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Jerome Hall
Indiana University School of Law

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Crime as Social Reality

By Jerome Hall

EVERYBODY talks about "crime" and "criminals"; and their meaning. The answers are assumed to exist; they are assumed to be common property. Actually, the obvious conceals the most difficult of problems. The simple questions, on second thought, become the most provocative ones, even though they are not in the least impertinent.

MEANING OF "CRIME"

The most obvious fact about "crime" is that the term is employed in many different senses. The basic difficulties concern the meaning of "crime." Many words in everyday discourse are to some extent and in some contexts, ambiguous. This is especially true of words having to do with social affairs, human relationships, where what is most significant meets neither eye nor ear. But "crime" and "criminal" are loaded with even greater burdens than are most of these terms. Here one quickly recognizes that communication of ideas is not the only function of language; for, plainly, "criminal" is a term that is much more than description. It is also a word of reproach, of condemnation, of obloquy, of stimulation to action and to repression.

In recent months "criminal" has entered the common vocabulary of international propaganda; the leaders of the warring countries call each other "criminal." The speaker wishes to arouse emotion, to move his audience in a desired direction. It has become abundantly evident that "criminal" is a tag to be placed on political enemies—not merely or even especially on those who injure person or property. Much too frequently it has been an instrument to mask the torture of great benefactors of mankind. In a number of countries we find new criminal codes expressed in the broadest possible terms constructed on a sweeping axiom of "social defense." "Criminal behavior" is, accordingly, any "antisocial" conduct, and in actual administration, "antisocial" becomes any conduct that runs counter to the politics of the regime. The meaning of "criminal" is thus determined by authority, i.e., by force. Some of our criminologists are beginning to wake up to the fact that there are political and ethical problems involved in "crime"—that the term is sometimes chiefly an index of who has power to wield the maximum force. In addition, we are familiar with equally loose usages in everyday talk, where the speaker means to say that certain persons or behaviors are unethical, unprincipled, degenerate, or even stupid.

It might be imagined that within the confines of the law there would be few such troublesome questions. But unless one is content to run in a circle, it is plain that even here the accepted definition of "crime" is only superficially precise. This may be seen by reference to the perennial issue of the differences between "crime" and "tort." A crime is a violation of a penal law, it is said, while torts are proscribed by civil or private law. Yet so great a scholar as Austin contended that there were no substantial differences between the two, perhaps least of all on the basis of the degree or importance of the public interest. Nor is it easy to demonstrate that punishment characterizes the one, compensation the other. Punitive damages and penal actions are only the most salient of the difficulties in the way of this thesis.

The law has been largely directed by procedure in its early history, and by the purposes of litigants and their lawyers; perhaps only by the suggested functional differences can the two be
distinguished. Even within the more restricted field that is invariably labeled “criminal,” the same difficulty persists. It is seen, notably, in the distinctions drawn between crimes mala in se and those mala prohibita, or, as a recent writer would have it, between the real crimes and the public torts.

Thus it is apparent that even when limited to law, “crime” has such varied denotation as to suggest that the wisest course may turn out to be elimination of the word entirely from scientific discourse, and substitution of numerous specific terms. In any event, if we think that beyond emotive, prerogative, and loose uses of the word there are facts denoted by the term “crime” which can be clearly described and understood, and that, proceeding thus, we can discover better answers to the relevant distressing social problems than any now known, our first bit of sophistication is to be on guard against this insidious ambiguity of everyday speech.

Nonetheless, any significant critique of crime must inevitably be oriented in the existing “recognized” discussions of it. If we analyze such discourse, we may be able to discover the principal issues and the difficulties in the way of greater understanding. If we work our way through the existing field as carefully and intuitively as possible, at the same time nourishing awareness of besetting linguistic quicksands as well as of our own predilections, what do we find?

Emotion and Analysis

About as certain an observation as any is that emotion has something to do with crime itself—not merely talking about it. Public feeling is common when there is public knowledge of major harms; the deeply rooted affective states are revealed in newspapers, in the courtroom, sometimes in violent, overt attacks. The criminal law may be viewed as the rationalization of such states, though it is much more than that. One has only to scrutinize “scholarly” discussions to discover here too, alas, frequent biases in what purport to be rigorously objective analyses of the phenomena.

