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Gerhard O.W. Mueller
New York University School of Law

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CRIMINAL THEORY:

An Appraisal of Jerome Hall’s STUDIES IN JURISPRUDENCE AND CRIMINAL THEORY†

GERHARD O. W. MUELLER‡

It is quite easy to state what may be right in particular cases (quid sit juris), as being what the laws of a certain place and of a certain time may say or may have said; but it is much more difficult to determine whether what they have enacted is right in itself, and to lay down a universal criterion by which Right and Wrong in general, and what is just and unjust, may be recognized. All this may remain entirely hidden even from the practical jurist until he abandon his empirical principles for a time, and search in the Pure Reason for the sources of such judgments, in order to lay a real foundation for actual positive Legislation. In this search his empirical Laws may, indeed, furnish him with excellent guidance; but a merely empirical system that is void of rational principles is, like the wooden head in the fable of Phaedrus, fine enough in appearance, but unfortunately it wants brain.

IMMANUEL KANT¹

Professor Hall has added another book to his already long list of distinguished publications. Studies in Jurisprudence and Criminal Theory reproduces some of his best essays, many of which had not been previously readily accessible to the lawyer, and also contains significant new chapters, in the realm of jurisprudence and criminal law theory. This book is not a self-contained segment of work but, rather, a cross section of works, and not just of any scholar, but of an unusually original thinker. Moreover, the subjects joined in this book have rarely, if ever, been combined in this country. The result of this joinder is a new area of inquiry, criminal theory.

INTEGRATIVE JURISPRUDENCE

Before discussing the fusion at which I hinted, the reader should be reminded of Hall’s jurisprudential contribution to Western thought, quite

‡ Associate Professor of Law; Director, Comparative Criminal Law Project, New York University, School of Law.
apart from his independently unique efforts in criminal law. Although Hall had indicated the flight of his ideas in earlier publications, the first major disclosure of his jurisprudential program occurred in 1947, when he wrote on Integrative Jurisprudence in *Interpretations of Modern Legal Philosophies*.

Integrative Jurisprudence has its immediate orientation in a persistent effort to correct the most serious fallacy in modern jurisprudence: the sophisticated separation of value, fact and idea (form). This fallacy is manifested in the particularism of prevailing legal philosophies, i.e. in their restriction to, or concentration on, one of the above spheres of significance, with consequent exaggeration and error. The premise of this criticism is that the soundest measure of any legal philosophy is its 'adequacy.' ‘Adequacy’ requires of a legal philosophy: (1) ultimacy—that it be constructed on simple, irreducible ideas that are intellectually defensible; (2) comprehensiveness—that, so far as possible, it take account of all significant aspects of legal problems (a corollary is that it be 'necessary' in the sense of omitting the unimportant); and (3) consistency—that doctrines defended and results obtained in dealing with some problems be not contradicted by those maintained elsewhere—not only in a strictly formal sense, but also as regards the general coherence of jurisprudence.

Tested by these criteria, Natural Law Philosophy is guilty of the particularistic fallacy of divorcing value from fact; American Legal Realism was guilty of the exaggeration of fact to the virtual exclusion of value, and Legal Positivism, exemplified by Kelsen’s Pure Theory of Law, is guilty of the gravest inconsistency of all by being anti-empirical and devoid of ethical value. The “inadequacy” of these schools is thereby indicated. Hall himself spent great efforts elaborating on these deficiencies. Integrative Jurisprudence became the answer to the particularistic fallacies. This new philosophy is a “pluralism” which “insists on the inclusion of relevant ideas, facts, and evaluations, in compliance with the criteria of adequacy.” Stated in the most concise possible terms, Integrative Jurisprudence posits, first, that “law originates in a sovereign

2. *Interpretation of Modern Legal Philosophies* 313 (Sayre ed. 1947).
4. Use of the past tense conforms to Hall’s style and estimation.
and is expressed in a distinctive normative form composed of two descriptive propositions, one designating a harm, the other, a physical sanction, both being joined by a copula signifying must, an imperative 'shall' . . . [second] the teleological quality of these norms and their embodiment of, or relation to, values. Finally, there is a factual dimension of law manifested in conduct and institutions which express the legal ideas, and in artifacts into which those ideas are read.”

Integrative Jurisprudence was well received. Indeed, a realistic return to "justice" as the core concept of all legal endeavour has since received recognition as the basic criterion of the most significant school or trend of jurisprudence today, outside neo-Thomistic Natural Law. Being in various degrees of propinquity in thought to Hall's Integrative Jurisprudence, such significant thinkers as Edmond N. Cahn, Edwin W. Patterson, Huntington Cairns, Morris R. Cohen and Lon Fuller, and among the judiciary the late Mr. Justice Cardozo, have likewise subscribed to an axiological legal philosophy, though sometimes with a lesser emphasis on the positive foundation of law.

In evaluating Integrative Jurisprudence one must not overlook the fact that this philosophy relies in part on positivism, Hall's stringent rejection of the Pure Law Theory notwithstanding. "Positivism" is broad enough to include the anti-axiological Pure Law Theory on one extreme and axiological positivism in the form of Integrative Jurisprudence on the other. It is difficult to perceive how positivism, to form an adequate jurisprudence, can be anything but axiological. Is it not clear that a statement of legal rules devoid of consideration of the values which have produced them and in which they function, would be more like a death mask, rather than a life cast, of the living image, law? Moreover, the law constantly incorporates existing and presumably ascertainable values by reference. Thus, when a legal mandate provides that for conviction of crime a \textit{mens rea} must be proven, the word "\textit{rea}" incorporates a meta-legal value by reference and makes it a legal standard. If it were otherwise, \textit{i.e.}, if \textit{rea} were interpreted to refer only to the objective fact that a certain conduct is prohibited, convictions would befall the populace without discrimination between those who breached the law knowingly and with design, and those who breached it by happenstance or despite the exercise of the utmost care.

In order to construct a new jurisprudence which was to absorb the lead ideas of the three existing schools of thought, Hall had to master

7. Id. at 89.
them all. That he is an expert craftsman with the tools of realism, he demonstrated as early as 1935 in *Theft, Law and Society*; that he is well grounded in positivism, he evinced in *The Living Law of Democratic Society* (1949) and the *General Principles of Criminal Law* (1947), and that he is as skillful with values as any Natural Law philosopher, he demonstrated more than once. These are but examples, yet they all attest to an unusual alertness which has kept Hall from falling into the typical booby traps of those philosophies.

