

CHAPTER TWO

Criminal Law in Politically Organized Society

In roughly a decade social scientists have amassed an impressive amount of research on criminal law. Yet, in spite of the research, a theory of criminal law has not developed. We are not at the moment theoretically equipped to generalize beyond the empirical studies or to formulate theoretically relevant research questions. In this chapter, I will develop a theoretical perspective to assist in these tasks. For this perspective I have elaborated on my general proposition describing how criminal definitions are formulated in the social reality of crime.¹

THE STUDY OF CRIMINAL LAW

Paradoxically, with law and social science gradually converging, we have no greater theoretical understanding of legal matters than we did all of half a century ago. The rapprochement that we are currently witnessing is not novel; a similar trend appeared in the United States shortly after the turn of the century. At that time social scientists, the early American sociologists in particular, were incorporating law into their scheme of things. E. A. Ross

¹ Portions of this chapter are adapted, with the publisher's permission, from the introduction to my *Crime and Justice in Society* (Boston: Little, Brown and Company, 1969), pp. 20-30.

referred to law as "the most specialized and highly furnished engine of control employed by society."⁷ Lester F. Ward, an advocate of government control and social planning, foresaw a day when legislation would undertake to solve "questions of social improvement, the amelioration of the condition of all the people, the removal of whatever privations may still remain, and the adoption of means to the positive increase of the social welfare, in short the organization of human happiness."⁸ The possibility of social reform, through legal means available to the state, was also emphasized by Albion W. Small.⁹

The ideas of the early sociologists directly influenced the school of legal philosophy that became a major force in American legal thought — sociological jurisprudence — in which Roscoe Pound was the principal figure. He drew from the early sociologists in asserting that law should be studied as a social institution. Pound saw law as a specialized form of social control that brings pressure to bear upon each man "in order to constrain him to do his part in upholding civilized society and to deter him from anti-social conduct, that is, conduct at variance with the postulates of social order."¹⁰ Moreover, in his theory of interests, Pound provided one of the few starting points for the study of law as a social phenomenon.

Recent writing and research have documented the role of interest groups in the political process. The techniques and tactics of interest groups, relations between the groups, their internal organization and politics, and overlapping group membership have been ex-

² E. A. Ross, *Social Control* (New York: Macmillan, 1922), p. 106 (originally published in 1901).

³ Lester F. Ward, *Applied Sociology* (Boston: Ginn, 1906), p. 339.

⁴ Albion W. Small, *General Sociology* (Chicago: University of Chicago Press, 1925).

⁵ The relationship between early American sociologists and the development of Pound's sociological jurisprudence is discussed in Gilbert Geis, "Sociology and Jurisprudence: Admixture of Lore and Law," *Kentucky Law Journal*, 52 (Winter, 1964), pp. 267-293. Also see Edwin M. Schur, *Law and Society* (New York: Random House, 1968), pp. 17-50.

⁶ Roscoe Pound, *Social Control Through Law* (New Haven: Yale University Press, 1942), p. 18. Earlier statements by Pound are found in Roscoe Pound, *An Introduction to the Philosophy of Law* (New Haven: Yale University Press, 1922); Roscoe Pound, *Outline of Lectures on Jurisprudence* (Cambridge: Harvard University Press, 1928).

amined.⁷ In addition, studies have been conducted on how specific groups operate.⁸ But almost no research has been directed at finding how much influence the interests have in formulating and administering law.⁹ Moreover, few have attempted to revise Pound's theory of interests to reflect recent sociological developments. As it has been observed, "Sociologists to date have paid virtually no attention to Pound's doctrine, either in terms of rejecting it, refining it for their purposes, or supplementing it with sociological material of more recent vintage."¹⁰

⁷ Donald C. Blaisdell, *American Democracy Under Pressure* (New York: Ronald Press, 1957); V. O. Key, Jr., *Politics, Parties and Pressure Groups* (New York: Thomas Y. Crowell, 1959); Earl Latham, *Group Basis of Politics* (Ithaca, N.Y.: Cornell University Press, 1952); David B. Truman, *The Governmental Process* (New York: Alfred A. Knopf, 1951); Henry W. Ehrmann (ed.), *Interest Groups on Four Continents* (Pittsburgh: University of Pittsburgh Press, 1958); Henry A. Turner, "How Pressure Groups Operate," *Annals of the American Academy of Political and Social Science*, 319 (September, 1958), pp. 63-72; Richard W. Gable, "Interest Groups as Policy Shapers," *Annals of the American Academy of Political and Social Science*, 319 (September, 1958), pp. 84-93; Murray S. Steadman, "Pressure Groups and the American Tradition," *Annals of the American Academy of Political and Social Science*, 319 (September, 1958), pp. 123-129.