The need to emphasize this second prevailing difficulty should be obvious to any thoughtful observer who consciously, at least, serves no other end than discovery of truth in this most difficult of all fields of exploration. Sometimes these drives are sublimated into desire for reform, in itself surely not unworthy, yet all too frequently clouding the scholar’s mind, rendering fruitful debate impossible. Social policy is as important as social science; but unless preferences and evaluations are distinguished from knowledge and understanding, there is little reason to expect marked progress in any social science, and least, perhaps, in criminology.

The current Sociology of Knowledge raises interesting problems in this regard; such analysis of ideologies is apt to be circumspect. As to discussions of crime, we have long been victims of scholastic oversimplifications, even of fads that, in abortive efforts to surmount the real difficulties, limited the range of investigation to muscular movements, with talk and thought either ignored or labeled “oral behavior,” as though that aided understanding.

Next to such narrowing of the phenomena together with the limiting axioms of mechanics implied thereby to be the sole source of explanation, understanding has been further restricted by other dogmas, notably by rather perverse theories of human nature. With human beings, especially primitives, regarded as wholly irrational and as inexorably fixed in the course of their conduct, any discipline constructed on corresponding premises would hardly enlighten. Persistent effort is required to limit ambiguity and emotion and the
appeal of mechanistic and particularistic rationalizations. Only by maximum efforts to slough off the artificial garb of fashionable vocabulary, only by steadfast efforts to rise above the Schools, may we hope to talk sense about the major problems of social disorganization.

**Actions, Talk, and Theory**

The above remarks indicate that we need to distinguish what "the common man" does and says about crime from what scholars say about crime. Viewed in broadest outline, the first enterprise, if assiduously prosecuted, would be a sort of chronicle, a history of conflicts and disputes, the pains and injuries human beings have inflicted on one another in connection therewith, and what reasons they gave to explain their conduct. This would include the actions and talk of "offenders" (from society's viewpoint; "oppressed" from their own), as well as those of pater, chieftain, official ("oppressor" or "tyrant" from the "offender's" point of view). The second sort of enterprise would constitute analysis of the discussions of scholars, of theories of the above noted phenomena.

Although this dichotomy should be useful analytically, it is apparent that the two realms intermingle: in the very selection by the scholar of "significant" phenomena, are premised theories and values, shared with the community itself. But scholars are conscious of their value-judgments. The suggested approach centers initially on observable phenomena. We can see individuals inflicting physical injuries on one another, we can see the conduct designated "assaults," "trespasses to property," "homicide," and so forth. In addition to the participants in these doings, there is the behavior of third persons, including group behavior or that of its representatives, namely, the "banishments," "executions," "imprison-
ments," and such. One central problem is: Why do these outsiders interfere?

Once this question is asked, we have left the sphere of behavior alone, and think in terms of culture and motivation. Indeed, no one has seriously tried to explain such phenomena solely by reference to observable behavior; the very inclusion of group behavior, at least when that extends beyond the immediate family, implies some theory of significance not entirely dependent on behavior. Here, then, it is essential to take account of the talk that accompanies the behavior. It represents various levels of significance. The parties themselves base their conduct on various rationalizations, understanding of which requires reference to nonphysical or metaphysical entities. A man has failed to bring a sacrifice to the gods, he has performed an act taboo, he has ridiculed his mother-in-law—the very recital points to ideas that are much more potent in their effect on conduct than many physical forces. In their talk about the unpleasant conduct of their fellows, simple people are concrete. What the "wise" man says will depend on whether he is an official intent on enforcement, or a mere onlooker—a scholar perhaps. In these latter instances, there is apt to be generalization about laws, norms, customs, mores, protection of society, and the like.

We here and now confront so much of the above phenomena as is known to us, and our job is to reach a fuller understanding of it all—the doings, the common talk, the official pronouncements, and the analyses of scholars. Is it possible to take a fresh approach to the entire problem, one that promises results?

Recent exploration for some core of meaning of "crime" has resulted in such general notions as "disapproval," "violation of group values," and "injury to public interests," as common denominators. But the besetting evil here is that
the generality of these ideas sharply diminishes both their significance as symbols and their utility as instruments of discovery.

