



Part I

The Nature, Purpose, and Constitutional Context of Criminal Law

Chapter 1

The Nature, Purpose, and Function of Criminal Law

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Punishment and Sentencing

Chapter 1 is an introduction to the characteristics, function, and organization of criminal law. Chapter 2 describes the constitutional restrictions on criminal law. Chapter 3 outlines the purposes of punishment, approaches to sentencing, and the constitutional restrictions on criminal sentences.

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May the police officers be subjected to prosecution in both state and federal court?

As the videotape begins, it shows that King rose from the ground and charged toward Officer Powell. Powell took a step and used his baton to strike King on the side of his head. King fell to the ground. From the 18th to the 30th second on the videotape, King attempted to rise, but Powell and Wind each struck him with their batons to prevent him from doing so. From the 35th to the 51st second, Powell administered repeated blows to King's lower extremities; one of the blows fractured King's leg. At the 55th second, Powell struck King on the chest, and King rolled over and lay prone. At that point, the officers stepped back and observed King for about 10 seconds. . . . At one-minute-five-seconds (1:05) on the videotape, Briseno, in the District Court's words, "stomped" on King's upper back or neck. King's body writhed in response. At 1:07, Powell and Wind again began to strike King with a series of baton blows, and Wind kicked him in the upper thoracic or cervical area six times until 1:26. At about 1:29, King put his hands behind his back and was handcuffed.

Core Concepts and Summary Statements

Introduction

The criminal law is the foundation of the criminal justice system. The law defines the acts that may lead to an arrest, prosecution, and imprisonment. States punish a range of acts in their criminal codes.

The Nature of Criminal Law

- A. Crime is conduct that, if shown to have taken place, will result in a formal and solemn pronouncement of moral condemnation by the community.

Criminal and Civil Law

- A. The civil law protects the individual rather than the public interest.

The Purpose of Criminal Law

- A. The criminal law prohibits conduct that causes or threatens the public interest; defines and warns people of the acts that are subject to criminal punishment; distinguishes between serious and minor offenses; and imposes punishment to protect society and to satisfy the demands for retribution, rehabilitation, and deterrence.

Principles of Criminal Law

- A. Basic principles essential for understanding the criminal law include: criminal acts, criminal intent, the concurrence between acts and intent, causality, responsibility, and defenses.

Categories of Crime

- A. Felonies are punishable by death or by imprisonment for more than a year. Other offenses are misdemeanors. Some states provide for minor offenses that do not result in imprisonment, referred to as violations or infractions.
- B. *Mala in se* crimes are inherently evil; *mala prohibita* crimes are not viewed as inherently evil.
- C. Crimes also may be categorized by subject matter, examples are crimes against a person or property.

Sources of Criminal Law

- A. There are a number of sources of criminal law ranging from the common law to state and federal statutes to the U.S. and state constitutions.
- B. The common law originated in the common customs and practices of the people of England and can be traced to the Norman conquest of England in 1066. This law was transported to the American colonies.

- C. American states in the nineteenth century began to adopt comprehensive criminal codes. States today differ on whether they continue to recognize the common law in areas not addressed by state statutes. Most states no longer recognize the common law and there are no federal common law crimes.
- D. States possess the broad authority to protect the health, safety, welfare, well-being, and tranquility of the community.
- E. In 1962, the American Law Institute adopted the Model Penal Code to encourage and guide the uniform drafting and reform of state statutes.
- F. The U.S. Constitution assigns various powers to the federal government that form the foundation for the federal criminal code.
- G. The U.S. and individual state constitutions establish limits and standards for the criminal law.

Introduction

The criminal law is the foundation of the criminal justice system. The law defines the conduct that may lead to an arrest by the police, trial before the courts, and incarceration in prison. When we think about criminal law, we typically focus on offenses such as rape, robbery, and murder. States, however, condemn a range of acts in their criminal codes, some of which may surprise you. In Alabama, it is a criminal offense to promote or engage in a wrestling match with a bear or to train a bear to fight in such a match.¹ A Florida law states that it is unlawful to possess “any ignited tobacco product” in an elevator.² Rhode Island declares that an individual shall be imprisoned for seven years who voluntarily engages in a duel with a dangerous weapon or who challenges an individual to a duel.³ In Wyoming you can be arrested for skiing while being impaired by alcohol⁴ or for opening and failing to close a gate in a fence that “crosses a private road or river.”⁵ You can find criminal laws on the books in various states punishing activities such as playing dominos on Sunday, feeding an alcoholic beverage to a moose, cursing on a miniature golf course, making love in a car, or performing a wedding ceremony when either the bride or groom is drunk.⁶ In Louisiana, you risk being sentenced to ten years in prison for stealing an alligator, whether dead or alive, valued at \$1,000.00.⁷

The Nature of Criminal Law

Are there common characteristics of acts that are labeled as crimes? How do we define a crime? The easy answer is that a **crime** is whatever the law declares to be a criminal offense and punishes with a penalty. The difficulty with this approach is that not all criminal convictions result in a fine or imprisonment. Rather than punishing a defendant, the judge may merely warn him or her not to repeat the criminal act. Most commentators stress that the important feature of a crime is that it is an act that is officially condemned by the community and carries a sense of shame and humiliation. Professor Henry M. Hart Jr. defines crime as “conduct which, if . . . shown to have taken place” will result in the “formal and solemn pronouncement of the moral condemnation of the community.”⁸

The central point of Professor Hart’s definition is that a crime is subject to formal condemnation by a judge and jury representing the people in a court of law. This distinguishes a crime from acts most people would find objectionable that typically are not subject to

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state prosecution and official punishment. We might, for instance, criticize someone who cheats on his or her spouse, but we generally leave the solution to the *individuals involved*. Other matters are left to *institutions* to settle; schools generally discipline students who cheat or disrupt classes and this rarely results in a criminal charge. Professional baseball, basketball, and football leagues have their own private procedures for disciplining players. Most states leave the decision whether to recycle trash to the *individual* and look to *peer pressure* to enforce this obligation.

Criminal and Civil Law

How does the criminal law differ from the **civil law**? The civil law is that branch of the law that protects the individual rather than the public interest. A legal action for a civil wrong is brought by an individual rather than by a state prosecutor. You may sue a mechanic who breaches a contract to repair your car or bring an action against a landlord who fails to adequately heat your apartment. The injury is primarily to you as an individual and there is relatively little harm to society. A mechanic who intentionally misleads and harms a number of innocent consumers, however, may find him or herself charged with criminal fraud.

Civil and criminal actions are characterized by different legal procedures. For instance, conviction of a crime requires the high standard of proof beyond a reasonable doubt, although responsibility for a civil wrong is established by the much lower standard of proof by a preponderance of the evidence or roughly fifty-one percent certainty. The high standard of proof in criminal cases reflects the fact that a criminal conviction may result in a loss of liberty and significant damage to an individual's reputation and standing in the community.⁹

The famous eighteenth-century English jurist William Blackstone summarizes the distinction between "civil and criminal law by observing that civil injuries are an infringement . . . of the civil rights which belong to individuals . . . public wrongs, or crimes . . . are a breach and violation of the public rights and duties, due to the whole community . . . in its social aggregate capacity." Blackstone illustrates this difference by pointing out that society has little interest in whether he sues a neighbor or emerges victorious in a land dispute. On the other hand, society has a substantial investment in the arrest, prosecution, and conviction of individuals responsible for espionage, murder, and robbery.¹⁰

The difference between a civil and criminal action is not always clear, particularly when it regards to an action for a **tort**, which is an injury to a person or to his or her property. Consider the drunken driver who runs a red light and hits your car. The driver may be sued in tort for negligently damaging you and your property as well as criminally prosecuted for reckless driving. The purpose of the civil action is to compensate you with money for the damage to your car and for the physical and emotional injuries you have suffered. In contrast, the criminal action punishes the driver for endangering society. Civil liability is based on a preponderance of the evidence standard, although a criminal conviction carries a possible loss of liberty and is based on the higher standard of guilt beyond a reasonable doubt. You may recall that former football star O.J. Simpson was acquitted of murdering Nicole Brown Simpson and Ron Goldman but was later found guilty of wrongful death in a civil court and ordered to compensate the victims' families in the amount of \$33.5 million.