*Plato's Legal Philosophy* takes a special place among Hall's jurisprudential writings. A Freudian psychoanalyst—I am sure Hall himself would detest the mere thought—might find this essay a gold mine of information about Hall's character and personality structure. Suffice it to say that Plato is probably the most significant single factor in the development of Hall's mature thoughts. He found Plato to be a constant source of inspiration. "Even though one disagrees with Plato on many points," he wrote, "it is impossible to remain insensitive to the sweep of his imagination. Centering on law and the political community, he created a world-picture in which every important phase of human experience found an intelligible place in significant interrelations to all the other major components of the cosmos. [...] positive law is the central thread which unifies Plato's philosophy." The totality of Platonic philosophy became the central thread which unifies Hall's writings on jurisprudence and criminal theory.

Legal philosophers frequently are eminently impractical. Integrative Jurisprudence, on the other hand, was created and is fit for practical application. This requires special comment, as it will strike the reader so many times in the course of reading Hall's new work.

Legal philosophy, or jurisprudence in that sense, is, of course, nothing but that lofty inquiry about law "from the heights of maximum generalization." It is the "master science," and there is a long way down to "the valley below, where positive law functions." Now, it is entirely up to each philosopher to choose his position and approach, though he who functions solely in the heaven of philosophers cannot expect either to be understood by those in the valleys below, or, indeed, to influence their actions in any way whatsoever, quite apart from the fact that such

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11. *Studies*, ch. 3.
12. *Id.* at 81-82.
a heavenly philosopher's thoughts are bound to be so highly unrealistic as to be practically useless. The sphere between the lofty heights of jurisprudence and law in action is filled by thought levels of various degrees of abstraction. "Thus, legal theory is distinguished from positive law and the immediate elucidation of the rules and doctrines comprising positive law by its greater generality and its organizational functions. . . . Legal theory is distinguished from jurisprudence in that the latter deals . . . with universal conceptions and generalizations."

Each of the three levels of legal-intellectual abstraction in turn may be divisible into various spheres. Thus, positive law itself, as the term implies, deals with the rules of law, as well as with their immediate application. Jurisprudence, on the other extreme, may similarly be viewed as involving various concentrations of universal generalization. But the subdivisions of legal theory are perhaps the clearest. In abstracto, Hall demonstrated this splendidly on the example of criminal law, and I shall try to elaborate on this demonstration in concreto. This, then, is an eminently practical use of jurisprudence, one which differs from the typical jurisprudental (philosophical) statement about law in general, in that it penetrates through various levels of generalization until it reaches and directly affects positive law.

The Emergence of American Criminal Theory

At the risk of harping on the familiar, I should like to start with the observation that during the last one hundred years our law has experienced more change than in all its previous history. I am not referring to the problem of population growth and congestion, the development of swift communication and transportation, means of mass production and destruction. True enough, these posed many legal problems and challenged the ingenuity of the lawyer, and, on the whole, true to his tradition, he has succeeded in finding quid sit juris as each situation arose. But all these are but symptoms or penumbral issues. The change of our law lies deeper. The change I have in mind is that from an unsophisticated legal system to one of great and ever increasing organization and refinement. Classification and organization of the law was not needed when precedents and authorities were few in number. But the expanding legal system of the late 19th century could no longer rely on the memory of man exclusively. Classification and organization became necessary. Initially, it was not the scholar who performed this task for our system—unlike in continental experience—but, rather, the law publisher, primarily West and Sheppard.

16. Id. at 10-11.
I have briefly indicated how, according to Hall, human interest in and occupation with the law proceeds on various levels of generalization, abstraction and sophistication. If the rule of law itself, quid sit juris, is the most basic level, it is readily apparent that organization and classification must constitute the next higher echelon of thought, or a part thereof. In Hall's terms, this is the level of theory, as distinguished from that of positive law. Now, it is obvious to every member of the profession that a digest rests on a fairly unsophisticated theoretical level, as it may be a mere alphabetical ordering, and perhaps that is sufficient for its purpose, i.e., that of a precedent finder. If these commercial endeavors helped in the better refinement and organization of our law, this was a welcome incidental effect. But is, or should this be, the sole ambition of legal theory? Hall postulates that theory has elucidation for one of its principal purposes, so that, if a digest elucidates, however coincidentally, it fulfills at least one of the functions of theory. But elucidation is more than mere classification, and legal theory, indeed, demands more than mere elucidation. "Legal theory in its widest range deals with ideas common to one or more branches or systems of positive law, and it thus consists of more general propositions than those which immediately elucidate positive law." Anybody who wishes to reach this aim must abandon the publishers' organization for a more perfect system. By bringing the principles of scientific classification, as developed, e.g., by biology or chemistry, to bear, and keeping in mind that it is a specific body of laws rather than insects or herbs we are trying to classify, a legal classification can be achieved which is both scientific and practical. Such a classification attempt requires that (1) it be a continuous and dynamic, rather than a static, endeavor, (2) we drop the notion that one classification is as good as another, (3) we discover the basic distinctive unit or data comprising our subject matter, (4) we divide those units or data into types according to their basic properties, observing, however, that any such classification must aid in facilitating the discovery of wider generalizations, and (5) it must represent significant uniformities and relationships. By these criteria, the Western world, since Roman times, has divided law into public and private law. The Romans subdivided further into the law of persons, of property, and of procedure, and Bracton transplanted this system into English law. Whether these divisions of both systems were the best possible may be

18. *Id.* at 144-45.
19. *Institutes* 1.1.4.
20. *Id.* at 1.2.12.
a matter of dispute. Nor, of course, is it clear that our seven or eight subdivisions of public and private law are the best we can find. But it is significant to note that while Anglo-American law has been inimical to further and more detailed classification, although in a few fields it has yielded thereto to some extent, the bodies of Roman and Civil law are systematically classified and thus divisible into ever more minute categories. This gives them the appearance of thoroughly organized and logical systems—and, indeed, they are.

Applying the demands of legal theory and the principles of scientific classification to the criminal law, a category which as such is certainly not assailable, Hall has developed a criminal law theory, the first on this continent, which is fully adequate and can constitute the necessary basis for any reform our criminal law may need. The significance of this achievement can best be understood if we return to history once more.

