



Criminal Law

T W E L F T H E D I T I O N

Thomas J. Gardner

Terry M. Anderson

Criminal Law

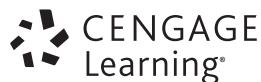
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*Dedicated to Eileen Gardner
January 25, 1925–September 26, 2005*



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Goals

The first edition of this text was published more than 30 years ago. Its goal was to introduce law enforcement personnel and others in the criminal justice field to the main principles of American criminal law. In the subsequent editions, including this, the twelfth edition, we have tried to adhere to that goal and at the same time broaden the scope of the text while also keeping it current. As in past editions, we have included recent court opinions and legislative acts that illustrate the current status of those principles of American criminal law. We have also tried to include information we believe to be helpful to the study of criminal law, taken from governmental reports, empirical studies, and news accounts of current criminal cases and developments. We hope these additions and changes in the twelfth edition serve to advance our goal for this text.

We make extensive use of court opinions, especially U.S. Supreme Court opinions, and case citations in the text. We use these opinions and case citations primarily to illustrate how the majority of courts interpreted and applied criminal statutes within their jurisdiction. We also identify and cite decisions on key points of criminal law so that teachers and students will have a sound basis for doing more extensive research into such points. It has always been our plan to create a text that would prove useful as both a classroom learning tool and a reference book for post-classroom use. We are gratified that users of our text have found that it met that plan in previous editions, and we hope they will conclude the same about this edition.

Features

In this edition we continue to use more detailed case excerpts called Case Close-Ups to examine courts' analyses of difficult or emerging criminal law issues, sometimes including our observations about the possible effect of a court's decision on a particular issue. These case excerpts generally include a more detailed factual statement, and a more complete discussion of the court's reasoning, than in the other case excerpts found in the text. Also, in some chapters we examine an important U.S. Supreme Court case or cases, and then discuss lower court cases that apply the rules announced by the Supreme Court. As an example, in Chapter 8 we include an extensive analysis of the two recent U.S. Supreme Court cases involving juvenile life sentences, *Graham v. Florida*, and *Miller v. Alabama*, together with important lower court decisions decided subsequently.

Where possible, we chose U.S. Supreme Court cases for the Case Close-Up features. In subject areas where the Supreme Court does not ordinarily issue opinions, we chose opinions of the federal circuit courts or the highest state courts. Cases were usually selected because their topics were of current interest, but not

necessarily because the opinion represented the majority view on the topic. We hope these closer looks at important cases will add substance to our coverage of the issues framed in those cases.

We continue to make references to specific state and federal criminal statutes, as well as illustrations from the Model Penal Code, which we have expanded in this edition. For example, in Chapter 6, we include excerpts from the Florida “Stand Your Ground” statute, which has been a model for similar legislation in twenty-nine other states.

In this edition we have retained the chapter-opening vignettes, with new vignettes for most chapters. We also retained the chapter-ending “Case Analysis and Writing Exercises” feature. Most of the cases highlighted in the exercises are new to this edition, though we did retain a small number from the previous edition. In this edition we also continue to use charts, boxes, and lists as supplements to text and case summaries. We intend the textual materials and case summaries to serve as the main exposition of criminal law principles, with the boxes and other tools helping to illustrate specific applications or examples of those principles.

New to This Edition

In addition to the features just discussed, we have made other changes and additions to this edition. While we have always striven to incorporate new cases and statutes into each new edition, in the twelfth edition we did this on a very broad scale. We not only added many cases decided since the eleventh edition was published; we also replaced a substantial number of older cases that illustrated legal principles with more recent cases that accomplish the same result, but in a more current setting. There are hundreds of cases cited or discussed in our book; in this edition over **250** court decisions will have come from cases decided in the years 2010–2013. With this effort we believe we have made the twelfth edition as up to date and complete as possible, while at the same time maintaining the clarity and ease of understanding that we hope are the hallmarks of our Criminal Law textbook.

Finally, we have added the most recent reports available in the many places in the book where we include statistical information. There is commonly a lag between when statistics are gathered and reports are published, and we tried our best to minimize that lag time.

We have always been appreciative of the efforts of those who review our book before we begin work on a new edition. In this edition, as in the past, we have made it a point to incorporate specific suggestions made by our reviewers and others who have taken the time to communicate with us. We thank them and invite all our readers to share their thoughts on the book with us at Terry Anderson’s e-mail address, which is listed in the brief biography that appears in the front pages of this edition.