The distinction between criminal and civil law proved immensely significant for Kansas inmate Leroy Hendricks. Hendricks was about to be released after serving ten years in prison for molesting two thirteen-year-old boys. This was only the latest episode in Hendricks's almost thirty-year history of indecent exposure and molestation of young children. Hendricks freely conceded that when not confined, the only way to control his sexual urge was to "die."

Upon learning that Hendricks was about to be released, Kansas authorities invoked the Sexually Violent Predator Act of 1994, which authorized the institutional confinement of individuals who, due to a "mental abnormality" or a "personality disorder," are likely to engage in "predatory acts of sexual violence." Following a hearing, a jury found Hendricks to be a "sexual predator." The U.S. Supreme Court ruled that Hendricks's continued commitment was a civil rather than criminal penalty, and that Hendricks was not being unconstitutionally punished twice for the same criminal act of molestation. The court explained that the purpose of the commitment procedure was to detain and to treat Hendricks in order to prevent him from harming others in the future rather than to punish him. Do you think that the decision of the U.S. Supreme Court makes sense?¹¹

The Purpose of Criminal Law

We have seen that the criminal law primarily protects the interests of society, and the civil law protects the interests of the individual. The primary purpose or function of the criminal law is to help maintain social order and stability. The Texas criminal code proclaims that the purpose of criminal law is to “establish a system of prohibitions, penalties, and correctional measures to deal with conduct that unjustifiably and inexcusably causes or threatens harm to those individual or public interests for which state protection is appropriate.”¹² The New York criminal code sets out the basic purposes of criminal law.¹³

- **Harm.** To prohibit conduct that unjustifiably or inexcusably causes or threatens substantial harm to individuals as well as to society
- **Warning.** To both warn people of conduct that is subject to criminal punishment and of the severity of the punishment
- **Definition.** To define the act and intent that is required for each offense
- **Seriousness.** Distinguish between serious and minor offenses and to assign the appropriate punishments
- **Punishment.** To impose punishments that satisfy the demands for revenge, rehabilitation, and deterrence of future crimes
- **Victims.** To insure that the victim, the victim’s family, and the community interests are represented at trial and in imposing punishments

The next step is to understand the characteristics of a criminal act.

The Principles of Criminal Law

The study of **substantive criminal law** involves an analysis of the definition of specific crimes (specific part) and of the general principles that apply to all crimes (general part), such as the defense of insanity. In our study, we will first review the general part of criminal law and then look at specific offenses. Substantive criminal law is distinguished from **criminal procedure**. Criminal procedure involves a study of the legal standards governing the detection, investigation, and prosecution of crime and includes areas such as interrogations, search and seizure, wiretapping, and the trial process. Criminal procedure is concerned with “how the law is enforced,” criminal law involves “what law is enforced.”

Professors Jerome Hall¹⁴ and Wayne R. LaFare¹⁵ identify the basic principles that comprise the general part of the criminal law. Think of the general part of the criminal law as the building blocks that are used to construct specific offenses such as rape, murder, and robbery.

- **Criminal Act.** A crime involves an act or failure to act. You cannot be punished for bad thoughts. A criminal act is called *actus reus*.
- **Criminal Intent.** A crime requires a criminal intent or *mens rea*. Criminal punishment is ordinarily directed at individuals who intentionally, knowingly, recklessly, or negligently harm other individuals or property.
- **Concurrence.** The criminal act and criminal intent must coexist or accompany one another.
- **Causation.** The defendant’s act must cause the harm required for criminal guilt, death in the case of homicide, and the burning of a home in the case of arson.
- **Responsibility.** Individuals must receive reasonable notice of the acts that are criminal so as to make a decision to obey or to violate the law. In other words, the required criminal act and criminal intent must be clearly stated in a statute. This concept is captured by the Latin phrase *nullum crimen sine lege, nulla poena sine lege* (no crime without law, no punishment without law).
- **Defenses.** Criminal guilt is not imposed on an individual who is able to demonstrate that his or her criminal act is justified (benefits society) or excused (the individual suffered from a disability that prevented him or her from forming a criminal intent).

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We now turn to a specific part of the criminal law to understand the various types of acts that are punished as crimes.

Categories of Crime

Felonies and Misdemeanors

There are a number of approaches to categorizing crimes. The most significant distinction is between a **felony** and a **misdemeanor**. A crime punishable by death or by imprisonment for more than one year is a felony. Misdemeanors are crimes punishable by less than a year in prison. Note that whether a conviction is for a felony or misdemeanor is determined by the punishment provided in the statute under which an individual is convicted rather than by the actual punishment imposed. Many states subdivide felonies and misdemeanors into several classes or degrees to distinguish between the seriousness of criminal acts. **Capital felonies** are crimes subject to the death penalty or life in prison in states that do not have the death penalty. The term **gross misdemeanor** is used in some states to refer to crimes subject to between six and twelve months in prison, whereas other misdemeanors are termed **petty misdemeanors**. Several states designate a third category of crimes that are termed **violations** or **infractions**. These tend to be acts that cause only modest social harm and carry fines. These offenses are considered so minor that imprisonment is prohibited. This includes the violation of traffic regulations.

Florida classifies crimes as felonies, misdemeanors, or noncriminal violations. Noncriminal violations are primarily punishable by a fine or forfeiture of property. The following list shows the categories of felonies and misdemeanors and the maximum punishment generally allowable under Florida law:

Capital Felony. Death or life imprisonment without parole

Life Felony. Life in prison and a \$15,000 fine

Felony in the First Degree. Thirty years in prison and a \$10,000 fine

Felony in the Second Degree. Fifteen years in prison and a \$10,000 fine

Felony in the Third Degree. Five years in prison and a \$5,000 fine

Misdemeanor in the First Degree. One year in prison and a \$1,000 fine

Misdemeanor in the Second Degree. Sixty days in prison and a \$500 fine

The severity of the punishment imposed is based on the seriousness of the particular offense. Florida, for example, punishes as a second-degree felony the recruitment of an individual for prostitution knowing that force, fraud, or coercion will be used to cause the person to engage in prostitution. This same act is punished as a first-degree felony in the event that the person recruited is under fourteen or if death results.¹⁶

Mala in se and Mala Prohibita

Another approach is to classify crime by “moral turpitude” (evil). *Mala in se* crimes are considered “inherently evil” and would be evil even if not prohibited by law. This includes murder, rape, robbery burglary, larceny, and arson. *Mala prohibita* offenses are not “inherently evil” and only are considered wrong because prohibited by a statute. This includes offenses ranging from tax evasion to carrying a concealed weapon, leaving the scene of an accident, and being drunk and disorderly in public.

Why should we be concerned with classification schemes? A felony conviction can prevent you from being licensed to practice various professions, bar you from being admitted to the armed forces or joining the police, and prevent you from adopting a child or receiving various forms of federal assistance. In some states, a convicted felon is still prohibited from voting. The distinction between *mala in se* and *mala prohibita* is also important. For instance, the law provides that individuals convicted of a “crime of moral turpitude” may be deported from the United States.

There are a number of other classifications schemes. The law originally categorized crimes as **infamous** that were considered deserving of shame or disgrace. Individuals convicted of

infamous offenses such as treason (betrayal of the nation) or offenses involving dishonesty were historically prohibited from appearing as witnesses at a trial.

Subject Matter

This textbook is organized in accordance with the subject matter of crimes and is the scheme that is followed in most state criminal codes. There is disagreement, however, concerning the classification of some crimes. Robbery, for instance, involves the theft of property as well as the threat or infliction of harm to the victim, and there is a debate about whether it should be considered a crime against property or against the person. Similar issues arise in regards to burglary. Subject matter offenses in descending order of seriousness are:

Crimes Against the State. Treason, sedition, espionage (Chapter 16)

Crimes Against the Person, Homicide. Homicide: murder, manslaughter (Chapter 11)

Crimes Against the Person, Sexual Offenses, and Other Crimes. Rape, assault and battery, false imprisonment, kidnapping (Chapter 10)

Crimes Against Habitation. Burglary, arson, trespassing (Chapter 12)

Crimes Against Property. Larceny, embezzlement, false pretenses, receiving stolen property, robbery (Chapter 13)

Crimes Against Public Order. Disorderly conduct, riot (Chapter 15)

Crimes Against the Administration of Justice. Obstruction of justice, perjury, bribery

Crimes Against Public Morals. Prostitution, obscenity (Chapter 15)

The book also covers the general part of criminal law, including the constitutional limits on criminal law (Chapter 2), criminal acts (Chapter 4), criminal intent (Chapter 5), the scope of criminal liability (Chapters 6 and 7), and defenses to criminal liability (Chapters 8 and 9).