American legal scholarship in criminal law has traditionally focused on two principal forms of expression, the practitioner's text and the case book. It is unlikely that anybody will disagree with the proposition that the criminal law texts of the past 100 years are dry, casuistic restatements of what courts have said in criminal matters. Their usefulness suffered because their authors had to sacrifice criticism and independent thought for inclusiveness and reconciliation of conflicting lines of decisions in one or several jurisdictions. Even Bishop, Wharton and Burdick could not free themselves of the custom of the time though they, more than any others, evidenced a true maturity of thought. In criminal law the more reputable scholarship turned to the production of case books. Fourteen years before Professor Langdell had the idea of making up a case book (in contracts) for use in the Harvard Law School, the first American case book in criminal law appeared on the market in Chicago. Unfortunately, the case books were just as dry and uninspiring as the texts, nor were they meant to be inspiring. It is safe to say that until 1925 there was no change in this form of scholarship. It was at that time that Roscoe Pound, disgusted with the stale and fossiliferous approach of scholarship in criminal law, which could produce nothing better than collections of edited appellate decisions, called for a progressive criminal law scholarship. A society riding in automobiles for business, pleasure and crime, psychoanalyzing itself and developing a science of sociology, needed a modern criminal law, and Pound felt that only the scholar could provide it.  

There was some response to Pound's demands in the new editions

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of some older case books, and Professors Sayre, Harno, L. Hall and S. Glueck, among others, cautiously introduced some realism in their new works. But it was not until 1940 that American legal scholarship in the case book field matured to perfection. The new era began with *Michael & Wechsler, Criminal Law and Its Administration.* This book joined law and the social sciences with exceptional success. Both the analytical-normative and the social importance of crime and its repression received their fair share. David Riesman wrote: "Michael and Wechsler make law a social science by being steadily comparative, legislative, and jurisprudential—drawing upon the resources of the other social sciences." Criminal law scholarship was no longer the same, and many of the subsequent case books, foremost Dession's, attested to this fact.

It was this new inquisitive approach which resulted directly in the magnificent effort of the American Law Institute to draft a Model Penal Code, under Professor Wechsler's supervision. This country has thereby reached a parallel point to the era of great modern European codifications from 1870 to about 1910, but it has the additional advantage of greater insight through the data which the social sciences have since made available, and this data is being fully employed.

But there is one basic difference between the great continental codification efforts and the present American enterprise. European scholarship could operate with a body of well organized knowledge, splendidly classified and refined to perfection. Here, on the other hand, the social science data are brought to bear on what is, for the most part, a crude body of dogma, more representative of the peasant society which founded it than the age of Einstein.

We must realize that the introduction of scientific knowledge into the body of criminal law in and by itself does not convert that body into a science. It is only when the body of knowledge which constitutes the criminal law is itself properly and deeply analyzed and organized that we can speak of a beginning science of criminal law. Such an analysis and organization must be achieved with the tools of the scientist, and that is the function of criminal theory, as developed in this country only

24. Id. at 645.
now, principally through Professor Hall. If the criminal law body is thus properly prepared, the data of science can be applied with greater ease and success, because the data will then be comparable.

In 1947 and 1949, when the "Principles" and Hall's casebook appeared, Hall stood practically alone in advocating progress through theory, i.e., greater knowledge through greater organization and refinement. Ten years later, in 1959, there is a growing collegium of scholars with an equal or similar outlook. Professor Wingersky has produced a magnificent new treatise on crime, and so has Professor Perkins, so that, for the first time in this country, we have well organized and theoretically sound and inclusive criminal law treatises. Professors L. Hall and S. Glueck have switched their casebook from the traditional system of subject presentation to the theoretically organized approach, and the contributions to legal periodicals reflecting the maturity of the new approach are too numerous to be mentioned.

The two great endeavors in criminal law, that of elucidation in the process of codification and that through criminal theory, are fascinating events. There is no rivalry between the two approaches; nor is there a sufficient amount of cooperation. But we can predict that should the two forces combine their powerful resources, the benefit to American criminal law is bound to be significant. Since there are no wonder drugs against criminality, only a well prepared deep-cutting operation can ultimately tackle the problem of the rising crime rate. And it is with such a result in mind that I make mention of future benefits.

It is when viewed in this context that the significance of Hall's criminal theory becomes truly apparent.

**The Principles of Criminal Law**

Hall's legal theory provides us with a basis for better organization and recognition of our subject. Like any theory, it is concerned with statements about and within the subject, the instant subject being that of positive criminal law.

In a valuable essay, which, unfortunately, was omitted from his recent book, Hall wrote: "In place of [the European bipartition of criminal law] . . . I suggest a threefold division. I retain the special part just as do the above codes . . . [but] I divide the general part into

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31. Compared with the growing number of theoretical scholars, supra, note the steadily growing list of collaborators on the Model Penal Code project. Model Penal Code IV-VI (Tent. Draft No. 8, 1958). But, note also that the lists of the two schools are almost mutually exclusive.
two divisions which I call doctrines and principles." The special part contains the rules, stated in terms of the least generalization, the general part the doctrines, of greater generalization, and the principles, of greatest generalization. "If one understands the principles of criminal law, one has the tools to work with and analyze any crime." While rules and doctrines rest on the level of positive law, Hall holds that the principles are so generalized as to rest in legal theory, perhaps entirely so. He explains the function of the principles thus: "The positive law of crimes, i.e. the rules and doctrines of that branch of law, can be elucidated and organized by use of certain conceptions and principles, namely, in terms of legality, harm, conduct, mens rea, the concurrence of the latter two, causation and punishment. These conceptions and the principles which include them refer to the totality of the rules and doctrines of criminal law." In other words, for the best possible elucidation of criminal law, we can state the propositions of and about this subject in terms of a hierarchy of conceptions, with the most generalized conceptions at the top (principles), the less general conceptions at the middle level (doctrines) and the least generalized conceptions (rules) at the bottom, analogues to the division of legal science into jurisprudence, theory and positive law, though it should be clear that the mere analogy does not lift the principles into the realm of legal philosophy.

Hall did not stop at positing his theory, but he constantly endeavored to explain the conceptions in terms of which the theory is stated. Thus, at various places, he had dealt with each of the principles: legality, harm, conduct, mens rea, concurrence, causation, and punishment. Having worked with these concepts for several years, I found them to constitute a fully satisfactory theory of our subject. The most significant aspect of this theory, in my opinion, is the high degree of fidelity with which it portrays the actualities of the unorganized mass of criminal law as applied in our courts since time immemorial. This is an

33. Id. at 3.
34. Studies 10.
36. Id. chs. 3 and 4, especially in terms of completed and inchoate harm, though the concept as such was briefly explained in Hall, Cases and Readings on Criminal Law and Procedure 45-46 (1949).
38. Id. chs. 5-6, 10-14; Hall, Ignorance and Mistake in Criminal Law, 33 Ind. L.J. 1 (1957); Hall, Ignorantia Legis, 26 Rev. Int'l de Droit Penal 293 (1955).
40. Studies, ch. 10.
41. Hall, op. cit. supra note 35, ch. 15.
aspect which, it seems to me, Professor Hall has not yet had a chance to explore fully.