New Content

In addition to the changes discussed above, in the twelfth edition we have made many substantive additions as well. They include the following:

- **Chapter 1, Criminal Law: Purposes, Scope, and Sources:** We made one organizational change: we moved the box on “omission crimes” to Chapter 3. The box on SORNA cases was updated, since courts continue to struggle with

the scope of that legislation and its relation to the Ex Post Facto Clause. In that regard, we included a brief discussion of the 2013 U.S. Supreme Court decision in *Peugh v. United States* on when changes in minimum sentences trigger the Ex Post Facto Clause. In the Case Analysis section we included the California Proposition 8 case, *Hollingsworth v. Perry*. Though not a criminal law case, it does have an interesting discussion of equal protection in the lower court decision, and introduces the concept of standing and how the Supreme Court applies that doctrine.

- **Chapter 2, Jurisdiction:** We updated facts and cases in the various jurisdictions, including jurisdiction of the sea and Indian tribal jurisdiction, focusing on the Tribal Law and Order Act of 2010. We condensed the section on military jurisdiction and martial law.
- **Chapter 3, Essential Elements of a Crime:** We added materials, a new box and new cases, on general intent, specific intent, and scienter as elements of crimes. We also expanded our discussion of the various causation issues that may arise in criminal prosecutions. We added two new boxes on causation: one that distinguishes “but for” from “proximate” cause, and one that looks at multiple causes in homicides. We also added new cases on the effect of a substantial time gap between injury and death in homicide crimes.
- **Chapter 4, Criminal Liability:** We added new cases on solicitation to illustrate both attempts to persuade another to commit a crime, and attempts aimed at victims of crimes. The distinction between “bilateral” and “unilateral” approaches to conspiracy convictions has been expanded and, we hope, clarified. We used current cases to illustrate the difference between those approaches. We added several recent cases, including a U.S. Supreme Court decision, on abandonment of and withdrawal from a conspiracy. The attempt section was rewritten with subheadings to direct attention to the classic elements of crimes, *actus reus* and *mens rea*, as they apply to attempt crimes. We updated the accomplice liability and *Pinkerton* rule sections with new cases, as well as a new box distinguishing accomplice liability from liability under rules like the *Pinkerton* rule.
- **Chapter 5, Criminal Responsibility and the Capacity to Commit a Crime:** In the capacity materials, we expanded the box on juvenile courts to include several recent cases and statutes that highlight changes making transfer from juvenile to adult courts more common. We added a new box on corporate liability for environmental crimes to illustrate both how corporations are treated as criminal defendants and how environmental laws are applied to corporate activities. We updated the diminished capacity, competency, and involuntary medication to restore competency sections with recent cases and statutes.
- **Chapter 6, The Law Governing the Use of Force:** In this chapter we added many new cases, examples, and boxed material to illustrate the use of force in self-defense. This includes updating cases under the “stand your ground” laws, with a new box on the meaning of “unlawful” activity under those laws, as well as a new box tracing the evolution of use-of-force rules. In the use of force by police materials we added a new (and relatively rare) case on the right to resist an unlawful arrest. We also discuss the 2013 U.S. Supreme Court case of *Missouri v. McNealey*, in which the Court discussed the requirements for police to use force to obtain a blood sample from a DUI suspect.