Sources of Criminal Law

We now have covered the various categories of criminal law. The next question to consider is what are the sources of the criminal law. How do we find the requirements of the criminal law? There are a number of sources of the criminal law in the United States:

English and American Common Law. English and American judge-made laws and English acts of Parliament.

State Criminal Codes. Every state has a comprehensive written set of laws on crime and punishment.

Municipal Ordinances. Cities, towns, and counties are typically authorized to enact local criminal laws, generally of a minor nature. These laws regulate the city streets, sidewalks, and buildings and concern areas such as traffic, littering, disorderly conduct, and domestic animals.

Federal Criminal Code. The U.S. government has jurisdiction to enact criminal laws that are based on the federal government's constitutional powers, such as the regulation of interstate commerce.

State and Federal Constitutions. The U.S. Constitution defines treason and together with state constitutions establishes limits on the power of government to enact criminal laws. A criminal statute, for instance, may not interfere with freedom of expression or religion.

International Treaties. International treaties signed by the United States establish crimes such as genocide, torture, and war crimes. These treaties, in turn, form the basis of federal criminal laws punishing acts such as genocide and war crimes when Americans are involved. These cases are prosecuted in U.S. courts.

Judicial Decisions. Judges write decisions explaining the meaning of criminal laws and determining whether criminal laws meet the requirements of state and federal constitutions.

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At this point, we turn our attention to the common law origins of American criminal law and to state criminal codes.

The Common Law

The English *common law* is the foundation of American criminal law. The origins of the common law can be traced to the Norman conquest of England in 1066. The Norman king, William the Conqueror, was determined to provide a uniform law for England and sent royal judges throughout the country to settle disputes in accordance with the common customs and practices of the country. The principles that comprised this common law began to be written down in 1300 in an effort to record the judge-made rules that should be used to decide future cases.

By 1600, a number of **common law crimes** had been developed, including arson, burglary, larceny, manslaughter, mayhem, rape, robbery, sodomy, and suicide. This was followed by criminal attempt, conspiracy, blasphemy, forgery, sedition, and solicitation. On occasion, the king and Parliament issued decrees that filled the gaps in the common law, resulting in the development of the crimes of false pretenses and embezzlement. The distinctive characteristic of the common law is that it is for the most part the product of the decisions of judges in actual cases.

The English civil and criminal common law was transported to the new American colonies and formed the foundation of the colonial legal system that in turn was adopted by the thirteen original states following the American Revolution. The English common law was also recognized by each state subsequently admitted to the Union; the only exception was Louisiana, which followed the French Napoleonic Code until 1805 when it embraced the common law.¹⁷

State Criminal Codes

States in the nineteenth century began to adopt comprehensive written criminal codes. This movement was based on the belief that in a democracy the people should have the opportunity to know the law. Judges in the common law occasionally punished an individual for an act that had never before been subjected to prosecution. A defendant in a Pennsylvania case was convicted of making obscene phone calls despite the absence of a previous prosecution for this offense. The court explained that the “common law is sufficiently broad to punish . . . although there may be no exact precedent, any act which directly injures or tends to injure the public.”¹⁸ There was the additional argument that the power to make laws should reside in the elected legislative representatives of the people rather than in unelected judges. As Americans began to express a sense of independence, there was also a strong reaction against being so clearly connected to the English common law tradition, which was thought to have limited relevance to the challenges facing America. As early as 1812, the U.S. Supreme Court proclaimed that federal courts were required to follow the law established by Congress and were not authorized to apply the common law.

States were somewhat slower than the federal government to abandon the common law. In a Maine case in 1821, the accused was found guilty of dropping the dead body of a child into the river. The defendant was convicted even though there was no statute making this a crime. The court explained that “good morals” and “decency” all forbid this act. State legislatures reacted against these types of decisions and began to abandon the common law in the mid-nineteenth century. The Indiana Revised Statutes of 1852, for example, proclaims that “Crimes and misdemeanors shall be defined, and punishment fixed by statutes of this State, and not otherwise.”¹⁹

Some states remain **common law states**, meaning that the common law may be applied where the state legislature has not adopted a law in a particular area. The Florida criminal code states that the “common law of England in relation to crimes, except so far as the same relates to the mode and degrees of punishment, shall be of full force in this state where there is no existing provision by statute on the subject.” Florida law further provides that where there is no statute, an offense shall be punished by fine or imprisonment, but that the “fine shall not exceed \$500, nor the term of imprisonment of 12 months.” Missouri and Arizona are also examples of common law states.²⁰ These states’ criminal codes, like Florida, contain a **reception statute** that provides that the states “receive” the common law as an unwritten part of their criminal law. California, on the other hand, is an example of a **code jurisdiction**. The California criminal code provides that “no act or omission . . . is criminal or punishable, except as prescribed or authorized by this code.”²¹ Ohio and Utah are also code jurisdiction states. The Utah criminal code states that common law crimes “are abolished and no conduct is a crime unless made so by this code . . . or ordinance.”²²

Professor LaFave observes that courts in common law states have recognized a number of crimes that are not part of their criminal codes, including conspiracy, attempt, solicitation, uttering gross obscenities in public, keeping a house of prostitution, cruelly killing a horse, public inebriation, and false imprisonment.²³

You also should keep in mind that the common law continues to play a role in the law of code jurisdiction states. Most state statutes are based on the common law and courts frequently consult the common law to determine the meaning of terms in statutes. In the well-known California case of *Keeler v. Superior Court*, the California Supreme Court looked to the common law and determined that an 1850 state law prohibiting the killing of a “human being” did not cover the “murder of a fetus.” The California state legislature then amended the murder statute to punish the “killing of a human being, or a fetus.”²⁴ Most importantly, our entire approach to criminal trials reflects the common law’s commitment to protecting the rights of the individual in the criminal justice process.

State Police Power

Are there limits on a state’s authority to pass criminal laws? Could a state declare that it is a crime to possess fireworks on July 4th? State governments possess the broad power to promote the public health, safety, and welfare of the residents of the state. This wide-ranging **police power** includes the “duty . . . to protect the well-being and tranquility of a community” and to “prohibit acts or things reasonably thought to bring evil or harm to its people.”²⁵ An example of the far-reaching nature of the state police power is the U.S. Supreme Court’s upholding of the right of a village to prohibit more than two unrelated people from occupying a single home. The Supreme Court proclaimed that the police power includes the right to “lay out zones where family values, youth values, the blessings of quiet seclusion, and clean air make the area a sanctuary for people.”²⁶

State legislatures in formulating the content of criminal codes have been profoundly influenced by the Model Penal Code.

The Model Penal Code

People from other countries often ask how students can study the criminal law of the United States, a country with fifty states and a federal government. The fact that there is a significant degree of agreement in the definition of crimes in state codes is due to a large extent to the **Model Penal Code**.

In 1962, the American Law Institute (ALI), a private group of lawyers, judges, and scholars, concluded after several years of study that despite our common law heritage, state criminal statutes radically varied in their definition of crimes and were difficult to understand and poorly organized. The ALI argued that the quality of justice should not depend on the state in which an individual was facing trial and issued a multivolume set of model criminal laws, *The Proposed Official Draft of the Model Penal Code* (MPC). The Model Penal Code is purely advisory and is intended to encourage all fifty states to adopt a single uniform approach to the criminal law. The statutes are accompanied by a commentary that explains how the Model Penal Code differs from existing state statutes. Roughly thirty-seven states have adopted some of the provisions of the Model Penal Code, although no state has adopted every single model law. The states that most closely follow the code are New Jersey, New York, Pennsylvania, and Oregon. As you read the book you may find it interesting to compare the Model Penal Code to the common law and to state statutes.²⁷

This book primarily discusses state criminal law. It is important to remember that we also have a federal system of criminal law in the United States.