**Relativity of Crime**

Coupled with the above insights is the prevalent hypothesis that crime is relative to time and place. This apparently means that the behavior punished (and, presumably, the values, disapprobation, and so forth) varies from place to place and from time to time. The supporting instances are familiar—polygamy is criminal in the United States, it is even approved in other countries; so, also, as to patricide among primitives, and prohibition of alcoholic beverages with us.

It is common in such discussion to concede that three or four crimes, usually, treason, murder, incest, and theft, are universal. The problem raises numerous difficulties. The minor ones can be summarily dismissed. Thus, one would not expect forgery to be criminal in a preliterate society, nor speeding on the Sahara or, indeed, in New York prior to 1900, nor flying a plane 300 feet above a city prior to 1910. Such immediate dependence of criminal behavior on culture and technology is too evident to give rise to speculation. The problem concerning the relationships between socioeconomic conditions and criminal behavior arises at the point where we pass from specific instances of criminal behavior to types of criminal behavior. Not only must these categories be broad (e.g., crimes against property without violence), but the socioeconomic conditions must be generalized to the extent that apt analogies can be found in societies representing different cultures.

If, with this objective in view, we try to uncover the facts "just as they actually occurred," we find a mass of contradictory evidence that makes likely generalization presently very difficult, if not impossible. Thus, many writers assert that theft (as understood by us) is universally criminal. But a trustworthy observer who spent many years in India reports that "almost every Indian domestic pilfers... during his long experience of the country he has rarely met exceptions. This form of brigandage is ingrained in their natures."1

The deficiencies in existing studies regarding even this central problem, behavior universally held criminal, are apparent on examination of the chief authority on this subject, Westermarck's *Origin and Development of the Moral Ideas*. The ultimate testing ground is, plainly, homicide; it is highly significant that even here there is the greatest confusion, at least on the surface of the data. Thus Westermarck reports:

Among various uncivilized peoples, however, human life is said to be held very cheap. "The Australian Dieyerie, we are told, would for a mere trifle kill their dearest friend. In Fiji there is an 'utter disregard of the value of human life.'... Some of the Himalayan mountaineers are reported to put men to death merely for the satisfaction of seeing the blood flow and of marking the last struggles of the victim."2

But just prior to his quoting a mass of contradictory data, he states: "I venture to believe that this [respect for our fellow creatures' lives] holds good not only among civilized nations, but among the lower races as well; ..."3 Then after statements of observers apparently to the contrary, he concludes: "We may without hesitation accept Professor Tylor's statement that 'no known tribe, however low and ferocious, has ever

admitted that men may kill one another indiscriminately. 4

TOWARD SCIENTIFIC GENERALIZATION

But what is "indiscriminate"? We must remember that all civilized societies condone, justify, and even approve certain homicides, quite in addition to war. Consider our own law. In at least two American states, a husband may kill his spouse or her paramour in the act of adultery. Among certain people where, we are told, hospitality requires a host to place his wife at the disposal of a guest, this rule of law might seem odd, indeed. So, too, as to Holmes's decision that a man may stand his ground if attacked and kill his assailant despite the fact that a safe avenue of retreat is available. And what of the blanket rule that permits a police officer to slay a suspected felon to effect arrest, especially when viewed in light of the arbitrary classification of offenses?

Perhaps we may hazard the view that while some of these (to us) justifiable homicides may seem as unjustifiable to so-called primitive peoples as many of their killings are to us, yet there is a common ground. But thus far its statement has taken the form of such dubious generalization as that the "irreducible conditions of survival" (or of "civilization") must be preserved.

Consider, next, the usual appraisals of primitive patricide. The clear implication is that the writer is talking about the same behavior that constitutes homicide in our society, and that what is most seriously condemned by our laws, mores, and ethics, is not only permitted but approved and sometimes even required in those societies.

The patent fallacy here is to compare expurgated actual primitive practices with the book-law of advanced societies.