⁸ Robert Engler, *The Politics of Oil* (New York: Macmillan, 1961); Oliver Garceau, *The Political Life of the American Medical Association* (Cambridge: Harvard University Press, 1941); Charles M. Hardin, *The Politics of Agriculture: Soil Conservation and the Struggle for Power in Rural America* (New York: The Free Press of Glencoe, 1962); Grant McConnell, *Private Power and American Democracy* (New York: Alfred A. Knopf, 1966); Harry A. Mills and Royal E. Montgomery, *Organized Labor* (New York: McGraw-Hill, 1945); Warner Schilling, Paul Y. Hammond, and Glenn H. Snyder, *Strategy, Politics and Defense* (New York: Columbia University Press, 1962); William R. Willoughby, *The St. Lawrence Waterway: A Study in Politics and Diplomacy* (Madison: University of Wisconsin Press, 1961).

⁹ Other social orientations to the law may be found among sociological jurists, among the so-called legal realists, and among current legal historians. See, in particular, Oliver Wendell Holmes, "The Path of the Law," *Harvard Law Review*, 10 (March, 1897), pp. 457-478; Thurman W. Arnold, *Symbols of Government* (New Haven: Yale University Press, 1935); Jerome Frank, *Courts on Trial* (Princeton: Princeton University Press, 1949); K. N. Llewellyn and E. Adamson Hoebel, *The Cheyenne Way: Conflict and Case Law in Primitive Jurisprudence* (Norman: University of Oklahoma Press, 1941); J. Willard Hurst, *Law and Economic Growth: The Legal History of the Lumber Industry in Wisconsin, 1836-1915* (Cambridge, Mass.: The Belknap Press, 1964).

¹⁰ Geis, "Sociology and Sociological Jurisprudence: Admixture of Lore and Law," p. 292.

In the current movement by social scientists toward research into law and the use by lawyers of social science research, an interest approach might well help us to construct a theory of criminal law that would integrate research findings and provide direction for future research. For sociological purposes, however, Pound's approach necessarily requires reformulation and extension into a sociological theory of criminal law.

FROM SOCIOLOGICAL JURISPRUDENCE TO SOCIOLOGY OF CRIMINAL LAW

Law is not merely a complex of rules and procedures; Pound taught us that in calling for the study of "law in action." For some purposes it may be useful to think of law as autonomous within society, developing according to its own logic and proceeding along its own lines. But law also simultaneously reflects society and influences it, so that, in a social sense, it is both social product and social force. In Pound's juristic approach, however, law represents the consciousness of the total society. This consensus model of (criminal) law has been described in the following way: "The state of criminal law continues to be — as it should — a decisive reflection of the social consciousness of a society. What kind of conduct an organized community considers, at a given time, sufficiently condemnable to impose official sanctions, impairing the life, liberty, or property of the offender, is a barometer of the moral and social thinking of a community."¹¹ Similarly, Pound, formulating his theory of interests, felt that law reflects the needs of the well-ordered society. In fact, the law is a form of "social engineering" in a civilized society.

For the purpose of understanding the law of today, I am content to think of law as a social institution to satisfy social wants — the claims and demands involved in the existence of civilized society — by giving effect to as much as we may with the least sacrifice, so far as such wants may be satisfied or

¹¹ Wolfgang Friedmann, *Law in a Changing Society* (Hammondsworth, England: Penguin Books, 1964), p. 143. A similar statement is found in Jerome Michael and Mortimer J. Adler, *Crime, Law and Social Science* (New York: Harcourt, Brace, 1933), pp. 2-3.

such claims given effect by an ordering of human conduct through politically organized society. For present purposes I am content to see in legal history the record of a continually wider recognizing and satisfying of human wants or claims or desires through social control; a more embracing and more effective securing of social interests; a continually more complete and effective elimination of waste and precluding of friction in human enjoyment of the goods of existence—in short, a continually more efficacious social engineering.¹²

Thus, the interests Pound had in mind would maintain and, ultimately, improve the social order. His was a teleological as well as consensus theory of interests: men must fulfill some interests for the good of the whole society; these interests are to be achieved through law. In Pound's theory, only the right law can emerge in a civilized society.