The key to the correspondence of theory and actuality lies in the maxim *actus non facit reum nisi mens sit rea*, which we can expand to the proposition that crime is a concurrence of *actus reus* and *mens rea*, subject to punishment. This, indeed, is an acceptable definition of crime, though some may wish to except regulatory offenses. It is my contention that this definition, certainly one which has influenced the behavior of criminal courts more than any other, contains all the principles of criminal law which Professor Hall included in his list. *Actus* stands for conduct, as no one will doubt, and, hence, *reus* indicates that it is only conduct of a certain nature with which the criminal law is concerned, namely evil, or guilty, or prohibited conduct. This, in turn, however, is nothing but a reference to the prohibition which is a concept composed of two principles, namely that of harm, which refers to the prohibited end effect of conduct, and that of legality, by which the fact of prohibition is to be ascertained. *Mens rea* refers to the frame of mind as related to the prohibition. It is, therefore, something different from, or greater than, the mere mental element which is a requisite of conduct as such. The concurrence of *actus reus* and *mens rea* is likewise indicated in the definition, as is the requisite punishment. Causation, lastly, while not specifically expressed, is necessarily included to relate conduct and harm, as it is only by rules of causation that any connection between the two can be established.

The ancient definition of crime, therefore, contains reference to all the principles of criminal law. These principles themselves can be demonstrated in terms of doctrines. Thus, *e.g.*, the principle of *mens rea* is explainable only by reference to the doctrines referring to ignorance or error of fact or law, necessity, coercion, self-defense, etc. Indeed, our traditional insanity doctrine is nothing but an elaboration on conduct

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42. At one time in the history of English criminal law all punishable conduct was known by all to be evil, hence *reus*. Today, in the "welfare" state, this no longer holds true, so that *reus* has acquired the frequently useful and applicable meaning "prohibited."

43. I shall refrain from going into the details of *mens rea* and conduct, as I had occasion recently to express my thoughts on these principles in detail. See Mueller, *On Common Law Mens Rea*, 42 Minn. L. Rev. 1043 (1958). See also text accompanying note 72 infra.

and *mens rea*, thus, doctrinal matter subsumed under these principles. When the M'Naughten rules refer to the inability to know the nature and quality of the act, they make a doctrinal statement with reference to conduct. It is a statement about those who, by reason of defect resulting from mental disease, are unable to engage in conduct altogether. When the M'Naughten rules refer to the inability to know the difference between right and wrong *in concreto*, the doctrinal reference is to the absence of *mens rea*, because the substance of *mens rea* is nothing but an awareness or appreciation of the wrongfulness or prohibited quality of the conduct.\(^{45}\)

In an effort to demonstrate the utility and clarity of the principles, it may be well to allude to a number of recently decided cases. These show that the principles, and the doctrines which they include, are not solely high level abstractions, as one might occasionally infer from Hall himself, but are significant in their application to everyday occurrences in the courts.

**A. Legality.** The principle of legality is embodied in three main doctrines and a number of elaborations thereon:

1. *Nullum crimen sine lege* is the requirement of a valid penal law completely encompassing the subsequent conduct of a perpetrator. Unless the perpetrator's conduct falls squarely within the prohibition, there is no crime. Thus, when a statute punishes certain prohibited acts committed with a motor vehicle "on a public highway," a defendant who commits such acts on a private parking lot is outside the prohibition.\(^ {46}\)

2. *Nullum crimen sine poena*: no conduct amounts to a crime, unless it is prescribed or proscribed by punishment, whatever else a statute lacking punishment may be.\(^ {47}\)

3. *Nulla poena sine lege*, lastly, requires that the criminal sanction and its range be provided for prior to the conduct in question.\(^ {48}\)

Implied in these doctrines, expressed in the form of maxims, are the

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45. Whatever the requisite form of *mens rea* may be, *e.g.*, intention or recklessness.

46. Prillaman v. Commonwealth, 199 Va. 401, 100 S.E.2d 4 (1957); People v. Wigle, 350 Mich. 692, 86 N.W.2d 813 (1957) (motor vehicle offense "on a public highway" cannot lead to a conviction of one driving on a private parking lot). See State v. Callaghan, 46 N.J. Super. 289, 134 A.2d 609 (1957), a statute invalidates city ordinances when traffic signs improperly constructed or placed. Thus, D cannot be convicted of wrong-way driving if one-way sign fails to comply with standards: *nullum crimen*.


48. While in the case of conflicting penal laws the latest enactment overrides the earlier, People *ex rel.* Cooper v. Martin, 168 N.Y.S.2d 811, 5 A.D.2d 736 (3d Dep't 1957), it is not possible to subject a defendant to the heavier punishment of the later statute, unless its enactment antedates his conduct. See Miller v. State, 316 P.2d 203 (Okla. 1957).
propositions that statutes leaving the definition of criminal conduct to administrators are unconstitutional and void.\textsuperscript{49} Mere ambiguity, however, does not render a statute unconstitutional. Rather, of two possible interpretations, that favoring constitutionality must be adopted, provided that this is also the interpretation favoring the defendant.\textsuperscript{50} It is otherwise with vague statutes which fail to inform the affected public adequately of the conduct which will render them criminally liable.\textsuperscript{51} In recent years the principle of legality has suffered some inroads from so-called liberal construction statutes,\textsuperscript{52} which are designed to close gaps attributable to legislative oversight or sloppiness. By increasing the conviction rates, these statutes lull the public into a false sense of greater security from crime while, of course, actually decreasing the certainty of convicting only parties who were so forewarned that they could in fact be expected to behave accordingly and who by failing to act, can be said to be guilty in terms of law and ethics.