- **Chapter 7, Other Criminal Defenses:** We added a 2011 case on legislative immunity under the Speech and Debate Clause of the Constitution. We have not previously included a case under this clause. We rewrote the section on the mistake defense, using several recent cases to illustrate when a mistake defense is permitted and when it is not allowed. We also added a 2012 case illustrating the limited rules on when the defense of coercion can be used in murder trials. We added new recent case examples on use of the necessity defense. Finally, we expanded the Double Jeopardy materials, adding a box on the meaning of “acquittal” after the 2013 U.S. Supreme Court’s decision in *Michigan v. Evans*. We also discuss the Supreme Court’s 2012 decision in *Blueford v. Arkansas* on mistrials and the Double Jeopardy Clause and include a new box that summarizes the various outcomes in a criminal trial and their effect on retrials and the Double Jeopardy Clause. To make room to do all of this we deleted the material on *res judicata* and collateral estoppel that appeared in the eleventh edition.
- **Chapter 8, Criminal Punishment:** We added the 2013 U.S. Supreme Court case of *Alleyne v. United States* on the distinction between elements of an offense and sentencing facts for *Apprendi* purposes, a continuing problem in the courts. We added a box that discusses both of the U.S. Supreme Court’s decisions on life sentences for juvenile defendants, *Graham v. Florida* (2010) and *Miller v. Alabama* (2012). We updated prison statistics, and discussed the U.S. Supreme Court’s 2012 decision in *Brown v. Plata*, which likely has significant consequences for California prisons in 2013. We also included in a new box the 2012 U.S. Supreme Court case of *Southern Union Co. v. United States* on the constitutionality of fines against corporations for violation of environmental criminal laws.
- **Chapter 9, Free Speech, Public Order Crimes, and the Bill of Rights:** The title of this chapter was changed, thanks to a helpful suggestion from a reviewer, to substitute “Public Order” for “Street Crimes.” We think the change more accurately expresses the content of the chapter. We highlight the 2012 U.S. Supreme Court “Stolen Valor” case, *United States v. Alvarez*, by using the case both in the chapter-opening vignette and as a Case Close-Up. We made room for this by deleting the campaign finance box, and greatly shortening the box on obeying police orders. We extensively updated with recent cases the sections on abusive language toward police officers and threats using the U.S. mail, telephones, and the Internet. Finally, we deleted the long box on state gun control laws, and substituted a new section, “Regulating Guns After *Heller*,” with seven 2011–2013 cases that considered the constitutionality of state gun regulations after the *Heller* decision. The law on gun regulation is evolving.
- **Chapter 10, Homicide:** This chapter has been substantially changed. Many reviewers suggested we give more attention to the corpus delicti requirement, so we expanded our discussion in that section, including adding a 2013 Colorado case that illustrates how a court-created *corpus delicti* rule can also be abrogated by a court. We substituted two 2012 cases on “no body” *corpus delicti* problems for the older case in the eleventh edition, and a 2011 case on proving *corpus delicti* in “no proof of death” cases. We deleted the Case Close-Up of *United States v. Begay*, because in 2011 the Ninth Circuit Court *en banc* reversed the panel decision. We discuss the reasons for that reversal. We rewrote part of the transferred intent section, substituting a 2011 Maryland Supreme Court case

for the older Maryland case used in previous editions. We also added several 2012 state cases illustrating how states that use the “intent-to-do-serious-bodily-harm” and “depraved-heart” forms of murder construe their statutes. We extensively rewrote the felony murder section. We introduce the “continuous transaction” doctrine to illustrate how states using that doctrine apply the felony murder rule to deaths that occur after the felony has been committed, such as during an escape. We also added several recent cases that address the issue of the application of the felony murder rule to the death of a co-felon. We made room for all of this by deleting the felony murder box used in previous editions. Finally, we greatly expanded the imperfect self-defense/manslaughter section by using examples of the defense, and several recent cases applying the defense.

- **Chapter 11, Assault, Battery, and Other Crimes Against the Person:** We clarified the elements under the federal assault statutes by deleting the “simple assault” box (which some thought too complicated) and added three recent cases that do a better job of illustrating assault, both under the federal statutes and the common law. We updated and expanded the discussion of hate crimes with recent cases. The “faith healing” case in Wisconsin went to the Wisconsin Supreme Court in 2013 on the meaning of the “religious healing” exception to child neglect. Other states have similar exceptions, and the decision might have ramifications outside Wisconsin. We updated the kidnapping cases, with emphasis on the “moving” requirement when another felony, like robbery, is being committed. This is an evolving issue, so we also used a case on the moving requirement in the case analysis exercises. We substantially rewrote the domestic violence section, noting the status of the Violence Against Women Act in Congress. We deleted two sections (court order violations and duty to report laws).
- **Chapter 12, Sexual Assault, Rape, Prostitution, and Related Sex Crimes:** We substantially rewrote the forcible rape section, with new titles and subsections. We replaced older cases with new ones. We deleted the lengthy Case Close-Up box on consent, force and resistance, and instead cover this important topic in the text, with new cases. We rewrote and expanded the report of rape section. We added several new cases under various rape shield laws, including a controversial 2012 Michigan Supreme Court decision. We discuss statutes and cases on the mistake of age defense in statutory rape, expanding the discussion of this issue found in Chapter 7. We also add a 2013 case of first impression under the federal sex trafficking statute. We added national statistics and a 2013 report that cast doubt on (1) the need for civil commitment of sexual offenders, and (2) the wisdom of child pornography prosecutions based on Internet use. We deleted the section on sexual harassment, which is mainly civil in nature.
- **Chapter 13, Theft:** We updated cases that illustrate the classic elements of theft, such as property of another, lost property, and abandoned property. We also added new cases on shoplifting to replace older cases. To illustrate the perils of merchants confronting suspected shoplifters, we included a Case Close-Up that involves an action by a supposed shoplifter against the merchant who confronted her.
- **Chapter 14, Robbery, Burglary, and Related Crimes:** The chapter-opening vignette is taken from a 2012 case from New Jersey that in 2013 will be reviewed by the New Jersey Supreme Court. We think it is interesting to see how our readers believe that review will (or should) turn out. In this chapter we

