could be sent for thorough examination and study.

In the reviewer's opinion it would be a convenience to readers of this book to have a more adequate table of contents than is provided; there is also no table of

statutes or cases. It is to be hoped that Professor Glueck in his next edition will endeavour to make it easier for his readers to find their way about his book. Despite these omissions, however, all teachers of criminology and criminal law, the better student, and the practitioner should find the book useful.

V. KUMAR.