

# Michigan Law Review

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Volume 53 | Issue 8

---

1955

## ***Weihofen: Mental Disorder as a Criminal Defense***

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### **Recommended Citation**

Winfred Overholser M.D., *Weihofen: Mental Disorder as a Criminal Defense*, 53 MICH. L. REV. 1197 (1955).

Available at: <https://repository.law.umich.edu/mlr/vol53/iss8/18>

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## RECENT BOOKS

MENTAL DISORDER AS A CRIMINAL DEFENSE. By Henry Weihofen. Buffalo: Dennis & Co. 1954. Pp. vii, 530. \$20.

Since 1933, when Professor Weihofen's *Insanity as a Defense in Criminal Law* was published, there have been many developments in the fields both of law and of psychiatry. Many decisions have been handed down, some of them manifesting an enlightened approach to psychiatric problems affecting litigants and culminating in the decision of *Durham v. United States* [(D. C. Cir. 1954) 214 F. (2d) 862]. Numerous statutes have been enacted, such as the so-called "sexual psychopath" laws and various improved laws relative to commitment. The British Royal Commission has considered at length the problem of insanity as a defense. The American Law Institute has undertaken the writing of a Model Penal Code, in which questions of responsibility bulk large. On the medical side, the American Psychiatric Association has established the Isaac Ray Award to stimulate a closer union of law and psychiatry. Professor Weihofen is the latest recipient of this award.

The present volume, coming as it does after two decades of legal evolution, is a welcome addition. In this period, Professor Weihofen has continued his studies in the field of forensic psychiatry and has contributed heavily to the literature. This book is based in part on the earlier study, but the chapters have been revised and expanded, and the legal references have been brought up to date. Three new chapters have been added. Chapter 2, for example, entitled "Types of Mental Disorder," presents, in a space of 39 pages, an epitome of psychiatric concepts and diagnoses.

Following chapter 3 ("The Legal Tests of Irresponsibility"), in which the evolution of the tests is given in some detail, and the state of the law in each jurisdiction of the United States considered, the author has introduced a new chapter (c. 4) entitled "Disorders Not Within the Tests." Here he considers mental disorder as a ground for reducing punishment, as a consideration in sentencing or fixing punishment, and the sexual psychopath laws. Although favoring the wider recognition of mental abnormality beyond the traditional all-or-none limits, Professor Weihofen is properly critical of the laws as they are now administered.

Chapter 5 deals with Burden of Proof, and chapter 6 with Witnesses and Their Testimony. The author follows Wigmore in advocating the abolition of the hypothetical question, preferring the direct expression of opinion, as provided in the Uniform Expert Testimony Act and the Model Code of Evidence.

Chapter 7 (new) discusses Providing Impartial Expert Diagnosis. Here Professor Weihofen properly states, "The part of our system of criminal procedure in greatest need of reform is the mode in which medical evidence as to the accused person's mental state is obtained." (p. 329) He enumerates as possible remedies court appointment of experts (with exclusion of other

experts?), commitment to hospital for observation, the Briggs Law of Massachusetts, and court clinics. He also enumerates (pp. 347-348) several ways in which existing practices could be improved; these suggestions could be studied with profit by all lawyers interested in raising the status of expert testimony. The remaining chapters deal with Pleading and Procedure, Incompetency at the Time of Trial, and Punishment and Therapy.

The Table of Cases covers 26 pages (double column); the statutes of the various states are thoroughly examined, and there is a wealth of references to legal and psychiatric literature.

All those who are interested in the important field of mental disorder as it touches upon criminal law are deeply indebted to Professor Weihofen.

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