Federal Statutes

The United States has a federal system of government. The states granted various powers to the federal government that are set forth in the U.S. Constitution. This includes the regulation of interstate commerce, the power to declare war, to provide for the national defense, to coin money, to collect taxes, to operate the post office, and to regulate immigration. The Congress is entitled to make “all Laws which shall be necessary and proper” for fulfilling these responsibilities. The states retain those powers that are not specifically granted to the federal government. The Tenth Amendment to the Constitution states that the powers “not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.”

The Constitution specifically authorizes Congress to punish the counterfeiting of U.S. currency, piracy and felonies committed on the high seas, crimes against the “Law of Nations,”

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and to make rules concerning the conduct of warfare. These criminal provisions are to be enforced by a single Supreme Court and by additional courts established by Congress.

The **federal criminal code** compiles the criminal laws adopted by the U.S. Congress. This includes laws punishing acts such as tax evasion, mail and immigration fraud, bribery in obtaining a government contract, and the knowing manufacture of defective military equipment. The **Supremacy Clause** of the U.S. Constitution provides that federal law is superior to a state law within those areas that are the preserve of the national government. This is termed the **preemption doctrine**.

Several recent court decisions have held that federal criminal laws have unconstitutionally encroached on areas reserved for state governments. This reflects a trend toward limiting the federal power to enact criminal laws. For instance, the U.S. government, with the **interstate commerce clause**, has interpreted its power to regulate interstate commerce as providing the authority to criminally punish harmful acts that involve the movement of goods or individuals across state lines. An obvious example is the interstate transportation of stolen automobiles.

In the past few years, the U.S. Supreme Court has ruled several of these federal laws unconstitutional based on the fact that the activities did not clearly affect interstate commerce or involve the use of interstate commerce. In 1995, the Supreme Court ruled in *United States v. Lopez* that Congress violated the Constitution by adopting the Gun Free School Zones Act of 1990 that made it a crime to have a gun in a local school zone. The fact that the gun may have been transported across state lines was too indirect a connection with interstate commerce on which to base federal jurisdiction.²⁸

In 2000, the Supreme Court also ruled unconstitutional the U.S. government's prosecution of an individual in Indiana who was alleged to have set fire to a private residence. The federal law made it a crime to maliciously damage or destroy, by means of fire or an explosive, any building used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce. The Supreme Court ruled that there must be a direct connection between a building and interstate commerce and rejected the government's contention that it is sufficient that a building is constructed of supplies or serviced by electricity that moved across state lines or that the owner's insurance payments are mailed to a company located in another state. Justice Ruth Bader Ginsburg explained that this would mean that "every building in the land" would fall within the reach of federal laws on arson, trespass, and burglary.²⁹

The sharing of power between the federal and state governments is termed **dual sovereignty**. An interesting aspect of dual sovereignty is that it is constitutionally permissible to prosecute a defendant for the same act at both the state and federal levels so long as the criminal charges slightly differ. You might recall in 1991 that Rodney King, an African American, was stopped by the Los Angeles police. King resisted and eventually was subdued, wrestled to the ground, beaten, and handcuffed by four officers. The officers were acquitted by an all-Caucasian jury in a state court in Simi Valley, California, leading to widespread protest and disorder in Los Angeles. The federal government responded by bringing the four officers to trial for violating King's civil right to be arrested in a reasonable fashion. Two officers were convicted and sentenced to thirty months in federal prison and two were acquitted. Later in this chapter, you are asked to decide whether this "double prosecution" is fair.

We have seen that the state and federal governments possess the power to enact criminal laws. The federal power is restricted by the provisions of the U.S. Constitution that define the limits on governmental power.

Constitutional Limitations

The U.S. and individual state constitutions establish limits and standards for the criminal law. The U.S. Constitution, as we shall see in Chapter 2, requires that:

- A state or local law may not regulate an area that is reserved to the federal government. A federal law may not encroach upon state power.
- A law may only infringe upon the fundamental civil and political rights of individuals in compelling circumstances.
- A law must be clearly written and provide notice to citizens and to the police of the conduct that is prohibited.
- A law must be nondiscriminatory and may not impose cruel and unusual punishment. A law also may not be retroactive and punish acts that were not crimes at the time that they were committed.

The ability of legislators to enact criminal laws is also limited by public opinion. The American constitutional system is a democracy. Politicians are fully aware that they must face elections and that they may be removed from office in the event that they support an unpopular law. As we learned during the unsuccessful effort to ban the sale of alcohol during the prohibition era in the early twentieth century, the government will experience difficulties in imposing an unpopular law on the public.

Of course, the democratic will of the majority is subject to constitutional limitations. A classic example is the Supreme Court's rulings that popular federal statutes prohibiting and punishing flag burning and desecration comprise an unconstitutional violation of freedom of speech.³⁰

Crime in the News

In 1996, California became one of ten states to authorize the use of marijuana for medical purposes (Arizona, Colorado, Hawaii, Maine, Montana, Nevada, Oregon, Vermont, and Washington).

California voters passed Proposition 215, the Compassionate Use Act of 1996, which is intended to insure that "seriously ill" residents of California are able to obtain marijuana. The act provides an exemption from criminal prosecution for doctors who, in turn, may authorize patients and primary caregivers to possess or cultivate marijuana for medical purposes. The California legislation is directly at odds with the federal Controlled Substances Act that declares it is a crime to manufacture, distribute, or possess marijuana. There are between 75,000 and 100,000 medical marijuana users in California and 115,000 registered medical marijuana users across the United States.

Angel Raich and Diane Monson are two California residents who suffer from severe medical disabilities. Their doctors have found that marijuana is the only drug that is able to alleviate their pain and suffering. Raich's doctor goes so far as to claim that her pain is so intense that she might die if deprived of marijuana. Monson cultivates her own marijuana and Raich relies on two caregivers who provide her with California-grown marijuana at no cost.

On August 15, 2000, agents from the Federal Drug Enforcement Administration (DEA) raided Monson's home and destroyed all six of her marijuana plants. The DEA agents disregarded objections from the Butte County Sheriff's Department and the local California District Attorney's Office that Monson's possession of marijuana was perfectly legal.

Monson and Raich, along with several doctors and patients, refused to accept the destruction of the mari-

juana plants and asked the U.S. Supreme Court to rule on the constitutionality of the federal government's refusal to exempt medical marijuana users from criminal prosecution and punishment. The case was supported by the California Medical Association and the Leukemia and Lymphoma Society. Raich suffers from severe chronic pain stemming from fibromyalgia, endometriosis, scoliosis, uterine fibroid tumors, rotator cuff syndrome, an inoperable brain tumor, seizures, life-threatening wasting syndrome, and constant nausea. She also experiences extreme chemical sensitivities that result in violent allergic reactions to virtually every pharmaceutical drug. Raich was confined to a wheelchair before reluctantly deciding to smoke marijuana, a decision that led to her enjoying a fairly normal life.

A doctor recommended that Monson use marijuana to treat severe chronic back pain and spasms. She alleges that marijuana alleviates the pain that she describes as comparable to an uncontrollable cramp. Monson claims that other drugs have proven ineffective or resulted in nausea and create the risk of severe injuries to her kidney and liver. The marijuana reportedly reduces the frequency of Monson's spasms and enables her to continue to work.

The U.S. Supreme Court, in *Gonzalez v. Raich* in 2005, held that the federal prohibition on the possession of marijuana would be undermined by exempting marijuana possession in California and other states from federal criminal enforcement. The Supreme Court explained that the cultivation of marijuana under California's medical marijuana law, although clearly a local activity, frustrated the federal government's effort to control the shipment of marijuana across state lines because medical marijuana inevitably would find its way into interstate commerce, increase the nationwide supply, and drive down the price of the illegal drug. There was also a risk that completely healthy individuals in California would

(Continued)

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(Continued)

manage to be fraudulently certified by a doctor to be in need of medical marijuana. Three of the nine Supreme Court judges dissented from the majority opinion. Justice Sandra Day O'Connor observed that the majority judgment "stifles an express choice by some States, concerned for the lives and liberties of their people, to regulate medical marijuana differently."

Following the decision, Angel Raich urged the federal government to have some "compassion and have some heart" and not to "use taxpayer dollars to come in and lock us up . . . we are using this medicine because it is saving our lives." She asked why the federal government was trying to kill her. Opponents of medical marijuana defend the Supreme Court's decision and explain that individuals should look to traditional medical treatment rather than being misled into thinking that marijuana is an effective therapy. They also argue that marijuana is a highly addictive drug that could lead individuals to experiment with even more harmful narcotics.