Jurisprudence has generally utilized a pluralistic model with respect to law as a social force in society. Accordingly, law regulates social behavior and establishes social organization; it orders human relationships by restraining individual actions and by settling disputes in social relations. In recent juristic language, law functions "first, to establish the general framework, the rules of the game so to speak, within and by which individual and group life shall be carried on, and secondly, to adjust the conflicting claims which different individuals and groups of individuals seek to satisfy in society."¹³ For Pound, the law adjusts and reconciles conflicting interests:

Looked at functionally, the law is an attempt to satisfy, to reconcile, to harmonize, to adjust these overlapping and often conflicting claims and demands, either through securing them directly and immediately, or through securing certain individual interests, or through delimitations or compromises of individual interests, so as to give effect to the greatest total

¹² Pound, *An Introduction to the Philosophy of Law*, pp. 98-99.

¹³ Carl A. Auerbach, "Law and Social Change in the United States," *U.C.L.A. Law Review*, 6 (July, 1959), pp. 516-532. Similarly, see Julius Stone, *The Province and Function of Law* (Cambridge: Harvard University Press, 1950), Part III; Julius Stone, *Social Dimensions of Law and Justice* (Stanford: Stanford University Press, 1966), chaps. 4-8.

of interests or to the interests that weigh most in our civilization, with the least sacrifice of the scheme of interests as a whole.¹⁴

In Pound's theory of interests, law provides the general framework within which individual and group life is carried on, according to the postulates of social order. Moreover, as a legal historian has written, "The law defines the extent to which it will give effect to the interests which it recognizes, in the light of other interests and of the possibilities of effectively securing them through law"; it also devises means for securing those that are recognized and prescribes the limits within which those means may be employed."¹⁵ In the interest theory of sociological jurisprudence, the law is an instrument that controls interests according to the requirements of social order.

Pound's theory of interests included a threefold classification of interests, including the individual, the public, and the social:

Individual interests are claims or demands or desires involved immediately in the individual life and asserted in the title of that life. Public interests are claims or demands or desires involved in life in a politically organized society and asserted in the title of that organization. They are commonly treated as the claims of a politically organized society thought of as a legal entity. Social interests are claims or demands or desires involved in social life in a civilized society and asserted in the title of that life. It is not uncommon to treat them as the claims of the whole social group as such.¹⁶

Pound warned that the types are overlapping and interdependent and that most can be placed in all the categories, depending upon one's purpose. He argued, however, that it is often expedient to put claims, demands, and desires in their most general form; that is, into the category of social interests.

¹⁴ Roscoe Pound, "A Survey of Social Interests," *Harvard Law Review*, 57 (October, 1943), p. 39.

¹⁵ George Lee Haskins, *Law and Authority in Early Massachusetts* (New York: Macmillan, 1960), p. 226.

¹⁶ Pound, "A Survey of Social Interests," pp. 1-2.

Surveying the claims, demands, and desires found in legal proceedings and in legislative proposals, Pound suggested that the most important social interest appears to involve security against actions that threaten the social group.¹⁷ Others are interest in the security of domestic, religious, economic, and political institutions; morals; conservation of social resources; general progress, including the development of human powers and control over nature to satisfy human wants; and individual life, especially the freedom of self-assertion. According to Pound, any legal system depends upon the way in which these interests are incorporated into law.

My theoretical perspective on criminal law departs from the general tradition of the interest theory of sociological jurisprudence in a number of ways. First, my perspective is based on a special conception of society. Society is characterized by diversity, conflict, coercion, and change, rather than by consensus and stability. Second, law is a result of the operation of interests, rather than an instrument that functions outside of particular interests. Although law may control interests it is in the first place created by interests. Third, law incorporates the interests of specific persons and groups; it is seldom the product of the whole society. Law is made by men, representing special interests, who have the power to translate their interests into public policy. Unlike the pluralistic conception of politics, law does not represent a compromise of the diverse interests in society, but supports some interests at the expense of others. Fourth, the theoretical perspective of criminal law is devoid of teleological connotations. The social order may require certain functions for its maintenance and survival, but such functions will not be considered as inherent in the interests involved in formulating substantive laws. Fifth, the perspective proposed here includes a conceptual scheme for analyzing interests in the law. Finally, construction of the perspective is based on findings from current social science research.

