

1949

Book Reviews

Follow this and additional works at: <https://scholarlycommons.law.northwestern.edu/jclc>

 Part of the [Criminal Law Commons](#), [Criminology Commons](#), and the [Criminology and Criminal Justice Commons](#)

Recommended Citation

Book Reviews, 40 J. Crim. L. & Criminology 357 (1949-1950)

This Book Review is brought to you for free and open access by Northwestern University School of Law Scholarly Commons. It has been accepted for inclusion in Journal of Criminal Law and Criminology by an authorized editor of Northwestern University School of Law Scholarly Commons.

BOOK REVIEWS

CASES AND READINGS ON CRIMINAL LAW AND PROCEDURE. Jerome Hall. The Bobbs-Merrill Company, Inc., 1949. Pp. XIV, 996. \$7.00.

Legal scholarship in the United States for some time now has been indebted to Professor Jerome Hall for his important and significant studies, "Theft Law and Society" (1935) and "General Principles of Criminal Law" (1947). The field of substantive criminal law in its broader aspects had been neglected for so long by American legal scholars that the publication of these works performed a very real service, not only by informing and clarifying, but by stimulating many to a reexamination and reflection upon age old problems and controversies. They also placed Professor Hall squarely in the middle of some new controversies and turned the spotlight on any new work he might undertake in the field of criminal law.

Under the circumstances a great deal would be expected of any teaching materials Professor Hall published, and, in the opinion of this reviewer, these expectations on the whole have been fulfilled by "Cases and Readings on Criminal Law and Procedure". The work follows traditional casebook formulation in the main in that the "cases" loom much larger in bulk than the other "readings". The latter reflect Professor Hall's views on a number of important problems and include in some instances rather lengthy excerpts from the editor's own prior works. Valuable and fairly extensive bibliographies appear at the end of each section of material.

The main departures from existing standard casebooks seem to be in matters of arrangement and emphasis. This reviewer is particularly pleased to observe the space and attention devoted in Chapter I to the "principle of legality", bringing forcefully to the student's attention fundamental problems pervading the whole field of substantive criminal law, which are all too commonly slighted. Such matters as the form of the positive criminal law, *nullum crimen sine lege*, the interpretation of criminal statutes, and legal method generally as applied in the criminal law field, are of tremendous significance not only legally but philosophically and politically as well. They are clearly worthy of even more than the forty-five pages devoted to them in this work. These problems have been dramatized to an unusual degree recently in Louisiana, where the form and method of the Louisiana Criminal Code of 1942 have compelled at least one tradition-minded state supreme court to grapple with them in a remarkable series of decisions. It appears that Professor Hall could have called upon this Louisiana material more heavily than he has in illustrating the matters which concern him in Chapter I.

It is with reference to the eternal problem of arrangement of material that Professor Hall's work may provoke the greatest dissent. Following the material on the "principle of legality", Part I includes such general matters as "the harm", "conduct", "*mens rea* and motive", "the concurrence of *mens rea* and conduct", etc. However, Part II at this point launches into a detailed consideration of "specific material elements" of all of the more important particular crimes, and it is several hundred pages later, in Part III, that the return is made to general matters under the title "Doctrines-General Material Elements". Here appear the "doctrines concerning *mens rea* and harm", such as "mistake" and "necessity and coercion", the "doctrines concerning incapacity and

mental disorder", and the "doctrines concerning relational crimes and complicity", including attempts, conspiracy, etc. All of these general matters, applicable to the entire field of criminal law, would be placed more appropriately in Part I, in the opinion of this reviewer, and this is likely to be the judgment of a substantial number of the law teachers in the field. On the other hand, there are many who still cling to the view that all particular crimes should be studied first, before approaching the generalities. Professor Hall has discarded this latter position so forcefully in Part I of his casebook that it is a source of disappointment to this reviewer that Parts I and III were not combined, placing all general matters first, before Part II on particular crimes. This suggested arrangement was deemed appropriate in the "General Part" and the "Special Part" of the Louisiana Criminal Code, and seems equally appropriate for teaching purposes, as some few casebooks and texts in the field have recognized.

Approximately one-fourth of Professor Hall's casebook is devoted to criminal procedure. This appears to be standard space allocation, except for those works which have attempted large scale "integrations" of sociology and criminology and have emphasized criminal law "administration". It is also certainly a maximum of space for procedure in the usual law school course which purports to cover substantive criminal law *and* procedure. Nevertheless, advocates of increased attention to criminal procedure in law school curricula may well feel that the 75 percent-25 percent ratio is entirely insufficient for an adequate treatment of procedure. This problem is not likely to be solved by any means short of devoting approximately six semester hours to the whole subject matter, either in two courses, or in two phases of a single course. In either event, two separate sets of materials would seem to be necessary: one embracing the field of substantive criminal law (the content of Parts I-III of Professor Hall's work) and the other including greatly expanded materials on "criminal law administration and procedure". If this could be achieved it would no longer be necessary to append, as though they were afterthoughts, condensed materials on procedure to "criminal law" casebooks. Where "criminal law" and "criminal procedure" are presented in a single three or four semester-hour course, however, the relatively slight attention to procedure, such as that encountered in Professor Hall's casebook, seems not only justified, but necessary.

College of Law
Tulane University

CLARENCE J. MORROW

ENCYCLOPEDIA OF CRIMINOLOGY. Edited by *Vernon C. Branham* and *Samuel B. Kutash*. Philosophical Library, New York, 1949. Pp. 527. \$12.00.

