you disapprove. But it undoubtedly represents the modern trend, and is in keeping with the "spirit of the code." Assuming it is adopted, why was it not clearly stated in the act, as it is in the black-letter discussion? Why was the problem misstated to be one of joinder of parties rather than one of joinder of causes of action? Why were the two sections in the act confused by the introduction of foreign problems concerning "necessary parties" and alternative causes of action? Why were the two sections used, with almost entirely different phraseology and even physical appearance, as though the problem of joinder of plaintiffs were fundamentally different from that of joinder of defendants? The first part of section twenty-three will illustrate the confused language: "Subject to rules, all persons may join in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally or in the alternative, where if such persons had brought separate actions any common question of law or fact would arise. . . . ." Remember, the rule is an indefinite (flexible) one, and the test is trial convenience. Does not section twenty-three leave the impression that the rule is a definite one, and is based upon something about a "transaction or series of transactions"? What is a "transaction"? Will the maze of confusion attending its use for determining permissible joinder of causes of action involving the same parties, as used in the typical act following the New York Code, be eliminated by adding: "or series of transactions"? Is any part of this section understandable? Is there anything in it that states or even intimates that "administrative convenience determines what claims shall be tried together"?[2]

But little would be gained by a further discussion of the defects in these or other sections of the act. We should rejoice that several such defects of other codes were eliminated when this act was revised by the committee. Those remaining forceably indicate the need for this book and explain why hope can be expressed that, with its aid, the interpretation of the act by the courts of Illinois will be more in keeping with that "spirit of the code" so well explained in these annotations.

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Handbook of Criminal Law. By Justin Miller. St. Paul, Minn.: West Publishing Co., 1934. 1 vol. Pp. xiii, 649. $5.00.

This book should prove a handy reference volume for busy lawyers, stating briefly, with illustrations drawn from the cases, the well-accepted principles of substantive criminal law. While largely based on common law offenses, it also indicates their important statutory variations.[1] It is a revision of Mikell's edition of Clark's Criminal Law,[2] and Dean Miller's efforts have given it considerable increased utility.

The book has been pretty thoroughly revised, although there are some relatively unimportant parts which reproduce the older edition with only minor changes in text

[2] P. 44; n. 11.

[1] See degrees of murder, pp. 273–278; mayhem, pp. 291–292; aggravated assaults, pp. 309–312; burglary, p. 339; degrees of larceny, pp. 373–374; abortion, pp. 444–5; federal offenses relating to health, morals, comfort, and economic welfare, pp. 445–452, etc.

[2] West Publishing Co., St. Paul, Minn. 1915.

or footnotes.[3] A good deal of new material has been added.[4] In some places this has been done to clarify the text,[5] and in others more adequately to take account of statutory developments.[6] Citations to law review articles, and a large number of new cases, have been added to the footnotes.[7]

The scope of the work has been increased. A new chapter, "The Criminal Act,"[8] has been added, on definition, causation, unintended consequences, and corpus delicti, greatly expanding matters rather briefly treated under homicide in the previous edition. The first eighteen pages are wholly new, dealing briefly with procedure, administration, penology, crime surveys, and the general purposes of punishment, and implemented with valuable references to law reviews, other texts, digest sections, and cases. Little use, however, has been made of these general considerations in later portions of the book.

So much for the busy lawyers, but what of the judges and students, for whom the book is also written?[9] A *short* text for all three is almost impossible to write, and while this book does tell what the law has been held to be in the past, it does not consistently offer a "direction for profitable thinking" about what the law ought to be, either to judges, who are in a position to do something about it, or to students, who can at least think about it.

The book does not purport to, and indeed could not, in the space available, include a detailed analysis, crime by crime and defense by defense, of the considerations of social policy which underlie, or should underlie, the substantive criminal law, and the effect which they should have thereon. The present edition goes further in this regard than the last, for Dean Miller has added a short introductory paragraph to many crimes and defenses, outlining the considerations which have led to the creation thereof. It is, however, a source of regret to the reviewer that Dean Miller has not felt free to put more of his own views on such subjects into the book. The passages where this has been done[10] serve only to whet the appetite for more, but unfortunately they are the exception rather than the rule.