¹⁷ Pound, "A Survey of Social Interests," pp. 1-39. Other aspects of the theory of interests are discussed by Pound in the following publications: *The Spirit of the Common Law* (Boston: Marshall Jones, 1921), pp. 91-93, 197-203; *An Introduction to the Philosophy of Law*, pp. 90-96; *Interpretations of Legal History* (New York: Macmillan, 1923), pp. 158-164; *Social Control through Law*, pp. 63-80.

LAW IN POLITICALLY
ORGANIZED SOCIETY

Authority relations are present in all social collectivities: some persons are always at the command of others. As order is established in a society, several systems of control develop to regulate the conduct of various groups of persons. Human behavior is thus subject to restraint by varied agencies, institutions, and social groupings—families, churches, social clubs, political organizations, labor unions, corporations, educational systems, and so forth. ¹⁶⁻¹⁷

The control systems vary considerably in the forms of conduct they regulate, and most provide means for assuring compliance to their rules. Informal means, spontaneously employed by some persons, such as ridicule, gossip, and censure, may ensure conformity to some rules. Control systems may, in addition, rely upon formal and regularized means of sanction.

The legal system is the most explicit form of social control. The law consists of (1) specific rules of conduct, (2) planned use of sanctions to support the rules, and (3) designated officials to interpret and enforce the rules.¹⁸ Furthermore, law becomes more important as a system of control as societies increase in complexity. Pound wrote that "in the modern world law has become the paramount agent of social control. Our main reliance is upon force of a politically organized state."¹⁹

Law is more than a system of formal social control; it is also a body of specialized rules created and interpreted in a politically organized society or the state, which is a territorial organization with the authorized power to govern the lives and activities of all the inhabitants. Though other types of organized bodies may possess formal rules, only the specialized rule systems of politically organized societies are regarded here as systems of law.²⁰

¹⁸ F. James Davis, "Law as a Type of Social Control," in F. James Davis, Henry H. Foster, Jr., C. Ray Jeffery, and E. Eugene Davis, *Society and the Law* (New York: The Free Press of Glencoe, 1962), p. 43.

¹⁹ Pound, *Social Control through Law*, p. 20.

²⁰ The rule systems of societies other than those which are politically organized may be adequately referred to, for comparative purposes, in any number of quasi-legal ways, such as nonstate law, primitive law, or "lawways." Perhaps, even better, such systems of rules could be described simply as "tradition," "normative system," or "custom." The concept of law is expanded to

Law as ideal
Pound of Society

Law, as a special kind of institution, again is more than an abstract body of rules. Instead of being autonomous within society and developing according to its own logic, law is an integral part of society, operating as a force in society and as a social product. The law is not only that which is written as statutes and recorded as court opinions and administrative rulings, but is also a method or process of doing something.²¹ As a process, law is a dynamic force that is continually being created and interpreted. Thus, law in action involves the making of specialized (legal) decisions by various authorized agents. In politically organized society, human actions are regulated by those invested with the authority to make specified decisions in the name of the society.

Furthermore, law in operation is an aspect of politics—it is one of the methods by which public policy is formulated and administered for governing the lives and activities of the state's inhabitants. As an act of politics, law and legal decisions do not represent the interests of all persons in the society. Whenever a law is created or interpreted, the values of some are necessarily assured and the values of others are either ignored or negated.

THE INTEREST STRUCTURE

Modern societies are characterized by an organization of differences. The social differentiation of society, in turn, provides the basis for the state's political life. Government in a politically organized society operates according to the interests that characterize the socially differentiated positions. Because varied interests are distributed among the positions, and because the positions are differently equipped with the ability to command, public policy represents

include the control systems of other than politically organized society among such writers as Bronislaw Malinowski, *Crime and Custom in Savage Society* (London: Routledge and Kegan Paul, 1926); E. Adamson Hoebel, *The Law of Primitive Man* (Cambridge: Harvard University Press, 1954); William M. Evan, "Public and Private Legal Systems," in William M. Evan (ed.), *Law and Society* (New York: The Free Press of Glencoe, 1962), pp. 165-184; Philip Selznick, "Legal Institutions and Social Controls," *Vanderbilt Law Review*, 17 (December, 1963), pp. 79-90.

