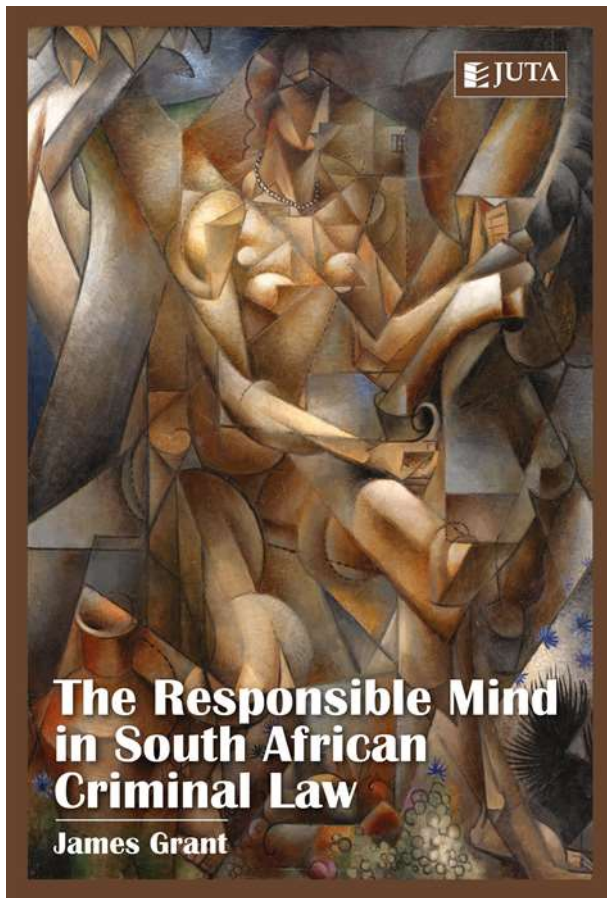


## Book Review



# THE RESPONSIBLE MIND IN SOUTH AFRICAN CRIMINAL LAW

by James Grant  
(259 pages)

Juta & Co (Pty) Ltd  
[www.jutalaw.co.za](http://www.jutalaw.co.za)

***"Too much consistency is as bad for the mind as it is for the body. Consistency is contrary to nature, contrary to life. The only consistent people are the dead."***

– Aldous Huxley (1894-1963)

The shocking horror of brutal criminal violence as often graphically recounted in the media, and the fear and bewilderment of those personally exposed as victims and witnesses to the seemingly mindless cruelty of crime has become a major factor in how our society is shaped and shaken.

It has been argued that the apparent increase in lack of respect for life, liberty and property is the result of multiple global pressures such as dwindling resources, climate change and overpopulation. Merryn Somerset Webb, editor-in-chief of *Money Week*, observes that the world began to change in 1796 when Edward Jenner introduced the first vaccine for smallpox (the major killer of the time) and so created a dramatic increase in life expectancy and the beginnings of a rise in the number of people in the world. The global population rose by a mere 0.17 per cent a year until 1820 but 0.98 per cent a year from then to 2000. However, from 1950 to 2000, the global population rose from 2.5 billion to around 6.1 billion. This has not happen without stresses and strains on individuals, including mental and psychological disorders.

Whatever the contributory causes of violent crime may be, the law must attempt to deal with the perpetrators. But what might have been appropriate legal rules, remedies and recourse in the past may prove to be wholly inadequate and unjust in a volatile and unpredictable present.

The Constitution enjoins our courts to develop the common law. But that has to be done on a rational, principled and well-founded basis.

Our legislators, jurists and policymakers must look to legal academics and researchers for guidance in grappling with these enormous challenges. In this context, *The Responsible Mind in South African Criminal Law* is a significant and scholarly contribution to the fundamental concept of the responsibility of a person for his or her conduct.

The book covers a wide range of topics relating to blameworthiness and criminal liability. It analyses and provides insightful guidance on concepts of unlawfulness, voluntariness, capacity, causation, culpability and fault.

The author observes:

*"Our current law relating to responsibility appears to be riddled with ambiguity, vagueness and incoherence."*

He examines comparable developments in the USA, UK and Canada and draws on philosophical and scientific material bearing directly on the law. There is an empirical component in which forensic psychologists and psychiatrists were consulted. Important leading cases dealing with pathological and non-pathological non-responsibility and incapacity are dissected. Fascinating exchanges between judges and various expert witnesses are quoted *verbatim*. This is fertile ground for legal practitioners and judicial officers to probe the unplumbed and uncertain depths of the law of responsibility for criminal liability.

The text is well-organised and remarkably readable for such complex subject-matter. This is aided by graphic diagrams, the use of bold and italic emphasis and relegating to footnotes the more detailed propositions.

Examples of what could affect or negate responsibility are discussed. These include epilepsy, kleptomania, drug addiction, schizophrenia, psychosis, depression, psychopathic antisocial personality disorder, sleepwalking and intoxication.

Included is a table of domestic and foreign cases, published references, an index, and appendices including excerpts from the Criminal Procedure Act and the Mental Health Care Act, as well as a summary of recommendations for law reform. A separate chapter is dedicated to "the law as it ought to be."

This work formed the basis of what Emeritus Professor of Law at the University of the Witwatersrand David Zeffertt calls: "...a *valuable and meticulously researched doctoral thesis*..." The author, James Grant BProc LLB BA Hons (Psych) PhD is an Advocate at the Johannesburg Bar, and Visiting Associate Professor of Law at the University of the Witwatersrand. He graciously acknowledges the financial assistance of the Centre for Science Development of the Human Sciences Research Council (now the National Research Foundation) towards the research that culminated in this work. Their investment has truly borne fruit.

The author concludes this ground-breaking study with this summary of his recommended way forward:

*"It draws our focus upon the ultimate question of responsibility – **whether** the accused was reason-sensitive and functioning properly, rather than **why**. The reason **why** the accused may not be functioning properly is only of interest in determining **whether** the accused was functioning properly. The proposed model of responsibility allows us to avoid the confusion over the label of mental illness by directing our attention to what it is that ought to concern us: any impediment to proper functioning – rather than the reason for the impediment. It proposes a basis upon which all acquittals based upon non-responsibility may be treated equally. The disposition of a person acquitted for non-responsibility may naturally attract an enquiry into whether they are dangerous or not under the appropriate law – the civil law. Ultimately, this model proposes a basis upon which to distinguish the mad from the bad."*

This is a significant addition to publisher Juta's stable of works on criminal law. The masterful intermeshing of law and other disciplines tracing the origins, development and philosophy on which legal responsibility has been constructed, and the practical and logical approach adopted to revising and resetting a proposed new statutory test for responsibility creates an illuminated model for legal transformation.

*Review by Louis Rood BA LLB (UCT), Consultant at Fairbridges Wertheim Becker Attorneys.*