What must be compared, instead, are unwritten primitive legal norms with our written laws, the entire relevant factsituations and behavior in both societies, and the accompanying talk, rationalizations, pronouncements, and analyses. We should probably find that the primitives who commit what our observers call "patricide" also respect their parents and share our ethical principles concerning treatment of them. On the other hand, it would be necessary to consider euthanasia in our society, and numerous instances of acquittal and pardon in cases of homicide of blood relations where relief from acute suffering is the motive. Thus, we, too, if judged by our actual practices, indulge in invalidicide even where the behavior corresponds to the legal definition of patricide. The like is true of infanticide, typically recognized in administration of the law as disclosing considerable grounds for extreme mitigation of the penalty, which has recently secured official recognition in the English statute on the subject. 5

The surest single generalization immediately available is that all societies proscribe behavior that runs counter to their preservation. Group preservation requires not only prohibition of indiscriminate killings and of the lesser batteries and mayhems that lead directly to such homicide; it also requires protection of infants, and consequently of institutions that provide, as well, for care of females during the childbearing period and for some time afterwards. Thus the generalization that "crime" is "relative" does not aid understanding; it merely points to the variation of criminal behavior and implies a total failure to recognize any common characteristics.

5 Cf. "But there can be little doubt that the wholesale infanticide of many of the lower races is in the main due to the hardships of savage life." Westermarck, op. cit., p. 399. "The exposure of deformed or sickly infants was undoubtedly an ancient custom in Greece; . . ." Ibid., p. 408.
Yet these are the *sine qua non* of any science.

**Socioeconomic Conditions**

As a matter of fact, we have already advanced our understanding of crime much beyond the indications of assertions as to its "relativity"; for we know a great deal about the relation of criminal behavior to social and economic conditions and also to technology. Especially is this true as regards crimes against property as they developed in England. This development has been analyzed with special reference to the Commercial Revolution that began in the fifteenth century, and, with greater detail, with reference to the Industrial Revolution.6 We know that from a single norm, "larceny" (patterned probably on medieval cattle-lifting), which originally designated simply direct, physical taking of chattels from another's possession, there evolved several different norms as social and economic changes raised new needs. The new norms denoted certain behaviors; as the former came into existence, the latter became crimes.

With the beginning of modern business in the latter part of the fifteenth century, came employment of carriers to deliver merchandise to distant points. To these carriers the merchandise was voluntarily handed over by the shippers; hence, subsequent conversion would not violate the law against stealing as then defined. The process by which the judges extended "larceny" to include "breaking bulk" by a lawful possessor, retaining but redefining the old words, is important with regard to the role of political agencies in the creation of criminal behavior. The origin of the new offense is important, also, in relation to changed economic conditions. The new law designating certain behavior "criminal" constituted an attempt to meet needs and demands arising from new social problems.

The Commercial Revolution brought mobility of population to a relatively static society. Servants, previously anchored to estates, increasingly picked up and absconded with their masters' valuables. These chattels were in the servants' possession; hence, as in the carriers' case, conversion did not constitute larceny. But since the servant was usually about the master's premises, it was possible to designate the former's physical control of the property as mere "custody" and thus to place all-important "possession" in the master, hence allowing a trespass to another's possession and "larceny"—still the same old bottle, but containing new substance thereafter. Again a new crime and new criminals were created; not arbitrarily, be it noted, but upon rational grounds, to meet felt needs and new attitudes regarding conduct previously tolerated, but now definitely antisocial under the changed conditions.

"Larceny" was a much broader avenue for adaptation to new conditions than can be briefly indicated. Suffice it to add that in 1780, some few years prior to the rise of the law of fraud, the ancient category gave birth to the new offense of "larceny by trick," where possession but not ownership was voluntarily transferred in reliance upon fraudulent representations of fact.

The law of criminal fraud is replete with significance for the intimate interplay of legal norms, public attitudes, and changing social and economic conditions. The enormous losses in stock speculation as the bubbles burst developed awareness of the potency of "mere" misrepresentation of fact to wreak damage on a large scale. Yet as late as 1761, in a case where the defendant had misrepresented the quantity of merchandise sold, a high English court, which included

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6 See the writer's *Theft, Law and Society*, 1935.
Mansfield, found no criminal liability, declaring: "We are not to indict one man for making a fool of another."