**B. Conduct.** While, for the time being, one must leave the explanation of the interrelation between brain and body and brain and sense stimuli, and the interrelation of the various psychic functions, to the psychologist and neurologist, we are in a position to make significant statements about the role of conduct for purposes of criminal liability. \textit{Impossibilium nulla obligatio est.}\textsuperscript{53} Just as the law can neither command mountains to move, nor birds to stop flying, it cannot command the behavior of human beings who are incapable of perceiving sensory data, ranging from the perception of one's own existence to the reception of sensory stimuli of whatever sort, and including the capacity to direct one's volition. This restricts the law's regulatory function to the pre-
scription or proscription of conduct. Conduct is actus. The fact that it is legally prohibited conduct with which we are concerned is, as indicated, marked by the addition of the word reus. It is not possible to influence a defendant (or others) by punishing him for anything not amounting to conduct, thus, not including the elements of cognition and volition. Prima facie, this should preclude the punishment of a relation, condition or status. It also excludes the punishment of mere behavior, thus lacking awareness or volition, as distinguished from conduct. Thus, while an epileptic who, knowing that he may suffer an epileptic seizure at any moment, may well incur criminal liability for harm done during an epileptic seizure through an instrumentality set in motion by his conduct, i.e., while he was still in control of his faculties, because he could have stopped his conduct at an appropriate moment, a defendant who automaton-like goes through the motions of apparent conduct, but lacking awareness, whatever the cause, whether unknown, epilepsy, sleep-walking, hypnosis, etc., in formal violation of law, is not guilty of a criminal offense, as one lacking conduct. This was recently demonstrated again by a widely publicized English case. In this country such cases rarely reach the courts, but make for frequent amusing newspaper reading.

Apart from cases in which the mind is not the least bit receptive, there is no conduct when an event occurs which is not attributable to the defendant's mental activity and applied volition. Thus D sitting in a parked automobile which by itself and without D's intervention rolls a few feet forward, simply is not "driving" the car, there being no conduct of driving.

Conduct may consist of commission or omission. Either may equally accomplish an unlawful result. While quite clearly the failure to act in the face of a specific mandate of the law to do so, amounts to a crime (true omission crime), offenses phrased in terms of commission may be equally accomplished by omission, namely when there is a legal obligation on the particular defendant to avert a consequence which, for his failure,
C. Harm. The principle of harm is the most underdeveloped concept in our criminal law. "Harm," as Hall noted, "implies interests or values which have been destroyed, wholly or in part." Harm is not confined to physical injuries. . . . [It is] an essential element of every crime [and] each legal definition of a crime . . . describes a more or less specific harm.

I like to think of harm as a tri-level abstraction. In the first place, every crime entails harm in the most general sense. The mere breach of the law, in disobedience of a mandate, is harmful to the sovereign. On the intermediate level, the harm which a specific crime entails is recognizable in part by the definition, in part by the very context in which the crime is listed, e.g., within a code. Here we find the harm groups in terms of broadly defined legally protected interests, like life, physical integrity, property, honor and reputation, and so on. But lastly, each crime is meant to serve a specific purpose. Thus, the crime of larceny by false pretenses was created not just for the general protection of rights in personal property, especially possession, but for the protection of such rights against deprivations of a specific nature. Thus, the legally protected specific interest is that of a certain confidence with respect to the enjoyment of one's personal property rights, including those of dealing with the property according to one's wishes. The victim's parting with his property, in order to fall under the definition of larceny by false pretenses, must have been accomplished in a particular way. Professor Snyder recently called the specific harm of larceny by false pretenses, the invasion of the victim's "liberty . . . to deal with what is his as he himself chooses" through a deception which nullifies what would be a free choice but for the deception. In a recent military case, even though the specific harm of larceny by false pretenses was present, it turned out that the victim was not one cent out of pocket after the deal involved. Harm of the intermediate category, that typical of larceny in general, was not done, although the most specific harm had been accomplished. Apply-

59. HALL, CASES AND READINGS ON CRIMINAL LAW AND PROCEDURE 45 (1949).
60. Id. at 46.
62. Snyder, supra note 61, at 48.
63. United States v. Rubenstein, supra note 61.
ing the principle of legality to that of harm, it would follow that the conviction should not have been rendered, although, of course, liability for the attempted crime might have been considered.

The concept of specific harm was recently demonstrated in the Illinois case People v. Von Rosen. On a charge of desecration of the United States flag it was established that the statute had been enacted not just for the preservation of our national emblem as such (intermediate harm), but primarily because of the grave danger that desecration may invite disturbances of the public peace, as the legislative history clearly showed. For the prosecution's failure to prove this harm—the potentiality of peace disturbance—the Illinois Supreme Court reversed the conviction. The Von Rosen case probably goes further than any other in the application of the concept of the specific harm. The case is sound only if the legislature can be considered to have incorporated its abstract anticipation into the definition of the crime so as to make a showing of a concrete anticipation in every case an element of the crime. It should be clear that a mere motive for legislation does not automatically become an element of the crime. But, as said, depending on a proper interpretation of the legislative history, Von Rosen may have been rightly decided. Nevertheless, the case is likely to arouse prosecution fears that courts may continue to go equally far in subsequent cases in uncovering hitherto unknown legislative motivations and giving them the status of definitional elements. To calm such fears, suffice it to point out that, (1) since the doctrine can work only for the protection of offenders, no prosecutor need be afraid that his conscience might be burdened by unjustified convictions, (2) that the definition of most crimes points to the specific harm explicitly, (3) that the legislative history has been closely scrutinized by courts, (4) that sound counter-argument will continue to be a good weapon against unsound argument, and (5) that the principle of legality and the rules of statutory construction are limitations on the courts' inquisitiveness about implied harms.

In England the view has recently been expressed that there are crimes which involve no harm. Rather, in this group of crimes, so it is said, a certain "mischievous tendency" takes the place of harm. Such a view overlooks the fact that a "mischievous tendency," as, e.g., in reckless driving, is a harm in itself. Just imagine the real and quite general feeling of insecurity which is created when at rush hour in an American city one driver proceeds at 75 m.p.h. through a congested area. The harm is there, even though metal may not be bent or bones broken, and even

64. 13 Ill. 2d 63, 147 N.E.2d 327 (1958).
65. WILLIAMS, CRIMINAL LAW—THE GENERAL PART 17 (1953).
the absence of any bystander would not alter the legal situation, as public anxiety certainly was not the only specific harm which the legislature wished to prevent in creating the crime. One might think of the danger of possible accidents due to the possibility of intervening traffic or failure of man and machine, etc., though we need not speculate on such possibilities at this point. Suffice it to say that the harm is present when the act is done, although it may seem remote to those engaged in the act or others who had less occasion to contemplate on the matter than the legislature. The quintessence of this argument is merely a concession to the English view that there are crimes in which the harm is easy to prove, perhaps by rebuttable presumptions, while in other crimes it takes more than that to prove the specific harm.