For instance, the problem of so-called "constructive intent" is one of the most vexing problems of the substantive criminal law, as to both legal definition and rational justification. Here the text does no more than state the doctrine in terms of Hale's day—a death in the course of a felony is murder; a death or injury in the course of a misdemeanor *malum in se* is manslaughter or assault and battery—with illustrations

[3] See abortion, pp. 443–444; fornication, pp. 432–433; prison breach, pp. 465–466.

[4] Roughly, the content of the book has been increased by half, while increasing the number of pages less than 10 per cent, by a narrower type and a closer spacing of lines.

[5] For example, attempt and conspiracy, pp. 95–117; insanity, pp. 122–136; express and implied malice, pp. 265–267; embezzlement, pp. 374–381; intent in larceny, pp. 365–367; former jeopardy, pp. 534–544.

[6] See juvenile courts, pp. 121–122; degrees of murder, pp. 273–278; degrees of larceny, pp. 373–374; malicious mischief, pp. 400–404; fraudulent checks, pp. 390–391.

[7] Nearly 2500 cases have been added to the 3000 odd cited in the previous edition, not counting a considerable substitution of cases.

[8] C. 6, pp. 77–94.

[9] Preface, p. v.

[10] For instance, as to the purpose of criminal law, pp. 17–19; corporate liability, pp. 148–150; entrapment, pp. 180–185; malicious mischief, pp. 400–404; former jeopardy, p. 538.

and a few instances in which it has not been applied.[11] Surely the tremendous growth of non-dangerous felonies since 1676 requires some limitation on the murder rule;[12] and an examination of the use and abuse of crimes *"mala in se"* in manslaughter leads one irresistibly to the conclusion that this curious survival in modern jurisprudence of a rule of canon law copies by Bracton before 1268 from Bernard of Pavia,[13] is now utilized by many courts as a means of individualizing punishment where other means are not available.[14]

The criteria by which such individualization should be governed cannot be found in the undefinable phrase *"malum in se"*;[15] possibly the solution is to say that where a man wilfully commits a misdemeanor he has embarked on a course of conduct known to be wrong, thus supplying the "moral element" commonly required for criminal recklessness,[16] and may properly be punished for ordinary negligence. Certainly the added punishment for an accidental homicide or injury will have no deterrent effect with regard to the commission of the original misdemeanor, unless the risk of such injury is at least great enough to make the defendant's conduct negligent with regard thereto. A few words from Dean Miller on this and other similar problems would have been most illuminating.

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[11] Pp. 268–270, 285–286, 313–315, and generally pp. 61–65.

[12] See Perkins, A Re-Examination of Malice Aforethought, 43 Yale L.J. 537 at 569 (1934): ". . . . if the person is engaged at the time in perpetrating or attempting a felony . . . . it includes the wilful doing of any act which involves a substantial element of human risk. . . . ."

[13] Bracton, f. 120–121; see Maitland, "Bracton and Azo," Vol. VIII, Publications of the Selden Society, (1894) p. 232. Such a far-flung net of culpable homicide was proper in the canon law, with its many gradations of punishment, but could only produce injustice in the early common law courts, where the alternatives were death or acquittal.

[14] See Tulin, The Role of Penalties in Criminal Law, 37 Yale L.J. 1048 (1928), for an explanation of the analogous cases holding reckless driving sufficient for an assault and battery, or occasionally an assault with intent to kill.

[15] Cf. Bentham, Comment on the Commentaries (Everett's ed. 1928), 80: ". . . . the acute distinction between *mala in se* and *mala prohibita* which being so shrewd and sounding so pretty, and being in Latin, has no sort of an occasion to have any meaning to it; accordingly it has none."

[16] Rex v. Greisman, [1926] 4 D.L.R. 738, 46 Can. C.C. 172; Rex v. Baker, [1929] 1 D.L.R. 785, 51 Can. C.C. 71; *contra*, Com. v. Pierce, 138 Mass. 165 (1884).