

Criminal Law Casebooks: An Introduction to a Dialogue on Their History and Role in Legal Education

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Sometime in 2008, Professor Anders Walker sent me a draft of a manuscript, *The Anti-Case Method: Herbert Wechsler and the Political History of the Criminal Law Course*, for my comment. Little did I know then that his manuscript would be awarded the Association of American Law School (AALS) Section on Criminal Justice's Junior Scholar Award for 2009. All I knew as I read the draft was that it was fascinating, provocative, and that I had serious reservations with some of the author's observations.

Thanks to Anders Walker and his essay, I learned much about the history of criminal law casebooks. I never fully appreciated the significance of the criminal law casebook first written by Herbert Wechsler and Jerome Michael: According to Walker, their "anti-case" book—a book comparatively light on common law cases and heavy on non-case materials—would "revolutionize criminal law teaching in the United States"; and, he claims, virtually every modern casebook, including my own,¹ follows the Wechsler-Michael model.

Walker's essay, however, is more than a study in legal history. As he writes in the abstract to his essay,

Wechsler's text inspired an entire generation of law teachers who believed that criminal law should be taught as a "liberal arts" course, precisely so that law students would not become criminal lawyers. The legal academy's disdain for criminal practice, this article concludes, allowed scholars like Wechsler to introduce innovations in criminal law teaching that became a subsequent model for law teaching generally in the United States during the latter half of the twentieth century.²

After I read the manuscript and discussed the matter with my Faculty Editor colleagues, I put on my *Ohio State Journal of Criminal Law* "Editor's Cap" and invited Professor Walker to publish his manuscript in our journal. Happily, he agreed. I then went about soliciting some other criminal law professors, including an incomplete and arbitrary collection of casebook authors, to comment on the

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¹ JOSHUA DRESSLER, *CASES AND MATERIALS ON CRIMINAL LAW* (4th ed. 2007).

² Anders Walker, *The Anti-Case Method: Herbert Wechsler and the Political History of the Criminal Law Course*, 7 OHIO ST. J. CRIM. L. 217, 217 (2009).

Walker essay.³ A few months later, in a case of serendipity, I was sitting next to Professor Yale Kamisar at a luncheon at which Professor Walker's essay won the AALS award. When Yale learned that the Walker essay focused on Herbert Wechsler, he offered to write a brief remembrance of Wechsler because, as Kamisar observes, "[t]his year marks the one hundredth anniversary of the birth of Professor Herbert Wechsler, one of the greatest criminal law scholars in American history."⁴

It is my hope that this symposium will inspire many of us—teachers of criminal law and, of course, those of us who prepare casebooks for teaching the subject—to think more about the issues raised by Walker and by his critics. I also hope, quite frankly, that we can continue this dialogue in our journal. **We would like to publish additional Commentaries on this topic, including responses to one or more of the essays published in this Commentary Symposium.** So, please read what follows and, if you believe you have something to add to the conversation, consider submitting a Commentary for possible publication.⁵

³ See Donald Dripps, *On Cases, Casebooks, and the Real World of Criminal Justice: A Brief Response to Anders Walker*, 7 OHIO ST. J. CRIM. L. 257 (2009); Angela P. Harris & Cynthia Lee, *Teaching Criminal Law from a Critical Perspective*, 7 OHIO ST. J. CRIM. L. 261 (2009); Douglas Husak, *Criminal Law Textbooks and Human Betterment*, 7 OHIO ST. J. CRIM. L. 267 (2009); Margaret L. Paris, *Four Good Things About Wechsler's Approach*, 7 OHIO ST. J. CRIM. L. 275 (2009); Lloyd L. Weinreb, *Teaching Criminal Law*, 7 OHIO ST. J. CRIM. L. 279 (2009); and Robert Weisberg, *Did Legal Realism Engage the Real World of Criminal Law?*, 7 OHIO ST. J. CRIM. L. 293 (2009).

⁴ Yale Kamisar, *I Remember Professor Wechsler*, 7 OHIO ST. J. CRIM. L. 249, 249 (2009).

⁵ All Commentaries in the *Ohio State Journal of Criminal Law* must be brief (preferably 7,500 words or less, and never more than 10,000 words) and, generally, lightly footnoted. Informality is not just tolerated but appreciated in the Commentary section of the *Ohio State Journal of Criminal Law*.