²¹ For this conception of law, as applied to criminal law, see Henry M. Hart, Jr., "The Aims of the Criminal Law," *Law and Contemporary Problems*, 23 (Summer, 1958), pp. 401-441.

specific interests in the society. Politically organized society, therefore, may be viewed as a differentiated *interest structure*.

Each *segment* of society has its own values, its own norms, and its own ideological orientations. When these are considered to be important for the existence and welfare of the respective segments, they may be defined as *interests*.²² Further, interests can be categorized according to the ways in which activities are generally pursued in society; that is, according to the *institutional orders* of society. The following may then serve as a definition of interests: *the institutional concerns of the segments of society*. Thus, interests are grounded in the segments of society and represent the institutional concerns of the segments.

The institutional orders within which interests operate may be classified into fairly broad categories.²³ For our use, these may be called: (1) *the political*, which regulates the distribution of power and authority in society; (2) *the economic*, which regulates the production and distribution of goods and services; (3) *the religious*, which regulates the relationship of man to a conception of the supernatural; (4) *the kinship*, which regulates sexual relations, family patterns, and the procreation and rearing of children; (5) *the educational*, which regulates the formal training of the society's members; and (6) *the public*, which regulates the protection and maintenance of the community and its citizens. Each segment of society has its own orientation to these orders. Some, because of their authority position in the interest structure, are able to have their interests represented in public policy.

The segments of society differ in the extent to which their interests are organized. The segments themselves are broad statistical aggregates containing persons of similar age, sex, class, status, occupation, race, ethnicity, religion, or the like. All these have *formal interests*; those which are advantageous to the segment but which are not consciously held by the incumbents and are not organized

²² The view here that interests are not distributed randomly in society but are related to one's position in society follows Marx's theory of economic production and class conflict. See Ralf Dahrendorf, *Class and Class Conflict in Industrial Society* (Stanford: Stanford University Press, 1959), especially pp. 3-35.

²³ The conception of institutional orders closely follows that of Hans Gerth and C. Wright Mills, *Character and Social Structure* (New York: Harcourt, Brace, 1953), especially pp. 25-26.

for action. *Active interests*, on the other hand, are manifest to persons in the segments and are sufficiently organized to serve as the basis for representation in policy decisions.²⁴

Within the segments, groups of persons may become aware of and organize to promote their common interests; these may be called *interest groups*. Public policy, in turn, is the result of the success gained by these groups.

The interest structure is characterized by the unequal distribution of *power* and *conflict* among the segments of society. It is differentiated by diverse interests and by the ability of the segments to translate their interests into public policy. Furthermore, the segments are in continual conflict over their interests. Interests thus are structured according to differences in power and are in conflict.

Power and conflict are linked in this conception of interest structure. Power, as the ability to shape public policy, produces conflict among the competing segments; and conflict produces differences in the distribution of power. Coherence in the interest structure is thus ensured by the exercise of force and constraint by the conflicting segments. In the conflict-power model, therefore, politically organized society is held together by conflicting elements and functions according to the coercion of some segments by others.

The conflict-power conception of interest structure implies that public policy results from differential distribution of power and conflict among the segments of society. Diverse segments with specialized interests become so highly organized that they are able to influence the policies that affect all persons in the state. Groups that have the power to gain access to the decision-making process are able to translate their interests into public policy. Thus, the interests represented in the formulation and administration of public policy are those treasured by the dominant segments of the society. Hence, public policy is created because segments with power differentials are in conflict with one another. Public policy itself is a manifestation of an interest structure in politically organized society.

²⁴ The distinction between formal interests and active interests is similar to the distinction Dahrendorf makes between latent and manifest interests. See Dahrendorf, *Class and Class Conflict in Industrial Society*, pp. 173-179.

FORMULATION AND ADMINISTRATION OF CRIMINAL LAW

Law is a form of public policy that regulates the behavior and activities of all members of a society. It is *formulated* and *administered* by those segments of society which are able to incorporate their interests into the creation and interpretation of public policy. Rather than representing the institutional concerns of all segments of society, law secures the interests of particular segments, supporting one point of view at the expense of others.