It is surprising to note how often the harm principle has been neglected in the court room. Unless vigorously argued by the defense, the court, at best, will retort that some other charge might have been more appropriate to meet the conduct in question. Since our law has always been hostile to doctrinal refinement, it is not astonishing that the potentials of the principle of harm are as yet largely undiscovered.

D. Causation. Professor Hall had commented on the problem of causation in various contexts and earlier writings. But it was not until the publication of the Studies that his full views on the topic became known. In this new work Hall dismisses those theories which fail to view causal problems in context, with a resulting overconcentration on mechanical causation. His solution, on the other hand, posits "that the essential constituents—fact-finding processes and policy—are interrelated in such ways that the factual inquiries are defined and, to a considerable degree, determined by policy." A causal inquiry, therefore, would first ascertain the sine qua non, or necessary, in the strictly physical sense, participation of the defendant's conduct in the production of the harm. By this standard the attribution of the harm to the defendant fails right from the outset unless it appears that but for the defendant's conduct the harm would not have resulted. The extent of the causal inquiry is next limited by restrictions of "effectiveness," i.e., incidental contribution will not suffice, the contribution must be an effective one. As Hall rightly notes, the use of the criterion of effectiveness in causation is not confined to law, but in law it has achieved singular significance. The last limita-

67. Studies, ch. 10.
68. Id. at 185.
69. But "harm" itself is a limitation upon the extent of the causal inquiry. Ibid.
70. Studies 186 n.96.
tion which is placed on a causal inquiry, according to Hall, is that provided by mens rea: "[T]he fact finding of a cause-in-law means the finding of a cause which is a substantial factor and includes certain voluntary conduct signifying a required mens rea." I can subscribe to the proposition that voluntary conduct is the final limitation upon cause-in-law. I differ with Professor Hall on the conclusion that such involves mens rea. As I discussed elsewhere in greater detail, mens rea "is the ethico-legal negative value of the deed (appearing in various legally prescribed forms)." Thus, it is nothing but the defendant's awareness that what he is doing is not approved by the community of which he is a member, though sometimes it is the failure to exert one's conscience so as to gain an awareness. As far as I can see, mens rea in that common law sense is too far removed from causation to be part thereof by construction. But when Professor Hall speaks of "voluntary conduct," he places the third restriction on the cause-in-law attribution rightly. A prediction or foreseeability as to whether or not a certain conduct will produce a certain consequence is properly subsumable under the primary principle of conduct, and, after all, causation is nothing but an auxiliary principle for joining actus and harm. Therefore, prediction or foreseeability becomes properly the third limitation on the causation inquiry. For example, a child's conduct resulting in the production of the harm of a broken bottle will entail an inquiry—after ascertainment of the physical relation as such and the effectiveness, or materiality, of the child's conduct in the production of the harm—into whether the child could or did predict that, upon being thrown upon the floor, the bottle would break. The causal inquiry for the purpose of imputation of the harm ends with a finding that the child did or did not (e.g., all its previous experience had been with plastic bottles) know that breakage might result. Cause within the meaning of the criminal law is attributed when a positive finding as to predictability is made. But causation, even in this sense as extended in meaning for purposes of the criminal law, does not suffice for the imposition of guilt or blame. In our example, disciplinary blame will be imposed only when the child knew of the existence of a prohibition of bottle throwing, whether it approved of the prohibition or not. Obviously, both law and household discipline no longer permit any argument about the awareness as to rules which by long standing and tradition have become part of cultural heritage and thus second nature. Even where such knowledge existed, it remains, however, to be ascertained whether the child, or the wrongdoer, produced the harm with the required

71. Id. at 187.
72. Mueller, supra note 69, at 1061.
form of attitude, i.e., negligence, recklessness, intention, or whatever the form requirement may be. In so adding guilt, or *mens rea*, in its appropriate form, to causal imputation, for the purpose of establishing liability, we are no longer within the realm of causal inquiry.

Notwithstanding any possible disagreement as to the precise nature of the third limitation on causal inquiry—conduct or *mens rea*—there is abundant agreement on the major proposition, namely that policy considerations are necessary in causal inquiries. This opinion is shared by a thoughtful scholar of international renown, Dean Ryu, who recently agreed that the meaning of cause-in-law “can be found only by inquiry into the policy of law.” These policy-oriented views stand in sharp contrast to some others recently expressed in England, and holding that policy has nothing to do with the determination of causal issues.

A comment on the remaining principle, that of punishment, would lead us too far afield in this context. But did we really exhaust the list of principles? My curiosity was aroused when in one of the chapters of the *Studies* I read that, according to Hall, there might be one or two other principles of significance to criminal theory. There is no elaboration on this remark. The statement is somewhat astonishing since I had found the seven stated principles to be perfect working tools, covering all of the subject of criminal law. It appears to me that any further principle would, on close inspection, turn out to be a doctrine subsumable under one of the existing principles. The *utility* concept might be a principle of this sort. While Professor Hall did not cover this concept in the *Studies*, the context of this essay requires a brief comment. A recent publication by Professor Scott has convinced me more than ever that the utility principle is extremely relevant, though its inclusion in criminal theory is another matter.

**E. Utility.** While the utility, wisdom or reasonableness of penal legislation is supposedly no concern of the courts, as long as a statute is not clearly in violation of some constitutional provision, and is, therefore,

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74. *Id.* at 805. Like myself, Dean Ryu warns against too much reliance on the test of responsibility for that of causation.
77. *Studies* 153.
79. *But see* People v. Lomazow, 176 N.Y.S.2d 456, 11 Misc. 2d 488 (2d Dep’t 1958). Defendant’s sole defense was an offer to prove that the regulation was unreasonable. The trial court rejected his offer. On appeal the court said, “We cannot say that defendant had his day in court.” *Id.* at 457, 11 Misc. 2d at 488.
virtually solely a legislative matter, Professor Scott recently demonstrated that this is simply not so in practice. Indeed, in recent years courts have in refreshingly bold opinions frustrated legislative intentions when a statute was utterly ridiculous or useless. Although courts feel usually bound to assign other reasons, like lack of equal protection, or of due process, the absence of legislative wisdom is the real rationale for the court's decision voiding the statute, and occasionally the legislative intention is judicially frustrated without any reference to the constitution. Perhaps as long as our legislatures continue poor batting averages in devising laws aimed at the eradication of real or imagined evils, we should not deny our courts the right to double-check on legislative wisdom. Nevertheless, on the whole, courts in this country have used restraint in the face of often the severest of provocations by phantastic legislative products.