Less than thirty years later, criminal fraud was created. Continued stock losses, the disappearance of the guilds, large-scale merchandising, purchases from strangers at a distance, and the new credit economy are among the important concomitant social and economic changes. New law resulted; new "criminals" were designated for selection by the punitive apparatus of legal control. So far as certain individuals were concerned, it may have been sheer chance that one day made them regarded as respectable businessmen, and the next, as criminals. But in the large, the development was a rational adaptation to the interaction of many social forces operating to create new social problems.

Today embezzlement is so common that it comes as a shock to learn that the crime did not exist in England until 1799. There were earlier special and restricted types of embezzlement, confined, significantly enough, to the Bank of England, the South Sea Company, and the Post Office. But generally, prior to 1799 there were simply "breaches of trust"—not embezzlement; that is to say, those who prior to 1799 were merely untrustworthy, became after that date, criminals.

Laws Result from Experience

Again, it is well to note that these new laws and the consequent criminals which, in a somewhat odd sense, they may be said to have "produced" were not fortuitous occurrences. Larceny by servant had long crystallized into behavior that was restricted to receipt of goods from the master. The economic revolutions, especially the rise of banks and other large business institutions, transformed employees' relations to the public into matters of paramount importance. Still it was not any rare imagination, any scientific prescience concerning future probabilities, that brought about the new laws. It was experience under new conditions and with many cases of large depredation by servants, accumulating more slowly than one imagines should have been necessary, that provided the driving force to change law to enlarge the area of criminal behavior.

The above knowledge of theft, especially as it developed in England, carries us an appreciable degree beyond mere recognition that "crimes are relative to time and place." But this knowledge needs to be supplemented by that of corresponding developments in other countries (e.g., adequate Russian data for the past twenty years) until we are able to generalize on the basis of specific comparative data. As yet we have hardly begun to write the history of American crime and criminal law, but it is probable that many relationships between crime and social change similar to those described above could be discovered; obvious special points of attack in the American scene would be cattle-rustling, bootlegging, and racketeering.

Laws Result from Basic Ideas

A similar history of crimes against the person would present much more difficult problems than did that of crimes against property. So far as this writer is aware, such a history has thus far evaded adequate presentation. The reasons are sufficiently apparent; the interests involved are elemental in the sense of being represented in all societies, however primitive. Accordingly, the underlying motives, values, and rationalizations are so deeply rooted in the history of the race as to defy easy exploration. Instead of quantitative data and observable phenomena that accompany and symbolize economic change, one would need to deal with imponderables to a far greater extent. The configuration within which this division of criminal law and
crime must be set would need to be constructed very largely from more or less transcendental forms, from ideas and attitudes that are ingrained in human nature and ancient institutions.

Equally difficult are crimes that spring directly from certain other ideas. For example, the criminal laws of the American Colonies include such offenses as blasphemy, failure to attend church, dissenting, idleness, being a Quaker, scolding, and by no means least in significance, witchcraft. How far does it advance our understanding of these offenses to know that they were "relative to the time and place"? And we have only to remember that Matthew Hale, one of the greatest scholars of modern times, presided at some of the major trials for witchcraft in England, to caution against such facile generalizations about the Salem trials. Even Blackstone, writing in the latter part of the eighteenth century, credits the existence of witchcraft. It is apparent that understanding such offenses is directly dependent, in part, on an adequate history of ideas.

LEGAL RESPONSIBILITY

Similar problems are presented by the rules of law on responsibility for criminal behavior, especially with reference to diseased minds. The accepted version has it that earliest liability was absolute, and that many centuries passed before modern ideas of culpability, resting on distinctions between such notions as negligence, intention, and accident, were accepted. But discovery has been slight and long retarded in the field of ancient legal history; hence we must recall Holmes's opposition to the above thesis, and his suggestive remark that even a dog distinguishes between an intentional beating and an accidental injury. In any event, we know that "understanding" and "volition" have important bearings on culpability in our criminal law largely because of insistence that punishment be inflicted only on immoral persons. But in other fields of law, notably torts, absolute liability, i.e., liability despite due care, has been widely implemented in recent years. Perhaps similar reasons can be invoked in defense of mala prohibita if the absence of any mens rea is assumed. The major theoretical difficulties seem rather to relate to penalization for negligent conduct, and to interpretations that would eliminate responsibility entirely as irrelevant to penal treatment.