Thus, the content of the law, including the substantive regulations and the procedural rules, represents the interests of the segments of society that have the power to shape public policy. Formulation of law allows some segments of society to protect and perpetuate their own interests. By formulating law, some segments are able to control others to their own advantage.

The interests that the power segments of society attempt to maintain enter into all stages of legal administration. Since legal formulations do not provide specific instructions for interpreting law, administration of law is largely a matter of discretion on the part of *legal agents* (police, prosecutors, judges, juries, prison authorities, parole officers, and others). Though implementation of law is necessarily influenced by such matters as localized conditions and the occupational organization of legal agents, the interest structure of politically organized society is responsible for the general design of the administration of criminal justice.

Finally, the formulation and administration of law in politically organized society are affected by changing social conditions. Emerging interests and increasing concern with the protection of various aspects of social life require new laws or reinterpretations of old laws. Consequently, legal changes take place within the context of the changing interest structure of society.

INTERESTS IN CONTEMPORARY SOCIETY

Interests not only are the principal forces behind the creation and interpretation of law, but they are changing the very nature of government. For centuries the state was the Levathian, protector,

repository of power, main source of the community's economic and social life. The state unified and controlled most of the activities of the society. In recent times, however, it is apparent that some groups and segments of society have taken over many of the state's functions:

The question must be raised in all seriousness whether the "overnightly subjects" of our time—the giant corporations, both of a commercial and non-commercial character, the labor unions, the trade associations, farmers' organizations, veterans' legions, and some other highly organized groups—have taken over the substance of sovereignty. Has the balance of pressures and counter-pressures between these groups left the legal power of the State as a mere shell? If this is a correct interpretation of the social change of our time, we are witnessing another dialectic process in history: the national sovereign State—having taken over effective legal political power from the social groups of the previous age—surrenders its power to the new massive social groups of the industrial age.²⁶

Some analysis of the contemporary scene have optimistically forecasted that checks of "countervailing power" will adequately balance the interests of the well organized groups.²⁶ This pluralistic conception disregards the fact that interest groups are grossly unequal in power. Groups that are similar in power may well check each others' interests, but groups that have little or no power will not have the opportunity to have their interest represented in public policy. The consequence is government by a few powerful private interest groups.

Furthermore, the politics of private interests tends to take place outside of the arena of the public governmental process. In private politics, interest groups receive their individual claims in return for allowing other groups to press for their interests.²⁷ Behind public politics a private government operates in a way that not only guarantees rewards to well organized groups but affects the lives of us all.

If there be any check in this contemporary condition, it is in the

²⁶ Friedman, *Law in a Changing Society*, pp. 239-240.

²⁶ John Kenneth Galbraith, *Modern Capitalism* (Boston: Houghton Mifflin, 1952).

²⁷ See Theodore Lowi, "The Public Philosophy: Interest-Group Liberalism," *American Political Science Review*, 61 (March, 1967), pp. 5-24.

prospect that the "public interest" will take precedence over private interests. Interest groups, if for no other reason than their concern for public relations, may bow to the commonweal. Optimistically, the public interest may become an ideal fulfilled, no matter what the source of private power.

But the fallacy in any expectation of the achievement of the public good through the "public interest" is that the government which could foster such a condition will become again in a new age an oppressive interest in itself. That age, in fact, seems to be upon us. Increasingly, as Reich has argued, "Americans live on government largess — allocated by government on its own terms, and held by recipients subject to conditions which express 'the public interest.'"²⁸ While the highly organized, scientifically planned society, governed for the social good of its inhabitants, promises the best life that man has ever known, not all of our human values will receive attention, and some may be temporarily or permanently negated.

In raw form we cannot hold optimistically to either government by private interests or public interest by government largess. The future for individual man appears to lie in some form of protection from both forms of government. Decentralized government offers some possibility for the survival of the individual in a collective society. But more immediately, that protection must be sought in procedural law, a law that must necessarily be removed from the control of either the interests of private groups or public government. The challenge for law of the future is that it create an order providing fulfillment for individual values that are now within our reach, values that paradoxically are imminent because of the existence of interests from which we must now seek protection. A new society is indeed coming: Can a law be created apart from private interests which assures individual fulfillment within a good society?

²⁸ Charles A. Reich, "The New Property," *Yale Law Journal*, 73 (April, 1964), p. 733.