

BOOK REVIEWS

General Principles of Criminal Law, by JEROME HALL, Distinguished Service Professor of Law, Indiana University. 2nd ed. (The Bobbs-Merrill Company, Inc., Indianapolis and New York, 1960), pp. i-xii, 1-642. Australian price not stated.

In 1947, when the first edition of *General Principles of Criminal Law* appeared, it could fairly be said that a good deal of legal opinion in the United States and in England was generally opposed, or at the best indifferent to the thesis which Professor Hall pressed so ardently. His contention that criminal liability depends upon 'personal guilt', and that it must mirror the moral turpitude of an accused, was in opposition to the theory vehemently propounded by Oliver Wendell Holmes in his judgments and in his writings;¹ and Holmes' views had secured considerable support in the common law world. Nevertheless, reviewers on both sides of the Atlantic hailed the first edition as a great contribution to the theory of criminal law, despite disagreement with its postulates and analyses. The author subjected basic questions of the criminal law to so intensive an examination, and offered solutions to so many conundrums, that a most eminent American teacher, who disagreed with the basic theory propounded by Hall, could still write that 'No disagreement with Hall's thesis or his views upon particular issues detracts . . . from the essential value of his work'.²

The second edition, however, comes to readers throughout the common law world who are acquainted with (and probably have been influenced by) Hall's arguments, and who would seem readier to accept his thesis. *General Principles* has had something of a Pauline success in its thirteen years of existence. This new version should continue the process. There is considerable rewriting, rearrangement and entitling of chapters, but the framework is the same and there is no substantial alteration in the general burden of the work. The book commences, as in the first edition, with the outline of Professor Hall's theory of criminal law, followed by his brilliant study of the principle of legality, which contains one of the best reviews of the nature of penal statutes and the mode of their interpretation this reviewer has read. Then come three chapters on *mens rea*, in which the backbone of the writer's theory is articulated and the pathological growths of the law excised. There are new chapters on harm as a requirement of a crime, on causation,³ and on punishment. Chapters X to XIV, reproducing the arrangement of the first edition, deal with strict liability, ignorance and mistake, necessity, mental disease and intoxication. A 'reconstructed' discussion of attempts now appears as Chapter XV and there is a concluding section on 'Criminology and Criminal Law'. All the important legal literature of the intervening thirteen years, judicial and academic, is considered; Professor Hall casts his net wide to collect not only American, but English, Canadian, South African and Australian decisions and articles.

There are some new insights and clarifications of several contentious propositions which had been the subject of particular criticism. Hall still

¹ See *Commonwealth v. Pierce* (1884) 138 Mass. 165, and *The Common Law* (Boston, 1881), ch. 2.

² Professor Herbert Wechsler in (1949) 49 *Columbia Law Review* 425, 426.

³ This chapter is substantially the same as chapter X, 'Causation', in Hall's *Studies in Jurisprudence and Criminal Theory* (New York, 1958).

adheres completely to his view that there must be a harm or 'social disvalue' in every crime, and now writes that the harm in criminal attempts consists of making people afraid, and also of the creation of a dangerous condition in that the probability of still greater harm is substantially increased (page 218). This seems to this reviewer an eminently sound proposition, and one which answers those critics who argued that Hall's general requirement of harm could not be maintained because not all criminal attempts caused any harm.⁴ There is no difficulty in regarding apprehension of danger or injury as a significant 'social disvalue'. The greatest value of the book, however, remains the author's clear proclamation of criminal law 'as a sustained effort to preserve important social values from serious harm and to do so not arbitrarily but in accordance with rational methods, directed towards the discovery of just ends' (page 1, 1st edition). Hall calls for justice as the essential feature of criminal law. This is a demand which might seem strange to some who believe that the common law has always wrought justice, particularly in the working of its criminal jurisdiction. But in a legal system which countenances strict liability (albeit not nearly so readily as in the late nineteenth century), and which embraces objective penal liability so readily, it is a necessary demand. The common law has punished the careful milkman,⁵ put a simpleton like Ward⁶ in the shadow of the gallows, and put its brand of 'murderer' upon a man who never intended to kill or to cause grievous harm.⁷ This bifurcation between criminal liability and moral blameworthiness has produced a fear that penal law has ceased to be an instrument of justice; the recent public outcry in England directed against the House of Lords' decision in *D.P.P. v. Smith*⁸ demonstrates this feeling.⁹ It is this fear that Hall would wish to have eradicated.

General Principles is not an easy work to read, since Professor Hall's writing could never be labelled 'graceful', but it is more than worth the effort. This book must be acclaimed as an outstanding contribution to criminal jurisprudence. One hopes that its author will continue to devote his extraordinary talents to this particular field of the law. The light he sheds is bright indeed.

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English Courts of Law, by H. G. HANBURY, Q.C., D.C.L., Vinerian Professor of English Law in the University of Oxford, 3rd ed. (Oxford University Press, London, 1960), pp. 1-196. Australian price 12s. 9d.

This book was first published in 1944 and is now in its third edition. Its title is in a way misleading, as it embraces far more than a survey of English courts of law and their jurisdictions. Through the accidents of history, the substantive law of England is so intertwined with the growth of its courts of law and their jurisdictions that a book such as this, which

⁴ P. A. Landon in (1948) 64 *Law Quarterly Review* 395.

⁵ *Parker v. Alder* [1899] 1 Q.B. 20.

⁶ *Regina v. Ward* [1956] 1 Q.B. 351.

⁷ *D.P.P. v. Smith* [1960] 3 W.L.R. 546.

⁸ See n. 6 *supra*.

⁹ 'Letters to the Editor', *The Times*, October and November 1960, under the heading 'The Law of Killing by Accident'. Also Professor Gerhard D. W. Mueller, 'How to Increase Traffic Fatalities: A Useful Guide for Modern Legislators and Traffic Courts' (1960) 60 *Columbia Law Review* 944.

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