The history of lack of mental capacity as a defense parallels much of the law on culpability of normal persons. It is still common for writers intent solely on reform to assert that an eighteenth-century judge held that a person had to be "as mad as a wild beast" before he could be exculpated on grounds of mental disease. There usually follow desultory remarks on the progress in psychology, culminating in fulsome praise of the achievements of that discipline in the twentieth century. The facts are rather more complicated, even after contemporary psychology is critically evaluated. The eighteenth-century judge did not say what is reported of him. He said the diseased person does "not know what he is doing, no more than a wild beast"; and his opinion, read in its entirety, is much too sensible to be distorted into the above exaggeration. As a matter of fact, if we go back as far as the thirteenth century and read Bracton fairly, we may come away with no little admiration for the understanding and moderation of those days regarding responsibility of mentally diseased persons. The history of ethics and epistemology is ancient and pregnant with ideas current today.

So, too, ideas on culpability seem to have persisted over longer periods of

time and to have been modified only slightly in comparison with overt behavior designated "criminal." But if the elements that constitute culpability in our law seem to be few and relatively static, we must remember that these conceptions lie in the most difficult part of criminal law and criminology. Until we have had sustained analyses of the relation of these ideas to intellectual, social, and legal problems in various countries and times, we must cling to a wholesome skepticism of any existing interpretations.

**Adequacy of Legal Concepts**

As regards both the overt phases of criminal behavior and those aspects of it that refer to responsibility, one major problem concerns the adequacy of legal concepts. It must be recognized that there is a constant, practically inevitable lag between the legal categories and actual behavior patterns; this lag increases in proportion to the acceleration of social change. Indeed, there is little factual content in any legal definition of crime that is entirely invariant over a long period of years. Not only do the words change in meaning more or less without such change being noticed, but also, the professionals distort, expand, and contract them as they deem necessary. Human beings are thus occasionally brought within the punitive apparatus against reasonable expectation, or perhaps, more fortunately, they escape despite coincidence of legal norm and behavior.

It is impossible here to develop the technical aspects of the above problem. They have received considerable attention in current jurisprudence, especially where the function of the judicial process has been emphasized or where wide reforms have been sought. Irrationalism and "verbal camouflage" are blanket and all-too-easy dispositions of legal concepts. The actual existence and functions of these entities are evidenced by conduct, by repeated common occurrences, by uniform patterns of behavior in societies where laws are unwritten, as well as in our own. If this is established, investigation moves into fair perspective and permits the most searching inquiries as to correspondence of norm with actuality; no less does it provide for the most detailed, uncompromising criticism of the adequacy of existing legal concepts to implement attainment of desirable objectives.

This actual inadequacy and the limitations accordingly imposed on administration even by the best possible personnel produce areas of uncertainty, a shadowland where crime merges imperceptibly into lawful conduct. It is indefensible to hold individuals responsible or malevolent for the consequences of these conditions. Explanation must, of course, include all sorts of motivation; frequently forgotten are the institutions, the given concepts, ends, economic conditions, and the concrete fact-situations that raise specific problems in the total culture complex. Thus when we find that prior to the rise of criminal fraud, certain behavior (e.g., the ring-dropping confidence game) was held larceny by trick, and that afterwards identical behavior was held fraud, i.e., obtaining property by false pretenses, we must not indulge in particularisms that ignore the total situation. Rather we must probe the relevant social realities for more adequate explanations. This not only does not check, it facilitates understanding of existing terminology and legal conceptions. There is no a priori reason, therefore, to continue to accept such formulations as *mens rea, mala in se, mala prohibita*, malice aforethought, preméditation, larceny by trick, and many others, as including adequate descriptions of significant realities. Too many innocent persons get hoisted on the petard of such archaism; yet we have only just begun to make the de-
tained empirical researches that are necessary to sustain intelligent reform of existing legal concepts.