substantially deleted older cases (and an older box) on the elements of the crimes covered in this chapter, and added new cases and statutes. Those include bank robbery, carjacking, and extortion. We rewrote the robbery–theft distinction section, adding new cases of what force is required, when force must be used, and the lack of the necessity of a completed robbery. In burglary we added new cases on “dwelling of another” and “intent to commit a crime therein,” including a 2012 case that ties in with the Double Jeopardy materials in Chapter 7. Finally, in the Case Analysis exercises we look at two federal cases under the Hobbs Act, where courts found violations under doubtful circumstances. In 2013 the U.S. Supreme Court agreed to review one of these cases, perhaps to consider how federal prosecutors are using the Hobbs Act.

- **Chapter 15, White-Collar Crime, Cybercrime, and Commercial Crime:** In one organizational change, we moved the materials on receiving stolen property and possession of burglary tools to Chapter 14, where they seem to fit better. We did substantial updating in the identity theft section, and the discussion of computer access crimes. This includes a new box on the criminal liability of employees who use employer computers for illegal purposes. We also updated the product tampering section. We added a new box on environmental crimes and corporate responsibility for those crimes, keeping with our goal (based in part on reviewers’ requests) for more cases on environmental crimes.
- **Chapter 16, Drug Abuse and Alcohol-Related Crimes:** We continue to update the statistics on the international drug war/gun sales/border problems. We also updated the news on medical marijuana and recreational use of marijuana. We rewrote the drunk driving section, adding recent cases on how courts are handling the issues in such prosecutions, including a Case Close-Up case from Illinois that illustrates how presence of a controlled substance in a driver’s system relates to aggravated drunk driving. We include in that Case Close-Up discussion of a 2013 Michigan case that struggles with a similar issue: a driver who has marijuana in his system, but is a registered medical marijuana user.
- **Chapter 17, Terrorism:** Once again, the various tables and boxes with statistical information have been updated. We added a new Case Close-Up on the meaning of “material support of terrorism” under federal law. We believe it is likely the U.S. Supreme Court will grant review in one of these cases very soon to address that issue.
- **Chapter 18, Organized Crime and Gangs:** We substituted newer cases for older cases where we could, including those on money laundering, and Congressional legislation designed to overturn some controversial decisions. We note the passage of the sports betting statute in New Jersey, but include reference to the federal district court decision that recently struck down that statute. We added more material on RICO prosecutions, a subject some of our reviewers asked us to expand.
- **Chapter 19, Immigration Crimes, Contempt, and Other Crimes Against Government:** Immigration cases and statutes are the news in this edition. The U.S. Supreme Court decision in the Arizona immigration statute litigation leads off our discussion of immigration crimes. We also discuss lower court decisions and the impact of the Arizona decision on those decisions. We discuss in detail the “fraudulent marriage” scheme to illegally gain entry to the United States, and in a new box focus on the *mens rea* needed for violation of immigration

laws. We list the highlights of proposed Congressional legislation on immigration reform. We include a U.S. Supreme Court case that has important implications in civil contempt cases, where it is now the law that in some circumstances a defendant in a civil contempt hearing must have appointed counsel. Finally, we deleted the environmental crimes section; as reviewers suggested, crimes against the environment are not crimes against government. As we noted earlier, we have tried wherever possible to integrate prosecutions for environmental crimes into other chapters.