Roughly 75,000 marijuana arrests are carried out each year, most by state authorities. The question is whether the federal authorities will use the Supreme Court decision as a justification for arresting individuals growing or in possessing medical marijuana. A study indicates that since 1996 that there have been only 20 federal prosecutions of medical marijuana users or growers, most of which involved individuals accused of growing 1,000 plants or more. One California medical marijuana grower who had been prosecuted and convicted by the federal government was released after serving two years of a ten-year sentence for growing medical marijuana plants pending the outcome in *Gonzalez v. Raich*. After the decision he was ordered back to prison.

The California Attorney General, Bill Lockyer observed that there is a "vast philosophical difference" between the federal government and Californians on the "rights of patients to have access to the medicine they need to survive and lead healthier lives." Where do you stand on the medical marijuana controversy?

Consider the following factual scenario that is taken from the U.S. Supreme Court's description of the events surrounding the beating of Rodney King.³¹



1.1. You Decide

On the evening of March 2, 1991, Rodney King and two of his friends sat in King's wife's car in Altadena, California, a city in Los Angeles County, and drank malt liquor for a number of hours. Then, with King driving, they left Altadena via a major freeway. King was intoxicated. California Highway Patrol [CHP] officers observed King's car traveling at a speed they estimated to be in excess of 100 m.p.h. The officers followed King with red lights and sirens activated and ordered him by loudspeaker to pull over, but he continued to drive. The Highway Patrol officers called on the radio for help. Units of the Los Angeles Police Department joined in the pursuit, one of them manned by petitioner Laurence Powell and his trainee, Timothy Wind [the officers are all Caucasians; King is African American. King later explained that he fled because he feared that he would be returned to prison, after having been released four months earlier following a year spent behind bars for robbery].

King left the freeway, and after a chase of about eight miles, stopped at an entrance to a recreation area. The officers ordered King and his two passengers to exit the car and to assume a felony prone position—that is, to lie on their stomachs with legs spread and arms behind their backs. King's two friends complied. King, too, got out of the car but did not lie down. Petitioner Stacey Koon arrived, at once followed by Ted Briseno and Roland Solano. All were officers of the Los Angeles Police Department, and as sergeant, Koon took charge. The officers again ordered King to assume the felony prone position. King got on his hands and knees but did not lie down. Officers Powell, Wind, Briseno, and Solano tried to force King down, but King resisted and became combative, so the officers retreated. Koon then fired taser darts (designed to stun a combative suspect) into King.

The events that occurred next were captured on videotape by a bystander. As the videotape begins, it shows that King rose from the ground and charged toward Officer Powell. Powell took a

step and used his baton to strike King on the side of his head. King fell to the ground. From the 18th to the 30th second on the videotape, King attempted to rise, but Powell and Wind each struck him with their batons to prevent him from doing so. From the 35th to the 51st second, Powell administered repeated blows to King's lower extremities; one of the blows fractured King's leg. At the 55th second, Powell struck King on the chest, and King rolled over and lay prone. At that point, the officers stepped back and observed King for about 10 seconds. Powell began to reach for his handcuffs. (At the sentencing phase, the District Court found that Powell no longer perceived King to be a threat at this point.) At one-minute-five-seconds (1:05) on the videotape, Briseno, in the District Court's words, "stomped" on King's upper back or neck. King's body writhed in response. At 1:07, Powell and Wind again began to strike King with a series of baton blows, and Wind kicked him in the upper thoracic or cervical area six times until 1:26. At about 1:29, King put his hands behind his back and was handcuffed. Where the baton blows fell and the intentions of King and the officers at various points were contested at trial, but, as noted, petitioners' guilt has been established.

Powell radioed for an ambulance. He sent two messages over a communications network to the other officers that said "'oops'" and "'I haven't [sic] beaten anyone this bad in a long time.'" Koon sent a message to the police station that said: "'Unit just had a big time use of force. . . . Tased and beat the suspect of CHP pursuit big time.'" King was taken to a hospital where he was treated for a fractured leg, multiple facial fractures, and numerous bruises and contusions. Learning that King worked at Dodger Stadium, Powell said to King: "'We played a little ball tonight, didn't we Rodney? . . . You know, we played a little ball, we played a little hardball tonight, we hit quite a few home runs. . . . Yes, we played a little ball and you lost and we won.'"

Koon, Powell, Briseno, and Wind were tried in California state court on charges of assault with a deadly weapon and excessive use of force by a police officer. The officers were acquitted of all charges, with the exception of one assault charge against Powell that resulted in a hung jury [the jury was comprised of ten Caucasians, one Hispanic, and one Asian American]. The verdicts touched off widespread rioting in Los Angeles. More than 40 people were killed in the riots, more than 2,000 were injured, and nearly \$1 billion in property was destroyed. [Los Angeles Mayor Tom Bradley declared that there "appears to be a dangerous trend of racially motivated incidents running through at least some segments of the police department," and President George H.W. Bush announced in May that the verdict had left him with a deep sense of personal frustration and anger and that he was ordering the Justice Department to initiate a prosecution against the officers.]

On August 4, 1992, a federal grand jury indicted the four officers . . . charging them with violating King's constitutional rights under color of law. Powell, Briseno, and Wind were charged with willful use of unreasonable force in arresting King. Koon was charged with willfully permitting the other officers to use unreasonable force during the arrest. After a trial in United States District Court for the Central District of California, the jury convicted Koon and Powell but acquitted Wind and Briseno. Koon and Powell were sentenced to thirty months in prison. This jury was comprised of nine Caucasians, two African Americans, and one Hispanic. King later won a \$3.8 million dollar verdict from the City of Los Angeles. He used some of the money to establish a rap record business.

The issue to consider is whether Officers King and Powell may be prosecuted and acquitted in California state court and then prosecuted in federal court. This seems to violate the prohibition on **double jeopardy** in the Fifth Amendment to the U.S. Constitution, which states that individuals shall not be "twice put in jeopardy of life or limb." Double jeopardy means that an individual should not be prosecuted more than once for the same offense. Without this protection, the government could subject people to a series of trials in an effort to obtain a conviction.

It may surprise you to learn that judges have held that the dual sovereignty doctrine permits the U.S. government to prosecute an individual under federal law who has been acquitted on the state level. The theory is that the state and federal governments are completely different entities and that state government is primarily concerned with punishing police officers and with protecting residents against physical attack, and the federal government is concerned with safeguarding the civil liberties of all Americans. Each of these entities provides a check on the other to insure fairness for citizens.



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On the other hand, the evidence introduced in the two prosecutions to establish the police officers' guilt in the *King* case was virtually identical, and the federal prosecution likely was brought in response to political pressure. On the other hand, the federal government historically has acted to prevent unfair verdicts, such as the acquittal of members of the Ku Klux Klan charged with killing civil rights workers during the 1960s. Do you believe that it was fair to subject the Los Angeles police officers to the expense and emotional stress of two trials? As the Attorney General to the United States, would you have advised President George H.W. Bush to bring federal charges against the officers following their acquittal by a California jury?

You can find the answer at <http://www.sagepub.com/lippmanstudy>



International Perspective

The International Criminal Court located in the Hague (Netherlands) began operation in 2002. Over one hundred countries have recognized this new court and forty-one others have indicated intent to join the tribunal. The court is comprised of a pre-trial chamber, a trial court, and an appellate court. Eighteen judges have been elected by member countries to the court, seven women and eleven men. These jurists are drawn from countries from throughout the world, including Brazil, Canada, Finland, France, Germany, Ghana, South Korea, Latvia, and the United Kingdom. Member states also elected a chief prosecutor from Argentina.

The court represents the culmination of efforts that began in earnest following the Nuremberg trial of twenty-two Nazi civilian and military officials following World War II. The Nuremberg trial convinced various international diplomats that a permanent court was required to punish the criminal acts of governments. In the 1990s, the United Nations established special courts to prosecute atrocities carried out in Rwanda and former Yugoslavia. The success of these efforts led to the formation of the new International Criminal Court.