**Theories of Crime**

In all discussions of crime, as in the above, certain facts are described; it is obvious that their selection is influenced by value-judgments and by other interpretations as to significance. If we consider the discourses of scholars, we find an elaborate array of explanation that complicates analysis considerably. We can simply take note of the variety of these theories on the nature of crime. They have run, broadly, in physical, biological, and social terms; some have been devoted entirely to individual differences, others to cultural processes. There are theories based on "interests" with stress on security or group survival or the power of economically dominant classes; taboo, discipline, sympathetic identification with victims of attack, ethical principles, and penal laws have provided the foundations of other theories. If we view theorizing on crime chronologically, and for convenience indulge in certain arbitrary divisions, we can distinguish theological (St. Paul, Bernard), ethical (Kant), classical (Beccaria), utilitarian (Bentham), formalist (Austin), positivist (Lombroso, Garofalo, Ferri), various neo-modifications of the above, and pragmatist (Saldaña) versions.

It is apparent that these theories parallel the entire history of western thought. They may be regarded as a type of opinion in so far as they, too, reflect phases of the total culture complex within which crime is integrated. (Such employment of theories is, of course, not to be confused with inquiries as to their validity.) Adding theory to "conditions," we can achieve greater insight into the basic realities within which crimes as social phenomena are integrated.

**Crime and Social Science**

Criminologists study those phases of social reality which irritate, produce tension, run counter to accepted values, constitute social problems. Specifically, their concern is those social problems that center on violation of actual penal laws. Understanding these social problems depends on knowledge of social realities, which not only defy actual division, but which can be comprehended only as integers. Hence criminology and the other social disciplines do not represent distinctive types of theory, nor are they concerned with essentially different subject-matters. They can be differentiated only in terms of the types of questions asked concerning social phenomena. Convenience and lack of time require division of labor, but these are only human limitations, not imposed by the nature of the data we seek to understand. Ideally, each social discipline would, therefore, represent the incidence of all social science upon distinctive questions posed by thoughtful persons. These questions are suggested not arbitrarily, but by the nature of social problems that have reference to common social realities.

**Criminology as Integration**

To illustrate the above and to implement the writer's thesis that all social scientists are concerned with common social realities, about which they legitimately ask different questions, consider crime as "a violation of a penal law." Only logicians and lawyers may be content with the legal definition of "crime." It suits their purposes. Criminologists consider the fact that while some laws (and *pro tanto*, crimes) may be arbitrary or archaic, on the whole (barring despotism) they have an intimate rela-

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8 This has received detailed analysis in the *Prolegomena to a Science of Criminal Law* (1941) 89 *U. of Pa. L. Rev.* 549.
tionship to moral attitudes, to ethics, to the affective nature of man, to culture, and to custom. If the approach is by way of "violation of group values against which the group reacts punitively," we are confronted by the whole sweep of social life, which we can penetrate only with partial insight. Or suppose our starting point is "social disorganization" or "social pathology." Can we understand these without knowing "social organization," which, in other terms, also involves the whole of social reality?

We can implement the argument specifically in terms that refer to other social disciplines: consider one of the commonest of crimes—the theft of automobiles and the related receiving stolen goods. Where can one stop in understanding this behavior? Private enterprise and the market place; technology and invention; environment, especially of urban centers; moral attitudes toward private property; ethical principles; law enforcement; juvenile delinquency; the personalities involved; biological inferiority; and many others—is there any actual boundary which can be imposed on the social phenomena relevant to this single type of criminal behavior?

In terms of existing disciplines, one can readily perceive many relations to economics, sociology, ethics, social psychology, biology, and others. These disciplines can be reconstructed much more rapidly than the social realities they explore. Increase in knowledge in criminology, as in each of the social sciences, consists in this very exploration of the interrelationships of phenomena relevant to questions asked about certain social problems, i.e., in the construction of a total significant social configuration. The collaboration that has existed for many years between legal scholars and criminologists has produced a body of social science and a knowledge of methods of research that have significance for integration of the social disciplines generally.

Jerome Hall, Jur.Sc.D., S.J.D., is professor of law at Indiana University Law School, Bloomington. He is United States Secretary of the Criminal Law Section of the International Association of Comparative Law, and Chairman of the Association of American Law Schools' Committee on a Modern Legal Philosophy Series. He is author of "Theft, Law and Society" (1935), "Readings in Jurisprudence" (Ed. 1938), and numerous articles.