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Criminal Responsibility and Mental Disease by C. R. Jeffery

John C. Ball
National Institute of Mental Health Addiction Research Center

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*Criminal Responsibility and Mental Disease* is a provocative book. It is rich in case material, reports of courtroom behavior, and a discussion of the relationship of law, psychiatry, and the social sciences to mental disease.

In the first half of the volume, Professor Jeffery considers the *Durham* rule\(^1\) with respect to legal precedents, present interpretations, and behavioral outcome. He notes that, "The *Durham* rule broadened the meaning of insanity so that, within a legal framework, non-psychotic psychopathology could be considered as insanity."\(^2\) Thus, the *Durham* decision of 1954, "extends the meaning of insanity to include any mental disease or mental defect."\(^3\)

In order to investigate the consequences of *Durham*, a research project was undertaken in the District of Columbia. This involved "introducing an insanity plea for a condition less than psychotic, such as alcoholism, homosexuality, drug addiction, or sociopathy" and then analyzing the effects upon the government, defense counsel, psychiatrists, the bench, jurors, and the defendant. More than twenty cases involving the insanity plea were introduced and studied. As a part of the project, thirty-six interviews with psychiatrists and twenty-six interviews with lawyers were conducted.

The research findings demonstrated that the lawyers and psychiatrists were divided as to the utility of the *Durham* rule. Most of those interviewed found fault with that decision. In particular, difficulty was encountered within both professional groups in defining mental disease. Jeffery found that judges generally oppose any extension of mental illness as a defense of crime, while counsel may favor its utilization as a means of preventing the punishment of the defendant. Of particular significance was the finding that the testimony of defense-minded psychiatrists and government-biased psychiatrists was closely related to their sponsorship. Regarding the inadequacy of psychiatrists as expert witnesses, the author states: "The psychiatrist is placed in an impossible situation so long as he has to testify as an expert witness for [either] the government or for the defense."\(^4\)

Finally, with regard to *Durham* and its relationship to criminal behavior, general conclusions and recommendations are advanced:

\(^{1}\) United States v. Durham, 214 F. 2d 862 (D. C. Cir. 1954).
\(^{2}\) C. Jeffery, *Criminal Responsibility and Mental Disease* 17 (1967).
\(^{3}\) Id. at 42.
\(^{4}\) Id. at 27.
We do not know how to cure or treat antisocial behavior, though the Durham rule assumes that such knowledge exists. The Durham rule does not reform the criminal nor protect society.

Serious due process issues are raised by the Durham rule. The insanity defense defines crime as a medical problem; it therefore ignores the fact that crime is a social problem, not a medical problem. 5

The second half of Professor Jeffery's book consists of a more general dissertation on criminal behavior and mental disease as presented by psychological and sociological theorists. He notes that differing opinions exist as to what constitutes mental disease; the author believes that crime is not caused by mental illness. Rather, Jeffery views crime as behavior which is learned.

Indeed, the book was provocative. It prompted this reviewer to ask: Is not the proper province of law, the courtroom? As surgery takes place in a specialized hospital setting, and teaching essentially remains a structured process undertaken in a controlled institution (not without creating another set of problems), so the practice of criminal law seems to be a definite and restricted process—to determine the guilt or innocence of particular persons who happen to be brought before the court.

The broader philosophical and empirical questions of correcting the wrong of society, providing medical treatment for prisoners and citizens, establishing the efficacy of particular laws, or unraveling the reasons why some persons in every society commit criminal acts, all transcend the law, although they may be related to it. This is not to say that scientific studies of the law should not be undertaken. Quite the contrary. Professor Jeffery has certainly shown that such investigations are feasible and productive. But the law is not science; it does not employ the scientific method. It seems, therefore, that studies of criminal behavior will of necessity transcend the legal framework and be organized around the methods and concepts of the developing behavioral sciences.

John C. Ball, Ph. D.
Chief, Sociology Unit
National Institute of Mental Health
Addiction Research Center
Lexington, Kentucky

5 Id. at 292-93.