The statute that sets forth the powers of the International Criminal Court provides jurisdiction over:

- **Genocide.** Extermination of members of a group
- **Crimes Against Humanity.** Acts committed as part of a widespread or systematic attack against civilians
- **War Crimes.** Grave breaches of the law of war committed as part of a large-scale commission of such offenses

The court may investigate and prosecute a case when one of these offenses is committed by a citizen of a nation that is a member of the court, or one of these offenses is committed on the territory of a nation that is a member of the court. The elected prosecutor of the court may initiate investigations or accept referrals from a member country or from the United Nations. He or she may only proceed in the event that the Pre-Trial Chamber finds a reasonable basis to believe that the allegations are true. The court operates on the basis of "complementarity." This means that the International Criminal Court will act only where a country's prosecutorial authorities refuse to pursue the case. In other words, the International Criminal Court is envisioned as a "court of last resort" that only acts where countries have refused to enforce the rule of law.

The new criminal court already has issued three indictments, the most important of which is against five of the leaders of a rebel group called The Lord's Resistance Army (LRA) in Northern Uganda. The group is led by Joseph Korny, and it has waged a nineteen-year war against the Ugandan government. Korny believes that he is an Old Testament prophet and invokes the Bible as justification for unspeakable atrocities. The LRA's primary strategy is to kidnap, torture, and rape children and transform them into killers and slaves. Children who resist have suffered the cutting off of lips, noses, and breasts and the driving of padlocks through the upper and lower lips. The International Criminal Court does not have an enforcement arm and must depend on member states to apprehend Korny and bring him before the court.

In 2000, President Clinton signed the Rome Treaty that established the International Criminal Court and indicated that the United States would join the tribunal in the event that various reforms were instituted. President George W. Bush, however,

revoked President Clinton's signature and has consistently opposed membership.

President Bush argues that the United States should not recognize an international court that claims the authority to prosecute American citizens, particularly given that the U.S. government would exercise virtually no authority over the court. Consider that allegations have been made that American servicemen have abused and tortured detainees. The new court might conclude that the United States has failed to fully pursue these allegations and, in response to a complaint from a European country whose nationals have purportedly been abused, demand that various American civilian and military officials be turned over for trial.

In 2002, the U.S. Congress passed the American Service Members Protection Act that authorizes the termination of foreign assistance to countries that

have joined the court and also recognizes the authority of the president to employ force to free any American military personnel held by the court. The United States has threatened to terminate financial assistance to any country that refuses to pledge not to refer cases involving Americans to the court. The United States has also insisted that the United Nations remove American peacekeepers sent abroad from the jurisdiction of the International Criminal Court.

The United States is clearly committed to the protection of international human rights, and governmental authorities believe that this can be accomplished through the creation of special courts to address the conflicts in specific countries. Critics contend that the failure of the United States to join the court diminishes the stature of the United States and weakens the court. Should the United States join the International Criminal Court?

Chapter Summary

Criminal law is the foundation of the criminal justice system. The law defines the acts that may lead to arrest, trial, and incarceration. We typically think about crime as involving violent conduct, but in fact a broad variety of acts are defined as crimes.

Criminal law is best defined as conduct that, if shown to have taken place, will result in the "formal and solemn pronouncement of the moral condemnation of the community." Civil law is distinguished from criminal law by the fact that it primarily protects the interests of the individual rather than the interests of society.

The purpose of criminal law is to prohibit conduct that causes harm or threatens harm to the individual and to the public interests, to warn people of the acts that are subject to criminal punishment, to define criminal acts and intent, to distinguish between serious and minor offenses, to punish offenders, and to insure that the interests of victims and the public are represented at trial and in the punishment of offenders.

In analyzing individual crimes, we will be concerned with several basic concerns that comprise the general part of the criminal law. A crime is composed of a concurrence between a criminal act (*actus reus*) and criminal intent (*mens rea*) and the causation of a social harm. Individuals must be provided with notice of the acts that are criminally condemned in order to have the opportunity to obey or to violate the law. Individuals must also be given the opportunity at trial to present defenses (justifications and excuses) to a criminal charge.

The criminal law distinguishes between felonies and misdemeanors. A crime punishable by death or by imprisonment for more than one year is a felony. Other offenses are misdemeanors. Offenses are further divided into capital and other grades of felonies and into gross and petty misdemeanors. A third level of offenses are violations or infractions, acts that are punishable by fines.

Another approach is to classify crime in terms of "moral turpitude." *Mala in se* crimes are considered "inherently evil," and *mala prohibita* crimes are not inherently evil and are only considered wrong because prohibited by statute.

Our textbook categorizes crimes in accordance with the subject matter of the offense, the scheme that is followed in most state criminal codes. This includes crimes against the state, crimes against the person, crimes against habitation, crimes against property, crimes against public order, and crimes against the administration of justice.

There are a number of sources of American criminal law. These include the common law, state and federal criminal codes, the U.S. and state constitutions, international treaties, and

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judicial decisions. The English common law was transported to the United States and formed the foundation for the American criminal statutes adopted in the nineteenth and twentieth centuries. Some states continue to apply the common law in those instances that the state legislature has not adopted a criminal statute. In code jurisdiction states, however, crimes only are punishable if incorporated into law.

States possess broad police powers to legislate for the public health, safety, and welfare of the residents of the state. The drafting of state criminal statutes has been heavily influenced by the American Law Institute's Model Penal Code, which has helped ensure a significant uniformity in the content of criminal codes.

The United States has a system of dual sovereignty in which the state governments have provided the federal government with the authority to legislate various areas of criminal law. The Supremacy Clause provides that federal law takes precedence over state law in the areas that the U.S. Constitution explicitly reserves to the national government. There is a trend toward strictly limiting the criminal law power of the federal government. The Supreme Court, for example, has ruled that the federal government has unconstitutionally employed the interstate commerce clause to extend the reach of federal criminal legislation to the possession of a firearm adjacent to schools.

The authority of the state and federal governments to adopt criminal statutes is limited by the provisions of federal and state constitutions. For instance, laws must be drafted in a clear and nondiscriminatory fashion and must not impose retroactive or cruel or unusual punishment. The federal and state governments only possess the authority to enact criminal legislation within their separate spheres of constitutional power.

Chapter Review Questions

1. Define a crime.
2. Distinguish between criminal and civil law. Distinguish between a criminal act and a tort.
3. What is the purpose of criminal law?
4. Is there a difference between criminal law and criminal procedure? Distinguish between the specific and general part of the criminal law.
5. List the basic principles that comprise the general part of criminal law.
6. Distinguish between felonies, misdemeanors, capital felonies, gross and petty misdemeanors, and violations.
7. What is the difference between *mala in se* and *mala prohibita* crimes?
8. Discuss the development of the common law. What do we mean by common law states and code jurisdiction states?
9. Discuss the nature and importance of the state police power.
10. Why is the Model Penal Code significant?
11. What is the legal basis for federal criminal law? Define the preemption doctrine and dual sovereignty. What is the significance of the interstate commerce clause?
12. Discuss various theories of punishment.
13. What are the primary sources of criminal law? How does the U.S. Constitution limit the criminal law?
14. Why is understanding the criminal law important in the study of the criminal justice system?

Legal Terminology

capital felony
civil law
code jurisdiction
common law crimes
common law states
crime
criminal procedure
double jeopardy
dual sovereignty

federal criminal code
felony
gross misdemeanor
infamous crimes
infractions
interstate commerce clause
mala in se
mala prohibita
misdemeanor

Model Penal Code
petty misdemeanor
police power
preemption doctrine
reception statutes
substantive criminal law
Supremacy Clause
tort
violation

Criminal Law on the Web

Log on to the Web-based student study site at <http://www.sagepub.com/lippmanstudy> to assist you in completing the Criminal Law on the Web exercises, as well as for additional cases and resources.

1. A number of sites contain collections of state and federal laws and links to state criminal cases. As a first step, go to findlaw.com, click on criminal law and read about the steps in a criminal case. This is also a good site to find the definition of various crimes. Then explore the site maintained by the

Cornell University Law School and find the criminal law statutes of the state in which you live. You also might want to go to lawsources.com.

2. Learn more about the Rodney King case on the Court Television site. Would you have convicted the police officers?
3. You may also want to ask yourself whether it is possible for an innocent individual to be convicted. The Innocence Project works to exonerate the wrongfully convicted. Why are individuals wrongfully convicted?

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Appendix

Reading and Briefing Cases

Introduction

A unique aspect of studying criminal law is that you have the opportunity to read actual court decisions. Reading cases will likely be a new experience and although you may encounter some initial frustrations, in my experience students fairly quickly master the techniques of legal analysis.

