

# Michigan Law Review

---

Volume 79 | Issue 4

---

1981

## Mental Disabilities and Criminal Responsibility

Michigan Law Review

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Criminal Law Commons](#), and the [Law and Psychology Commons](#)

---

### Recommended Citation

Michigan Law Review, *Mental Disabilities and Criminal Responsibility*, 79 MICH. L. REV. 754 (1981).

Available at: <https://repository.law.umich.edu/mlr/vol79/iss4/16>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

MENTAL DISABILITIES AND CRIMINAL RESPONSIBILITY. By *Herbert Fingarette* and *Ann Fingarette Hasse*. Berkeley: University of California Press. 1979. Pp. xi, 332. \$19.50.

Criminal defenses based on mental disability may take many forms, ranging from complete defenses such as insanity and involuntariness to partial defenses such as intoxication and diminished capacity. In rationale and consequences these defenses may vary widely, but the basis for each, according to Fingarette and Hasse,<sup>1</sup> is the commonly held intuition that an irrational state of mind negates criminal responsibility (p. 6). Armed with this insight, the authors attempt to unravel the doctrinal "thicket" (p. 3) that these defenses comprise. They begin by demonstrating how the courts have intertwined the defense of mental disability with other criminal law concepts. After disentangling these concepts, the authors present a comprehensive synthesis of the mental disability defenses, a synthesis that purportedly encompasses all possible theories on which to mitigate or eliminate criminal responsibility because of irrationality.

The bulk of the book contains an exegesis of the multitude of present and proposed mental disability defenses. This analysis both illuminates the particular defenses discussed and underscores the authors' thesis that irrationality is at the core of each. For example, the authors argue that courts often confuse the concepts of "mistake of fact," "mistake of law," and "involuntariness" with the insanity defense. "Mistake" implies that a person having the capacity to act rationally has erred in exercising that capacity. By contrast, the insane defendant is one who lacks the capacity to know the law or the facts (pp. 25, 28-39). And while involuntary acts are those done without choice or will, criminal actions resulting from mental disease are often purposeful, intentional, and ingeniously planned (pp. 52-53). Therefore, full or partial mitigation must be based on the defendant's irrational state of mind and not on involuntariness or mistake.

Part III of the book examines the partial mental disability defenses of alcohol and drug intoxication and diminished capacity. Under the common law, these defenses negated the specific intent to do the criminal act, but not the general intent to do a lesser included offense. Fingarette and Hasse argue that this distinction between

---

1. Herbert Fingarette is Professor of Philosophy at the University of California at Santa Barbara. Ann Fingarette Hasse works for a San Francisco law firm.

specific and general intent is indefensible (pp. 95-96) and irrelevant, because it is irrationality, and not the absence of specific intent, that justifies reducing the defendant's criminal liability (p. 99). Since intoxication foreseeably increases the risk of committing a crime, the defendant is culpable for becoming intoxicated. Consequently, the defendant should still be punished, though not as severely as a sober defendant (pp. 100-02).

Having disentangled the mental disability or irrationality defense from other criminal law concepts and defenses, Fingarette and Hasse present in Part V their version of the mental disability defense, called the Disability of Mind (D.O.M.) Doctrine. This doctrine, claim the authors, will end the search for such will-o-the-wisps as "mental disease" or "specific intent" and will focus attention where it belongs: on the defendant's capacity for rational thought and his culpability, if any, for impairing that capacity. Three sequential jury questions suffice to apply the doctrine in any given case, with the jury proceeding to the next question only if it answers "yes" to the one before it. The first question is: Did the defendant commit the criminal act? The jury must determine if the accused did the act and if he has any defenses other than D.O.M. If the defendant committed the act and has no other valid exculpatory claims, the jury enters a guilty verdict (p. 209) and moves to the second question: Did the accused, at the time of the act, suffer from total or partial D.O.M. (p. 200)? If the answer is affirmative, the jury indicates the extent of D.O.M. (partial or total), and moves to the third question: Did the accused culpably induce his disability (p. 201)?

The effect of a finding of D.O.M. would be felt in sentencing, rather than in the verdict. The following example illustrates this process. Consider the madman who, after sufficient reflection, strangles his wife thinking that he is squeezing a lemon (p. 24). The jury would find the man guilty of murder. Next, it would find total D.O.M. since the accused was utterly incapable of understanding the criminal significance of his conduct. If the insanity resulted from causes beyond the defendant's control, the jury would find nonculpable D.O.M. The judge then would impose no sentence on the defendant because nonculpable, total D.O.M. is a complete defense. If the defendant caused his insanity (*e.g.*, through addiction to, or overuse of, drugs or alcohol) the jury would find culpable D.O.M. The judge would then impose a lighter sentence (preferably with statutory guidance) than that imposed on other defendants, for although the defendant's mind was disabled at the time of the offense, the defendant is responsible for the disability. Finally, if the

defendant is still disabled at the time of sentencing, the Court would require him to undergo psychiatric and medical care, both for his own good and for the protection of society (p. 202).

The D.O.M. doctrine has been severely criticized.<sup>2</sup> But regardless of its ultimate success, the doctrine is a significant attempt to synthesize the various concepts traditionally used in mental disability defenses into one coherent system that emphasizes irrationality as the justification for exculpation or mitigation. In attempting this synthesis, the authors clarify what intuitions and concepts underlie the mental disability defenses. For these achievements, the authors are to be commended.<sup>3</sup>

---

2. See Arenella, Book Review, 80 COLUM. L. REV. 420, 424 n.10, 432-33 (1980).

3. Other reviews of this book include Arenella, *supra* note 2; Lamborn, Book Review, 66 A.B.A. J. 614 (1980).