The idea of preparing and publishing an encyclopedia of criminology was an excellent one. Unfortunately, however, that is about the kindest thing which the reviewer can conscientiously report on the present volume, outside of the fact that it is attractively printed in easy to read double column type.

One serious objection to the "Encyclopedia of Criminology" is the fact that it is overweighted with a discussion and treatment of words, phrases, and subjects which are of far more concern to someone with a

special interest in criminal psychiatry and criminal psychology than the average individual who looks to an encyclopedia as a source of general information presented in a reasonably objective fashion. For instance, eleven pages of the book are devoted to the subject of "mental mechanisms", written by a psychiatrist; seven pages to the subject "therapy", authored by a psychologist. Even the subject "traffic violator" was prepared by a psychiatrist, who naturally discussed the problem on the basis of psychiatric considerations. Three pages are devoted to "maturation", a word which would attract few people to an encyclopedia of criminology.

The overemphasis on the psychiatric and psychological aspects of criminology is perhaps a natural result of the special interests of the two editors, one of whom is a psychiatrist and the other a psychologist. Both, incidentally, authored many of the topical discussions in the encyclopedia, and in some instances they have ventured far afield of their specialties and qualifications. The section on "Forensic Ballistics" (Firearm Identification), covering a detailed seven and one-half page discussion of the subject, was written by the senior editor, Dr. Branham, who is Chief of the Outpatient Section of the Neuropsychiatric Division of the Veterans Administration.

Sixty-one persons are listed at the beginning of the book as contributors. Included in the list are the names of some men of excellent qualifications and reputations, but the impressive list is blemished by the name of at least one "expert witness" who is so well recognized as a dishonest practitioner that in his own section of the country several trial court judges will not even let him enter their courtroom, much less permit him to testify as a witness.

A few sections of the book are excellent. The late Warden Lawes' discussion on "Capital Punishment" is very good. It is short and to the point, and obviously about a subject quite appropriate for an encyclopedia of criminology. The discussion of "Criminal Law and Procedure" is appropriate and good, even though quite lengthy. At the other extreme, however, the reader will encounter several inexcusably poor contributions, even though they concern otherwise appropriate topics. "Religion and Crime," for example, is obviously a fit topic for encyclopedia treatment, but in the present volume all the reader will find in the section is a six-page dissertation of the work of the Salvation Army in the field of crime, written by the Director of the Men's Prison Bureau of the Salvation Army. Instead of labeling the title "Religion and Crime", it should have been "The Salvation Army", for it is nothing more than that and conceded to be so by the author himself, for he too describes it as a "dissertation on the work of the Army."

The section on the "Scientific Detection of Deception" is authored by a physician who professes infallibility for his particular type of "brain wave" lie-detector and who gives the thoroughly unwarranted impression that the results of his "psycho-detecto-meter" are admissible in court as evidence. A reading of this section may perhaps give the reader an impression of the author, but it will leave him with an inadequate and inaccurate understanding of the scientific detection of deception.

The law topics in the volume are almost invariably treated on the basis of New York law alone, which in some instances may mislead the reader from other jurisdictions.

If the section on "Organization," which purports to describe asso-

ciations and commissions of criminological significance, is not any more accurate than as regards one or two of the organizations with which the reviewer is familiar, this part of the book should have been omitted. For instance, "The American Institute of Criminal Law and Criminology," which no longer exists, is listed with an address and the comment that it "publishes the Journal of Criminal Law and Criminology." As a matter of fact, the Journal is published by Northwestern University School of Law and the address given is the residence of the Journal's Editor.

The "Encyclopedia of Criminology" falls far short of what the volume should have been. However praiseworthy may have been the editors' aims and efforts, the end product can hardly justify an expenditure of \$12.00 for the volume.

Northwestern University School of Law

FRED E. INBAU

BULWARKS AGAINST CRIME. Edited by *Marjorie Bell*. 1948 Yearbook of the National Probation and Parole Association, New York City.

This compilation of papers presented before the forty-first annual conference of the association and at other conferences holds no central theme, except that its main emphasis is on crime prevention.

For the most part, nothing very new in the way of theory is presented. The papers are perhaps noteworthy in emphasizing the extremely numerous weaknesses of our criminal prevention and rehabilitation program. At the same time, certain writers seem much too sure of their own preventive programs in light of our present state of knowledge about crime causation. (For example,—Mr. Leon T. Stern's "scientific" use of statistical data to the effect that because 67.8 per cent of parolees were successful, the parole program was 67.8 per cent successful! Who is to say if they were successful because of, or perhaps in spite of, the parole program?)

Without denying the central thesis of Mr. Ralph Banay that we need, above all, an understanding of defective and distorted personalities to help rehabilitate criminals and prevent crime, his complete reliance on the psychoanalytical approach seems one-sided. (Especially since he generalizes to all criminals from the presentation of two case of arson!)

Of special note are the two papers on foreign situations. The conditions surrounding children in Europe and the likelihood of the development of delinquent behavior patterns is dramatically set forth by Wanda Grabinska. Thorsten Sellin's review of probation and parole in Sweden indicates still another way in which Sweden may be pointing the way—obligatory parole for *all* criminals released from institutions.

This report has the merit of being presented in terms which can be understood by nearly any interested reader rather than simply by those especially trained in the specific parlance of criminology, social work, and sociology.

Stephens College

VAN B. SHAW