The case method was introduced in 1870 by Harvard law professor Christopher Columbus Langdell and is the primary method of instruction in nearly all American law schools. This approach is based on the insight that students learn the law most effectively when they study actual cases. Langdell encouraged instructors to employ a question and answer classroom technique termed the **Socratic method**. The most challenging aspect of this approach involves posing *hypothetical* or fictitious examples that require students to apply the case material to new factual situations.

The study of cases assists you to:

- understand the principles of criminal law,
- improve your skills in critical reading and thinking,
- acquaint yourself with legal vocabulary and procedures,
- appreciate how judges make decisions,
- learn to apply the law to the facts.

The cases in this textbook have been edited to highlight the most important points. Some nonessential material has been omitted to assist you in reading and understanding the material. You may want to read the entire, unedited case in the library or online.

The cases you read are the products of an *adversary system* in which the prosecutors and defense attorneys present evidence and examine witnesses at trial. The evaluation of the facts is the responsibility of the jury or, in the absence of a jury, the judge. A case heard by a judge without a jury is termed a **bench trial**. The adversary system is premised on the belief that truth will emerge from the clash between two dedicated attorneys “zealously presenting their cause.”

The lowest courts in the judicial hierarchy are *trial courts*. The proceedings are recorded in **trial transcripts** that recite the selection of jurors, testimony of witnesses, arguments of lawyers, and rulings by the judge. Individuals convicted before a trial court may appeal the guilty verdict to **appellate** (or appeal) **courts**. The cases you read in this book in most instances are the decisions issued by appellate court judges reviewing a guilty verdict entered against a defendant at trial. These reviews are based on transcripts and briefs. **Briefs** are lengthy written arguments submitted to the court by the prosecution and defense. The two sides may also have the opportunity to engage in an **oral argument** before the appellate court. In issuing a decision, the appellate court will accept as established those facts that are most favorable to the party that prevailed at the trial court level.

Defendants appealing a verdict by a trial court ordinarily file an appeal with the intermediate court of appeals, which in many states provides the defendant with a new trial or **trial de novo**. The losing party may then file an additional appeal to the state supreme court. The party

who is appealing is termed the **appellant**, and the second name is typically the party against whom the appeal is filed or the **appellee**. You also will notice the insertion of “v” between the names of the parties, which is an abbreviation for the Latin *versus*.

Individuals who have been convicted and have exhausted their state appeals may file a constitutional challenge or **collateral attack** against their conviction in federal court. The first name in the title is the name of the prisoner bringing the case, or the **petitioner**, and the second name, or **respondent**, is typically the warden or individual in charge of the prison in which the petitioner is incarcerated.

In a collateral attack, an inmate bringing the action files a petition for **habeas corpus** review requesting a federal court to issue an order requiring the state to demonstrate that the petitioner is lawfully incarcerated. The ability of a petitioner to compel the state to demonstrate that he or she has been lawfully detained is one of the most important safeguards for individual liberty and is guaranteed in Article I, Section 9, Clause 2 of the U.S. Constitution.

Federal courts may also preside over criminal cases charging a defendant with a violation of a federal statute. There are three levels of federal courts. First, there are ninety-four district courts, which are the trial courts. Appeals may be taken to the thirteen courts of appeals and ultimately to the U.S. Supreme Court. The U.S. Supreme Court generally has the choice whether to review a case. Four of the nine judges must vote to grant a **writ of certiorari** or an order to review the decision of a lower court.

The Structure of Cases

A case is divided into an *introduction* and *judicial opinion*. These two sections have several component parts that you should keep in mind.

Introduction

The initial portion of a case is divided into title, citation, and identification of the judge.

Title

Cases are identified by the names of the parties involved in the litigation. At the trial level, this typically involves the prosecuting authority (either a city, county, state, or the federal government) and the name of the defendant. On direct appeals, the first name refers to the appellant who is bringing the appeal and the second to the appellee who is defending against the appeal. On collateral attack, remember that the parties are termed petitioners and respondents. You will notice that judicial decisions often utilize a shorthand version of a case and only refer to one of the parties, much like calling someone by their first or last name.

Citation

Immediately following the names you will find the citation that directs you to the book or **legal reporter** where you can find the case in a law library. Cases are also becoming increasingly available online. The standard form for citations of cases, statutes, and law journals is contained in *The Bluebook* published by the Harvard Law Review Association.

Judge

The name of the judge who wrote the opinion typically appears at the beginning of the case. An opinion written by a respected judge may prove particularly influential with other courts. The respect accorded to a judge may also be diminished by the fact that his or her decisions are frequently reversed by appellate courts.

Outline

The full, unedited cases in legal reporters typically begin with a list of numbered paragraphs or **head notes** that outline the main legal points in the case. There is also a summary of the case and of the decisions of other courts that have heard the case. These outlines have been omitted from the edited cases reprinted in this book.

Judicial Opinion

The judge's legal discussion is referred to as the opinion, judgment, or decision. The opinion is usually divided into history, facts, and law. These component parts are not always neatly distinguished and you may have to organize the material in your mind as you read the case.

History

The initial portion of a case typically provides a summary of the decisions of the lower courts that previously considered the case and the statutes involved.

Facts

Each case is based on a set of facts that present a question to be answered by the judge. This question, for instance, may involve whether a defendant acted in self-defense or whether an individual cleaning his or her rifle intentionally or accidentally killed a friend. This question is termed the *issue*. The challenge is to separate the relevant from the irrelevant facts. A **relevant** fact is a fact that assists in establishing the existence or nonexistence of a *material fact* or element of the crime that the government is required to prove beyond a reasonable doubt at trial. For instance, in the gun example, whether the defendant possessed a motive to kill the victim would be relevant in establishing the material element of whether the defendant possessed a specific intent to kill.

Law

The judge then applies the legal rule to the facts and reaches a **holding** or decision. The **reasoning** is the explanation offered by the judge for the holding. Judges also often include comments and observations (in Latin *obiter dicta*, or comments from the bench) on a wide range of legal and factual concerns that provide important background but may not be central to the holding. These comments may range from legal history to a discussion of a judge's philosophy of punishment.

Judges typically rely on **precedents** or the holdings of other courts. Precedent or "*stare decisis et no quieta movere*" literally translates as "to stand by precedent and to stand by settled points." The court may follow a precedent or point out that the case at hand should be **distinguished** from the precedent and calls for a different rule.

Appellate courts are typically comprised of a **multiple judge panel** consisting of three or more judges, depending on the level of the court. The judges typically meet and vote on a case and issue a **majority opinion**, which is recognized as the holding in the case. Judges in the majority may choose to write a **concurring opinion** supporting the majority, which is typically based on slightly different grounds. On occasion, a majority of judges agree on the outcome of a case, but are unable to reach a consensus on the reasoning. In these instances there is typically a **plurality opinion** as well as one or more **concurring opinions**. In cases in which a court issues a plurality opinion, the decisions of the various judges in the majority must be closely examined to determine the precise holding of the case.

A judge in the minority has the discretion to write a **dissenting opinion**. Other judges in the minority may also issue separate opinions or join the dissenting opinion of another judge. In those instances in which a court is closely divided, the dissenting opinion with the passage of time may come to reflect the view of a majority of the members of the court. The dissent may also influence the majority opinion. The judges in the majority may feel compelled to answer the claims of the dissent or to compromise in order to attract judges who may be sympathetic to the dissent.

You should keep in mind that cases carry different degrees of authority. The decisions of the Ohio Supreme Court possess **binding authority** on lower courts within Ohio. The decision of a lower-level Ohio court that fails to follow precedent will likely be appealed by the losing party and reversed by the appellate court. The decisions of the Ohio Supreme Court, however, are not binding on lower courts outside of Ohio, but may be considered by these other tribunals to possess **persuasive authority**. Of course, precedents are not "written in stone" and courts will typically adjust the law to meet new challenges.

In reading the edited cases reprinted in this textbook you will notice that the cases are divided into various sections. The "facts" of the case and the "issue" to be decided by the court are typically followed by the court's "reasoning" or justification and "holding" or decision. A number of questions appear at the end of the case to help you understand the opinion.

