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 Ward[6] 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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sets out the history of the courts, must of necessity also cover much of the history of the substantive law. The book is published as part of the Home University Library, and is aimed at the intelligent layman who wishes to know something of the antecedents of the law of England, and at the freshman undergraduate who needs a general historical background to assist in his understanding of a law course.

Professor Hanbury commences with an introductory survey of the nature of law, outlining the distinction of morals and the common divisions of law into such branches as public and private, civil and criminal. He then passes to the history of the courts, starting in effect with the reign of Henry II, and the expansion of Royal justice at the expense of the communal courts. He surveys the mediaeval land law, the growth of the formulary system in civil law and the expansion of Royal jurisdiction over serious crime. He deals next with the thirteenth century when the powers of the sheriff and the feudal and franchise courts were encroached upon by the growing jurisdiction of the Curia Regis, and then turns to the origins of Parliament, conciliar government in the reigns of the Tudors and the history of the Court of Star Chamber.

Attention is concentrated on the several common law courts and their rival jurisdictions. The feuds of the Courts of King's Bench and Common Pleas are related with an account of their use of fictions to increase jurisdiction and, as a necessary part of the story, the history of the forms of action, and the use made of them, is outlined. The book then deals with the prerogative writs, appeals procedure at common law and the courts of Exchequer Chamber. The origins of courts of assize and *nisi prius* trials in civil cases are set out with an excursus on the history of trial by jury.

Chapter VII deals with the Court of Chancery and the system of Equity, and is followed by a survey of the modern English courts.

Professor Hanbury concludes with a consideration of the place of judges in the constitution; he digresses briefly to examine administrative law and the relationship of the courts and executive tribunals, and finally discusses the functions of the barristers and solicitors.

It can be seen from this summary that such a small book must of necessity compress and generalize. To make such a book intelligible to the uninitiated demands an unusual verbal felicity and there is little doubt that Professor Hanbury has the art of explaining the complex in simple language, and bringing out the continuity in a development over many centuries. To an interested layman or an intending law student it should be of the greatest worth and would be wise preliminary reading for anyone undertaking a course of study in Legal History.

However, the compression involved in a work of this nature must lead to generalization and over-simplification. In his introductory chapter, Professor Hanbury discusses the nature of sovereignty in England in Austinian terms. Some reference might be made to the view that the omnipotence of the Austinian sovereign is an ultimate legal principle which derives its validity from no other principle of law, but from the fact that through the accidents of history it is accepted as an ultimate legal principle by the courts and, behind them, the people. Moreover, the statement, 'But Austin quite correctly insists that for all law there is but one original source, for all law flows from the command of the sovereign power. The sovereign may make laws . . . indirectly . . . through the decisions of judges, which he permits them to render, and which he

will himself enforce' (page 22), seems to illustrate the incompleteness of a purely Austinian conception of sovereignty even in England. Might it not be simpler to recognize that judges, in so far as they have made and make law by their decisions, are sources of law, recognized in their own right by the ultimate legal principle in England? Since the Queen-in-Parliament has never directly declared by legislation that decisions of judges are to have the force of binding precedents and are to be recognized by courts in the future, the fact that such decisions are so recognized may well entitle them to be recognized as an independent source of law.

The discussion of the assize of *novel disseisin* (pages 39-40) would be more complete if it mentioned the fact that an owner who was ousted had at least four days in which he might reinstate himself before the disseisor acquired a seisin protected by the assize against the owner. Again, it does not seem accurate to state (page 98) that in the developed use of the action of ejectment by freeholders the defendant was not allowed to deny the real plaintiff's right to enter. While the defendant might not deny lease, entry and ouster the action would not, in the words of Blackstone, 'lie in such cases where the entry of him that hath right is taken away by descent, discontinuance, twenty years dispossession or otherwise'.

