Review: THE LAW OF INSANITY. By George A. Smoot

Arthur Evans Wood

University of Michigan, Department of Sociology
This volume on The Law of Insanity strikes a layman, unlearned in the law, as an amazing publication for the year 1929. While the psychiatrists are making inroads upon the traditional theory and procedure of the law with reference to mental disease, this discussion moves in the realm of pontifical abstractions, unaffected by the modern spirit of scientific inquiry into the subject. After a brief reference to the history of insanity the author engages in two extraordinary chapters on the "Definition of Insanity" and "Forms of Insanity." However bolstered by legal decisions, from which the author draws copiously, such "definitions" and "forms" have not the slightest standing in science. Important as it undoubtedly is that the student of law should have some knowledge of traditional legal theories in such matters, it is deplor-
It makes one despair of an integration between psychiatry and law which is so much desired by the leading scholars in both fields. In a succeeding chapter on the “Causes of Insanity” we are enlightened to learn that “masturbations” and “affection of nerves” are two of his three major categories of causation. The treatment of “Proceedings to Determine Insanity” is a thoroughly documented legal discussion, but, again, gives no inkling of modern movements, as in Massachusetts, for the routine examination of felons by competent experts without the farce of determining the issue by jury trial. The text proceeds with several chapters on the legal “Status of Non Compos as a Member of Society,” and on his “Status Before the Courts.” These sections cover doubtless important matters, as they have been determined by common law, by statute, or by judicial decision. Only with respect to the “Criminal Responsibility of Non-Compos” is one moved, again, to raise a general question. In American courts the question of the sanity of the accused is determined by the “right and wrong” test, in accordance with which the verdict may be rendered “not guilty on account of insanity.” The insanity plea is one of the scandals of criminal procedure. The “right and wrong test” itself is an outworn theological relic. The crux of the matter is that we want to protect the insane from the terrors of the criminal law which has a punitive sanction. If social defense, rather than punishment, were to become the sanction of the criminal law, the present theory of the insanity plea would be undermined. We should then find insane persons guilty of their crimes, as in reason and common sense they are; but we should put both them and normal criminals in safe keeping for the protection of society. If social protection could become the main emphasis in criminal procedure and treatment, perhaps some day we could then make our institutions subserve that purpose, releasing no one without reasonable evidence of having been cured.

If the author of this substantial work wished merely to carry on uncritically the legal tradition respecting the law and insanity, one can say that he had admirably accomplished his task. It is regrettable, however, when so much is being done to bring the law and psychiatry together on speaking terms, that the present volume could have been written in apparently blissful ignorance of it all.

Arthur Evans Wood

University of Michigan, Department of Sociology