 **Briefing a Case**

Your instructor may ask you to **brief** or summarize the main points of the cases reprinted in this textbook. A student brief is a concise, shorthand written description of the case and is intended to assist you in *understanding* and *organizing* the material and *in preparing for class and examinations*. A brief generally includes several standard features. These, of course, are only broad guidelines, and there are differing opinions on the proper form of a brief. Bear in mind that a particular case that you are reading may not be easily reduced to a standard format.

1. **The Name of the Case and the Year the Case Was Decided.** The name of the case will help you in organizing your class notes. Including the year of decision places the case in historical context and alerts you to the possibility that an older decision may have been revised in light of modern circumstances.
2. **The State or Federal Court Deciding the Case and the Judge Writing the Decision.** This will assist you in determining the place of the court in the judicial hierarchy and whether the decision constitutes a precedent to be followed by lower-level courts.
3. **Facts.** Write down the relevant facts. You should think of this as a story that has a factual beginning and conclusion. The best approach is to put the facts into your own words. *Pay particular attention to:*
 - A. the background facts leading to the defendant's criminal conduct,
 - B. the defendant's criminal act, intent, and motives,
 - C. distinguish the relevant from the irrelevant facts.
4. **Criminal Charge.** The crime with which the defendant is charged and text of the criminal statute.
5. **Determine the Issue That the Court Is Addressing in the Case.** This is customarily in the form of a question in the brief and typically is introduced by the word "whether." For instance, the issue might be "whether Section 187 of the California criminal code punishing the unlawful killing of a human being includes the death of a fetus."
6. **Holding.** Write down the legal principle formulated by the court to answer the question posed by the issue. This only requires a statement that the "California Supreme Court ruled that section 187 does not include a fetus."
7. **Reasoning.** State the reasons that the court provides for the holding. Note the key precedents the court cites and relies on in reaching its decision. Ask yourself whether the court's reasoning is logical and persuasive.
8. **Disposition.** An appellate court may *affirm* and uphold the decision of a lower court or *reverse* the lower court judgment. In addition, a lower court's decision may be *reversed in part and affirmed in part*. Lastly the appellate court may *reverse* the lower court and *remand* or return the case for additional judicial action. Take the time to understand the precise impact of the court decision.
9. **Concurring and Dissenting Opinions.** Note the arguments offered by judges in concurring and dissenting opinions.
10. **Public Policy and Psychology.** Consider the impact of the decision on society and the criminal justice system. In considering a court decision, do not overlook the psychological, social, and political factors that may have affected the judge's decision.
11. **Personal Opinion.** Sketch your own judicial opinion and note whether you agree with the holding of the case and the reasoning of the court.

 **Approaching the Case**

You will most likely develop a personal approach to reading and briefing cases. You might want to keep the following points in mind.

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- **Skim the case** to develop a sense of the issue, facts, and holding of the case.
- **Read the case slowly a second time.** You may find it helpful in the beginning to read the case out loud and write notes in the margin.
- **Write down the relevant facts in your own words.**
- **Identify the relevant facts, issues, reasoning, and holding.** *You should not merely mechanically copy the language of the case.* Most instructors suggest that you express the material in your own words in order to improve your understanding. You should pay careful attention to the legal language. For instance, there is a significant difference between a statute that provides that an individual who “reasonably believes” that he or she is being attacked is entitled to self-defense and a statute that provides that individual who “personally believes” that she is being attacked is entitled to self-defense. The first is an objective test measured by a “reasonable person” and the second is a “subjective test” measured by the victim’s personal perception. Can you explain the difference? You should incorporate legal terminology into your brief. The law, like tennis or music, possesses a distinctive vocabulary that is used to express and communicate ideas.
- **Consult the glossary or a law dictionary for the definition of unfamiliar legal terms and write down questions that you may have concerning the case.**
- **The brief should be precise and limited to essential points.** *You should bring the brief to class and compare your analysis to the instructor’s.* Modify the brief to reflect the class discussion and provide space for insights developed in class.
- **Each case is commonly thought of as “standing for a legal proposition.”** Some instructors suggest that you write the legal rule contained in the case as a “banner” across the first page of the brief.
- **Consider why the case is included in the textbook and how the case fits into the general topic covered in the chapter.** *Remain an active and critical learner and think about the material you are reading.* You should also consider how the case relates to what you learned earlier in the course. Bring a critical perspective to reading the case and resist mechanically accepting the court’s judgment. Keep in mind that there are at least two parties involved in a case, each of whom may have a persuasive argument. Most importantly, briefing is a learning tool and should not be so time consuming that you fail to spend time understanding and reflecting on the material.
- **Consider how the case may relate to other areas you have studied.** A case on murder may also raise interesting issues concerning criminal intent, causality, and conspiracy. Thinking broadly about a case will help you integrate and understand criminal law.
- **Outline the material.** Some instructors may suggest that you develop an outline of the material covered in class. This can be used to assist you in preparing for examinations.

 **Locating Cases**

The names of the cases are followed by a set of numbers and alphabetical abbreviations. These abbreviations refer to various **legal reporters** in which the cases are published. This is useful in the event that you want to read an unedited version in the library. An increasing number of the cases are also available online. The rules of citation are fairly technical and are only of immediate concern to practicing attorneys. The following discussion presents the standard approach used by lawyers. Those of you interested in additional detail should consult *The Bluebook: A Uniform System of Citation*, 18th ed. (Cambridge, MA: Harvard Law Review Association, 2005).

The first number you encounter is the volume in which the case appears. This is followed by the abbreviation of the reporter and by the page number and year of the decision. State cases are available in “regional reporters” that contain appellate decisions of courts in various geographic areas of the United States. These volumes are cited in accordance with standard abbreviations: Atlantic (A.), Northeast (N.E.), Pacific (P.), Southeast (S.E.), South (S.), and Southwest (S.W.). The large number of cases decided has necessitated the organization of these reporters into various “series” (P.2d and P.3d).

Individual states also have their own reporter systems containing the decisions of intermediate appellate courts and state supreme courts. Decisions of the Nebraska Supreme Court appear in the Northwest Reporter (N.W. or N.W.2d) as well as in the Nebraska Reports (Neb.). The decisions of the Nebraska Court of Appeals are reprinted in Nebraska Court of Appeals (Neb. Ct. App.). These decisions are usually cited to the Northwest Reporter, for example, *Nebraska v. Metzger*, 319 N.W.2d 459 (Neb. 1982). New York and California cases appear in state and regional reporters as well as in their own national reporter.

The federal court reporters reprint the published opinions of federal trials as well as appellate courts. District court (trial) opinions appear in the Federal Supplement Reporter (F. Supp) and appellate court opinions are reprinted in the Federal Reporter (F.), both of which are printed in several series (F.Supp.2d; F.2d and F.3d). These citations also provide the name of the federal court that decided the case. The Second Court of Appeals in New York, for instance, is cited as *United States v. MacDonald*, 531 F.2d 196 (2nd Cir. 1976). The standard citation for U.S. Supreme Court decisions is the United States Report (U.S.), for example, *Papachristou v. Jacksonville*, 405 U.S. 156 (1971). This is the official version issued by the Supreme Court and the decisions are also available in two privately published reporters, the Supreme Court Reporter (S.Ct.) and Lawyers edition (L.Ed.).

There is a growing trend for cases to appear online on commercial electronic databases. States are also beginning to adopt “public domain citation formats” for newly decided cases that appear on state court Web pages. These are cited in accordance with the rules established by the state judiciary. The standard format includes the case name, the year of decision, the state’s two digit postal code, the abbreviation of the court in the event that this is not a state supreme court decision, the number assigned to the case, and the paragraph number. A parallel citation to the relevant regional reporter is also provided. *The Bluebook* provides examples of this format. The following example is for a state supreme court case: *Gregory v. Class*, 1998 SD 106, ¶ 3, 54 N.W.2d 873, 875.

Legal Terminology

appellant
 appellate courts
 appellee
 bench trial
 binding authority
 briefs
 collateral attack
 concurring opinion
 dissenting opinion
 distinguishing precedents

habeas corpus
 head notes
 holding
 legal reporters
 majority opinion
 multiple judge panel
obiter dicta
 oral argument
 persuasive authority
 petitioner

plurality opinion
 precedent
 reasoning
 relevant
 respondent
 Socratic method
stare decisis
 trial de novo
 trial transcript
 writ of certiorari