



CRIMINAL LAW

Problems for decision in
the promulgation, invocation
and administration of
a law of crimes

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PREFACE

This volume is the result of an intensive and intimate collaboration. We have worked together on all of its sections. This has meant detailed and frequently abrasive discussions about the nature of criminal law and how best to explore and illuminate it. We hope a book has emerged that will ignite similar discussions among its readers, stimulate research in new directions and lead to wise changes in the methods and limits of governmental control of human behavior.

Each part of this book has been shaped by numerous exposures to classroom dialectics. We have used it in the introductory criminal law course which is taught at Yale in the second term of the first year. We have found it advantageous to cover both Chapters I and II in this course, but a first year course can be taught out of Chapter II alone or in conjunction with Chapter III. The book has also been used in advanced seminars in criminal law (Chapters I and III), and in jurisprudence (Chapter I). Each of the three chapters is an entity which permits a total view of the criminal process, though from different vantage points. While the book has been primarily designed for law students, we believe that it will prove useful for students of social control and criminology.

Several conventions have been adopted in the organization of this book. The NOTES omit string citations and references to other materials easily located through standard indices. Because they raise important issues, NOTES are printed in the same type as the major problem material. To the extent that this book departs from what might be called "legal" categories, the index provides a means for regrouping the materials in accord with traditional concepts, words and phrases. In addition, there are three tables of contents: the first provides an over-view of the three major chapters and its parts; the second a detailed analytical breakdown of all the sections, including NOTES; and the third, which appears at the beginning of each chapter, falls in between these two in degree of comprehensiveness. There are also tables of cases, of authors, and of articles.

The development of this book has been supported in large measure from its inception by funds from a grant of the National Institute of Mental Health.* In making available these funds, and in countless other ways, Dean Eugene V. Rostow has been an ever dependable source of encouragement, and tactful understanding. Among our

* One of us (J.G.) adds: "I wish to acknowledge the generous support of the Russell Sage Foundation for a residency at Harvard University (1955-56) 'to study behavioral sciences in preparation for teaching and research in criminal law' and for the initial impetus it gave toward developing this book. The residency afforded an opportunity to exchange ideas with Professor Francis Allen of the University of Chicago Law School, Dean Norval Morris, of the Faculty of Law, University of Adelaide, and Dr. John P. Spiegel of Harvard University. My indebtedness to them is recorded with special pleasure.

"It is with love to Sonja that I dedicate my share in this volume. Her critical appraisals, so often valid and thus sometimes annoying, helped me much."

colleagues at the Yale Law School, all of whom stood ready with assistance, we want particularly to acknowledge the following: Harold D. Lasswell, Myres S. McDougal, and the late George H. Dession who have had a major influence on our thinking; Harold W. Solomon, who worked with us in redrafting Chapter III; and Jay Katz and Jerome H. Skolnick, who have been helpful* critics. For previously unpublished documents we are grateful to many, particularly Judge David L. Bazelon of the United States Court of Appeals for the District of Columbia; James V. Bennett, Director of the Federal Bureau of Prisons; The California Department of Corrections; Harry J. Rubin, Deputy Attorney General for the State of Pennsylvania; Judge P. B. O'Sullivan, formerly Chairman of the Connecticut Prison Study Committee and formerly Chairman of the Connecticut State Board of Parole; and James J. McIlduff, Executive Secretary of the Connecticut State Board of Parole. We also thank the American Law Institute for its permission to quote extensively from its Model Penal Code.

The task of preparing the many drafts of the manuscript has been handled with superior patience, humor and efficiency by Mrs. Ruth Wrisley, as well as by Mrs. Lorraine Pettinelli and Miss Beverly Olsen.

We are grateful to A. Burton Street, of New Haven, who photographed gargoyles on the Sterling Law building at Yale, and to Miss Ellen Raskin who so magnificently translated them into woodcuts. We record with pleasure our gratitude to Miss Marian Hall, I. W. Klein, and Sidney Solomon, all of Free Press of Glencoe, for their inspirational contribution to the design and production of this book. We thank Mrs. Meira G. Pimsleur for the index.

An appreciative word belongs finally to the students of the Yale Law School who used earlier drafts and contributed with unusual vigor to the final product. Particularly important have been substantive contributions by Thomas F. Zuck, Donald G. Marshall, and Alan M. Dershowitz as well as by Lorna Bitensky, Arthur J. Kover, Richard D. Lee and Patricia W. Weinberg. Louise G. Trubek has played an especially valuable role in the preparation of the final draft. Recognition is also given to Edgar S. Cahn, Robert C. Josefsberg, Eugene J. Lambert, Frances L. White, and David D. White.

New Haven, Conn.
March 22, 1961

R.C.D.
J.G.
R.D.S.

* R. D. S. adds, "I am indebted to my father for inspiring in me a lasting interest in law. Friedrich Kessler and Joseph Goldstein provided invaluable encouragement during my initial attempts at understanding the legal process.

"My share in the book is dedicated with love to Emilie and our children."

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