It is impossible to talk of a trend in subjecting criminal legislation to a judicial utility scrutiny. No more can be said than that the inclination exists, and perhaps justifiably so, although it may be inconsistent with constitutional doctrine. But quite apart from that, the fact that utility is not a concept pertaining to the intrinsic validity or structure of crime should keep us from making it one of the principles.

**Comparative Criminal Law**

In chapter one of the *Studies*, Hall explained that "these principles do not refer to the criminal law of all times, but only to present criminal law. . . . [T]he fact that the above theory of criminal law is not applicable to all rules which are often called 'criminal laws' does not invalidate the theory. Indeed, the fact that the theory does not fit public welfare offenses, other areas of strict liability, and various archaic or arbitrary enactments is not relevant to the validity or the significance of the theory."
Such a view requires close scrutiny. A theory of criminal law has a double purpose, namely, to portray existing law with the highest possible fidelity, while also positing the empirically better (more effective) rules as between competing alternatives. Once empirical tests on samples of all constituent members of the class to which the theory applies show that this aim has been accomplished—and it is my conviction that Hall’s theory meets both requirements by all available tests—we can claim universal validity for the theory within the realm of its posited applicability, here at least American or Anglo-American penal law. It would seem, therefore, that the criminal theory developed by Hall through Integrative Jurisprudence is applicable to the entirety of criminal law and that includes (and here I claim to improve on Hall’s statement) archaic and arbitrary enactments among which are so-called public welfare offenses. These do not deserve that name since very few offenses in this category have anything to do with the public welfare, many of them actually opposing public welfare by the nature of their aim or application, and most of them being covert revenue measures. Others are being enforced primarily to collect fines so as to finance the administration of their enforcement. Now it is true that for some of these regulatory offenses criminal theory is “inapplicable”—but that is only a manner of speaking—because one or the other of the seven principles may have been consistently ignored in the past. This is especially true of the mens rea principle. But such ignoring, stemming obviously from ignorance, does not exempt these offenses from the realm of criminal law or its theory. It only shows that, tested back against the principles, these offenses are arbitrary enactments and wrong, or enactments arbitrarily enforced and wrong. Reference to the principles, in other words, would demonstrate how improvements can be achieved. Compliance with all the principles which the theory embodies is necessary for effectiveness of the penal law, as the theory contains neither superfluous principles nor inferior choices. Thus, a criminal enactment which neglects any of the principles is bound to be ineffective, and if ineffective, it simply is a wrong choice pointing to a certain deficiency in intelligence, information or integrity on the part of those who put the offense on the statute books or enforce it.88

I believe, therefore, that greater universality for the principles may be claimed than Hall was willing to assume. This finds further support in comparative law. No nation of our present level of civilization operates its criminal law without the principles as they are also incorporated in Hall’s theory. As to mens rea it is true that minor inconsistencies, not

even comparable to our wholesale deviations in the regulatory field, exist in several foreign countries, but it is also true that countries advanced in science, technology, theory and culture, have embraced mens rea without any limitation whatsoever.\textsuperscript{89} The only other principle the universality of which among modern nations has ever been doubted, is that of legality. But here, too, the exceptions are more apparent than real. The Nazi-German deviation\textsuperscript{90} was a limited one and, besides, it was practically nullified by the conservatism of the judiciary, to the “Fuehrer’s” furor, and lasted less than ten years. Section 16 of the Penal Code of the Russian Federated Soviet Republic, providing for a similar analogy and, thus, abrogating the legality principle, seems to have been repudiated and is probably no longer applied.\textsuperscript{91} It appears that even dictators realize the futility of operating a penal law at maximum effectiveness, whatever the political purpose of the prohibitions, unless all of the principles of criminal theory are applied. An out and out break with legality, as once proposed by Ferri,\textsuperscript{92} appeared so outrageous that not even Mussolini could be moved to sanction it,\textsuperscript{93} and the theory which has adopted more from Ferri’s positivism than any other, the Social Defense Movement, has pledged its firm allegiance to legality.\textsuperscript{94}

The Danish exception to the legality principle, lastly, is almost entirely academic. Section 1 of the Danish Penal Code subjects to punishment only acts punishable under a statute “or acts of entirely similar nature.”\textsuperscript{95} On the whole, Danish courts have exercised wise discretion in the application of this section so that rarely were results achieved which would shock the conscience of an American judge, Mr. Justice Holmes in \textit{McBoyle v. United States}\textsuperscript{96} notwithstanding. But to the extent that

\begin{itemize}
  \item \textsuperscript{89} E.g., § 2 of the \textit{Draft of the General Part of a Penal Code, In Conformity with the Resolutions of the Grand Commission of Penal Reform}, first reading, published by the Ministry of Justice, German Federal Republic, Bonn 1958, reads:
  \begin{quote}
  \textit{§ 2. No punishment without guilt.}
  Anybody acting without guilt cannot be punished.
  The punishment may not exceed the degree of guilt.
  \end{quote}


  \textsuperscript{92} Ferri, \textit{The Reform of Penal Law in Italy}, 12 \textit{J. Crim. L., C. & P.S.} 178 (1921).

  \textsuperscript{93} See Battaglini, \textit{The Fascist Reform of the Penal Law in Italy}, 24 \textit{J. Crim. L., C. & P.S.} 278 (1933).

  \textsuperscript{94} Holmberg, \textit{Introduction}, \textit{Nordisk Kriminalistisk Årsbok XVIII} (1958).

  \textsuperscript{95} \textit{Danish Committee on Comparative Law, The Danish Criminal Code} 21 (1958).

  \textsuperscript{96} 283 \textit{U.S.} 25 (1931).
\end{itemize}
Danish courts have indeed applied analogy to the defendant’s detriment,\textsuperscript{97} Danish scholars have not withheld their criticism.\textsuperscript{98}

The recognition of the universality of the principles of criminal law for the human being who is psychologically conditioned by the forces extant in the 20th century, both in Eastern and Western culture, which can be gained through application of the comparative method, points to the value of the new method or science.\textsuperscript{99} Hall belongs to those who have long championed the use of comparative law in the criminal law field, and he has been among the most active members of our small community of criminal law scholars in actually practicing what he preaches. The criminal law journals of many foreign countries have welcomed his contributions. In the Studies he devoted one chapter to “Culture, Comparative Law and Jurisprudence.”\textsuperscript{100} Here we find an interesting answer to our question on the universality of the principles of criminal law:

[D]o the principles and doctrines, the generalizations of the Anglo-American system, conform to or differ from those in the codes? I think one answer is that the generalizations were everywhere derived by pretty much the same methods of trained imagination (‘induction’) which recognized resemblances or universals, and that throughout the process there is a give-and-take between certain tentatively held general notions and specific data until the initial generalizations are confirmed or modified, or others are discovered and substituted for them.\textsuperscript{101}

While the groupings of foreign systems may differ, the recognitions are identical to those which Hall placed in the seven principles, and the methods for arriving at these conclusions were analogous.