Supplements

A number of supplements are provided by Cengage Learning to help instructors use *Criminal Law*, Twelfth Edition, in their courses and to aid students in preparing for exams. Supplements are available to qualified adopters. Please consult your local sales representative for details.

For the Instructor

Instructor’s Manual Updated by Valerie Bell of Loras College, the manual includes learning objectives, key terms, a detailed chapter outline correlated to each chapter’s PowerPoint slides, a chapter summary, lesson plans, discussion topics, student activities, “What If” scenarios, media tools, a sample syllabus, and an expanded test bank with 30 percent more questions than the prior edition. The learning objectives are correlated with the discussion topics, student activities, and media tools. Each chapter’s test bank contains questions in multiple-choice, true false, completion, essay, and new critical thinking formats, with a full answer key. The test bank, revised by Scott Rudeen of Globe University, is correlated to the chapter objectives that appear in the main text as well as to Bloom’s taxonomy levels and includes the sections in the main text where the answers can be found. Finally, each question in the test bank has been carefully reviewed by experienced criminal justice instructors for quality, accuracy, and content coverage—so you can be assured that you are working with an assessment resource of the highest caliber.

PowerPoint Slides Helping you make your lectures more engaging while effectively reaching your visually oriented students, these handy Microsoft PowerPoint® slides outline the chapters of the main text in a classroom-ready presentation. The PowerPoint® slides, updated by Lisa Briggs of Western Carolina University, reflect the content and organization of the new edition of the text and feature some additional examples and real-world cases for application and discussion. Available for download on the password-protected instructor book companion website, the presentations can also be obtained by e-mailing your local Cengage Learning representative.

Cengage Learning Testing Powered by Cognero The accompanying assessment tool is a flexible, online system that allows you to

- Import, edit, and manipulate test bank content from the Gardner/Anderson test bank or elsewhere, including your own favorite test questions.

- Create ideal assessments with your choice of fifteen question types (including true/false, multiple choice, opinion scale/likert, and essay).
- Create multiple test versions in an instant using drop-down menus and familiar, intuitive tools that take you through content creation and management with ease.
- Deliver tests from your LMS, your classroom, or wherever you want—plus import and export content from and into other systems as needed.

Cengage Learning Video Program (Courtesy BBC, CNN and more) CNN videos feature short, high-interest clips from current news events as well as historic raw footage going back 30 years. CBS and BBC clips feature footage from nightly news broadcasts and specials to *CBS News Special Reports*, *CBS Sunday Morning*, *60 Minutes*, and more. Taken together, the brief videos offer the perfect discussion-starters for your classes, enriching lectures and providing students with a new lens through which to view the past and present, one that will greatly enhance their knowledge and understanding of significant events and open up to them new dimensions in learning.

For the Student

CourseMate Companion Website Cengage Learning's Criminal Justice CourseMate brings course concepts to life with interactive learning, study, and exam preparation tools that support the printed textbook. CourseMate includes an integrated eBook as well as critical chapter review tools, including pre-tests students can use to quiz themselves in advance of reading the assignment so they are focused on issues that present a particular challenge to them personally. Also included are quizzes mapped to chapter learning objectives, flashcards, and videos, plus EngagementTracker, a first-of-its-kind tool that monitors student engagement in the course. The accompanying instructor website offers access to password-protected resources such as an electronic version of the instructor's manual and PowerPoint® slides. The web quizzes were developed by Cornel Plebani of Husson College.

Careers in Criminal Justice Website This unique website gives students information on a wide variety of career paths, including requirements, salaries, training, contact information for key agencies, and employment outlooks. Several important tools help students investigate the criminal justice career choices that are right for them.

- ***Career Profiles:*** Video testimonials from a variety of practicing professionals in the field as well as information on many criminal justice careers, including job descriptions, requirements, training, salary and benefits, and the application process.
- ***Interest Assessment:*** Self-assessment tool to help students decide which careers suit their personalities and interests.
- ***Career Planner:*** Resume-writing tips and worksheets, interviewing techniques, and successful job search strategies.
- ***Links for Reference:*** Direct links to federal, state, and local agencies where students can get contact information and learn more about current job opportunities.