Professor Hanbury adopts the traditional account of the 34th clause of *Magna Carta* as an attempt to check unwarranted expansion of Royal justice by the issue of the writ *Praecipe in Capite* in cases where the writ of right patent was appropriate (page 50). Miss N. D. Hurnard, in her essay in *Studies in Mediaeval History Presented to F. M. Powicke,* throws considerable doubt on the traditional view by showing that the Plea Rolls for John's reign do not reveal an excessive use of the writ *Praecipe* in cases which fell within the jurisdiction of feudal courts, and that if the writ *Praecipe* was so used, the competent feudal lord could and did come to the Royal courts to claim the action. Clause 34 may merely have relieved the barons from an occasional nuisance in having to come to the Royal courts to retrieve a case.

The statement (page 121) that a statute of 1275 authorized the use of *'peine forte et dure'* to extort consent to trial by jury is inaccurate in that the Statute of Westminster I, c. 12, referred to 'prison *forte et dure*', and the original words were strangely perverted by usage into a reference to torture.

In a comment on magistrates' courts (page 147) it is stated that 'the result is that if a man is guilty, he will almost always elect for a summary trial, but if he is not guilty, will prefer to be remanded for trial by Quarter Sessions or assizes'. It is difficult to judge the truth of this statement in England, but Australian experience suggests that it would be more accurate if the distinction were whether a man believed himself likely to be found guilty or not guilty.

However, the above are all small points in a book of this scope, and it stands almost alone as a lucid, comprehensive and short account of its subject, capable of maintaining the interest of, and being understood by, the uninitiated.

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The Criminal Prosecution in England, by SIR PATRICK DEVLIN (Oxford University Press, London, 1960), pp. 1-118. Australian Price £1. 5s.

This book provides in language easily understandable by lawyer and layman a concise statement of the current procedure in England used in prosecutions for indictable crimes, from investigation prior to arrest until the time of arraignment. It also discusses the rights and duties of the Crown and of the accused while the case for the prosecution is being prepared for trial.

The author deals historically with those institutions whose early function was to investigate crime and to commence the criminal proceedings which follow. He describes how the Grand Jury, the Coroner's Jury and the Justices of the Peace first began to function as witnesses and investigators of crimes and how, as their duties became more judicial and more formalized, their place has been taken by the various and numerous police forces throughout England. The author traces shortly the influences which operate in police investigation and in the prosecution of offenders by the police, the Director of Public Prosecutions, and other bodies. In the author's opinion the fact that a great many prosecutions are conducted by barristers who have general practices, including the defence of accused persons, and who are in close contact with the judges, serves to keep the investigation of crime within the limits of fairness and justice.

It would appear that the opinions of the judges and of the Bar are more reflected in the method of investigation of crime in England than in our younger community.

A substantial chapter is devoted to the interrogation of witnesses and of accused persons, the rules which have developed with the object of obtaining statements and confessions which are voluntary, true, and obtained with due regard to the liberty of the subject, and to the general views of the English community. The position is clearer and more favourable to the accused in England than in Victoria where the Evidence Act 1958, section 149, provides that confessions made under threats or promises are not to be rejected unless the presiding judge is of opinion that the inducement was really calculated to make an untrue admission of guilt. In Victoria there are no 'Judges' Rules' although the English rules have been copied into the Standing Orders issued by the Chief Commissioner of Police to the Force. A breach of these rules in Victoria, although taken into account, does not necessarily mean that a confession is rejected.[1]

In the chapter on Arrest and Detention the author describes the safeguards in England against unlawful arrest and subsequent detention without a speedy trial. The contrast with the 'police state' is well noted. The final chapter on the Legal Process again emphasizes the safeguards against injustice to an accused person who has been charged with a criminal offence.

The author believes that the system operates better in England because (in contrast to America and to Victoria) the English are an ancient and well-established community and their ways of life are governed by understandings which are traditionally operative, and which are accepted by the people as part of their way of life.

The text expresses clearly the author's view that the English system

[1] *R. v. Lee* (1950) 82 C.L.R. 133.