As to comparative law itself, Hall comes to the conclusion, certainly not universally adhered to; that comparative law is not just a method “since that would make it indistinguishable from either legal science or,

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\textsuperscript{97} Tapping telephone wire punished analogous to violation of mail secrecy, U.f.R. 1940, p. 156. Slander by anonymous telephone call punished analogous to anonymous libel, U.f.R. 1935, p. 1147.


\textsuperscript{99} Comparative Law is not a novel subject. Practically all cultures are known to have engaged in comparative law. But as a science, comparative law is a modern human achievement. In criminal law the century span from the late 18th to the late 19th century witnessed its development. The fascinating history of this human progress remains to be written for English speaking readers.

\textsuperscript{100} \textit{Studies}, ch. 6, heretofore unpublished, based on lectures given in Korea in the summer of 1954.

\textsuperscript{101} \textit{Studies} 111-12.
at the other extreme, from the methods of ordinary legal analysis." Rather, "there is a distinctive substantive side" to it, although to describe it would seem rather "arbitrary." I do hope that somebody some day will be able to prove this point. I find myself unable to do so, but am nevertheless convinced of the usefulness of comparative law, even if only a method.

CONCLUSION

This discourse on the Studies, and especially the "principles," may not have done justice to the magnificent contribution to criminal law which Jerome Hall has made through the creation of the first American theory of criminal law. There is a temptation to conclude with the cliche of the whetted appetite. But the context calls for much stronger language. Let those who are too conservative or feeble stick to criminal law notions which are those of an unsophisticated past era. In the age where human brains seek the road to greatest perfection, it is a matter of survival to operate with the most refined knowledge the human mind can provide. Here is one aspect of the world struggle between philosophies which may appear remote to some lawyers. The better ideas will win the struggle. But it is also a predictable chain reaction which will go forth from the classrooms and the books to the courts and legislatures. There the struggle will be fought too, and again, the better ideas will win. There will be a day when the unlearned member of our learned profession will pit stone against armor or Ethelbert's laws against the jurisprudence of a modern society. Knowledge is power. And in criminal law knowledge means a firm grounding in the philosophy and theory of our subject. To have alerted us to these facts is Jerome Hall's greatest merit, and the Studies demonstrate this perhaps more than any previous work.

102. Studies 116-17.
103. Id. at 117.
105. It appeared impossible in this essay to make due mention of the valuable chapters on Crime as Social Reality (ch. 11); Federal Criminal Procedure (ch. 12); Science and Reform in Criminal Law (ch. 13); Revision of Criminal Law (ch. 14).
APPENDIX†

The following is a complete chronological list of criminal law casebooks compiled and reviewed by Professor Mueller:

1856-57 E. W. BENNET AND FRANKLIN F. HEAD, A SELECTION OF LEADING CASES IN CRIMINAL LAW (1st ed).
1869 BENNET AND HEAD, 2d ed.
1884 LAWSON, A COLLECTION OF LEADING CASES IN CRIMINAL LAW (Lawson was a professor at University of Missouri Law School).
1885 ALBERT PHALEN, CRIMINAL CASES (2 vols.) (Phalen practiced law in Chicago).
1886-91 WALTER S. SHIRLEY, A SELECTION OF LEADING CASES IN THE CRIMINAL LAW (American notes by Horace W. Rumsey).
1891 CHAPLIN, CASES IN CRIMINAL LAW (temp. ed.).
1893-94 JOSEPH H. BEALE, CASE BOOK IN CRIMINAL LAW (1st ed.).
1896 CHAPLIN, perm. ed.
1902 JEROME C. KNOWLTON, CASES ON CRIMINAL LAW (Prof. Knowlton taught at University of Michigan Law School).
1903 WILLIAM E. MIKELL, CASES ON CRIMINAL LAW (1st ed.).
1907 BEALE, 2d ed.
1908 MIKELL, short ed.
1914 AUGUSTIN DERBY, CASES ON CRIMINAL LAW (1st ed.).
1915 BEALE, 3d ed.
1917 DERBY, 2d ed.
1922 THOMAS W. HUGHES, CASES ON CRIMINAL LAW AND PROCEDURE.
1923 DERBY, 3d ed.
1925 MIKELL, 2d ed.
1927 FRANCIS B. SAYRE, A SELECTION OF CASES ON CRIMINAL LAW.
1928 EDWIN R. KEEDY, CASES ON ADMINISTRATION OF CRIMINAL LAW.
1928 BEALE, 4th ed.
1930 DERBY, 3d ed.
1933 DERBY, 4th ed.
1933 LIVINGSTON HALL & SHELDON GLUECK, CASES ON CRIMINAL LAW AND ITS ENFORCEMENT (1st ed.).
1933 MIKELL, 3d ed.
1935 ALBERT J. HARNO, CASES AND MATERIALS ON CRIMINAL LAW AND PROCEDURE (1st ed.).

† This appendix supports the text at 121-13 supra.
1935 Mikell, Criminal Procedure.
1935 Mikell, Criminal Law and Procedure (4th ed.).
1937 John B. Waite, Cases on Criminal Law and Its Enforcement (1st ed.).
1939 Harno, 2d ed.
1939 Charles A. Keigwin, Cases in Criminal Procedure.
1940 Jerome Michael and Herbert Wechsler, Criminal Law and Its Administration.
1940 L. Hall and Glueck, 2d ed.
1947 Waite, 2d ed.
1948 George H. Deision, Criminal Law, Administration and Public Order.
1949 Jerome Hall, Cases and Readings on Criminal Law and Procedure.
1950 Harno, 3d ed.
1951 L. Hall and Glueck, 3d ed.
1952 Rollin M. Perkins, Cases on Criminal Law.
1952 Andrew V. Clements, Cases, Comments and Text on Criminal Law and Procedure.
1953 Orvill C. Snyder, Criminal Justice: Text and Cases.
1954 George L. Clark, Criminal Law, Cases and Text.
1957 Harno, 4th ed.
1958 L. Hall and Glueck, 4th ed.