Current Perspectives: Readings from InfoTrac College Edition These readers, designed to give students a closer look at special topics in criminal justice, include free access to InfoTrac College Edition. The timely articles are selected by experts in each topic from within InfoTrac College Edition. They are available free when bundled with the text and include the following titles:

- *Cyber Crime*
- *Victimology*
- *Juvenile Justice*
- *Racial Profiling*
- *White-Collar Crime*
- *Terrorism and Homeland Security*
- *Public Policy and Criminal Justice*
- *Technology and Criminal Justice*
- *Ethics in Criminal Justice*
- *Forensics and Criminal Investigation*
- *Corrections*
- *Law and Courts*
- *Policy in Criminal Justice*

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Criminal Law: Purposes, Scope, and Sources



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The United States Supreme Court building in Washington, D.C.

OUTLINE

Important Concepts in Criminal Law

Substantive Criminal Law

Criminal Law and Moral Law

Goals and Purposes of Criminal Law

The Permissible Scope of Criminal Laws in the United States

The Use and Limitations of the Police Power to Maintain Public Order

The Principle of “No Punishment Without a Law for It”

Classifications of Crimes

Felony and Misdemeanor

General Constitutional Limitations on Criminal Laws

Ex Post Facto Laws

Bills of Attainder

The Second Amendment and Gun Control

Due Process, “Void for Vagueness,” and the “Overbreadth” Doctrine

Status Crimes

Equal Protection of the Laws

Sources of Criminal Law

Common Law Crimes

Statutory and Administrative Crimes

LEARNING OBJECTIVES

In this chapter we introduce criminal law and the role it plays in the American legal system. The learning objectives for this chapter are the following:

- Identify the branches of government, and their relationship to the criminal law.
- Describe the difference between public law and private law, including the difference between criminal law and tort law.
- List the reasons people commit crimes, and why they do not.
- Understand the four generally recognized goals of the criminal justice system.
- Know the meaning of police power.
- Identify the general limitations on the exercise of the police power by government.
- Know the meaning of the phrase *nulla poena sine lege*.
- List and describe five specific constitutional limitations on the power to create a criminal law.
- Define circumstances that would make a criminal law a status crime.
- Trace the origin of the common law to its place in criminal law today.

The city of Chicago passed a municipal ordinance, § 8-4-010 (d), which made it a crime for a person to refuse to disperse after a police officer so ordered, whenever a nearby group was causing “serious inconvenience, annoyance, or alarm.” Three men observing a group

protesting the war in Iraq were arrested and charged under this ordinance when they refused to disperse after police ordered them to do so. The police had arrested one member of the group of protesters for disorderly conduct, and this was the basis for the police order to the three men to disperse under the ordinance.

In a 2012 decision the Seventh Circuit Court of Appeals held the statute unconstitutional under the First and Fourteenth Amendments to the U.S. Constitution.¹ The court stated that the ordinance was “overbroad” because it infringed on the rights of free speech and assembly. It stated the ordinance was unconstitutionally “vague” because it failed adequately to give citizens

notice of what kind of conduct was prohibited, and made possible arbitrary and discriminatory enforcement of the ordinance, in violation of the Due Process Clause of the Fourteenth Amendment.

In this chapter we examine the basis for the power of states and the federal government to pass criminal laws, and the constitutional limitations on that power.

Important Concepts in Criminal Law

Crime has been part of the human condition since people began to live in groups. Ancient documents indicate that conduct we now call murder, theft, or robbery was identified as criminal by civilizations that existed thousands of years ago. Criminal laws regulate human conduct and tell people what they cannot do and, in some instances, what they must do under certain circumstances. Though their content may have differed, all societies have had criminal codes regulating conduct.

Democracies have always sought to translate their basic principles and ideals into achievable goals through a system of laws that balance the rights of individuals with the compelling needs of society as a whole. These goals include public order, domestic tranquility, and protection of the basic rights of individuals.

Because governments in democracies are the servants and not the masters of the people, laws are seen as the product of the will of the people. Criminal justice systems in democracies operate most successfully when the majority of the people believe that laws are fair and that the system can operate efficiently and effectively.²

The issue of what laws should be enacted often causes intense public debate. Laws are enacted by elected representatives of the people. They are enforced, administered, and interpreted by civil servants and elected officials in other branches of government.

In the United States, those branches are as follows:

1. *The legislative branch:* Laws (including criminal laws) are enacted by the legislative branch. The chief executive officer participates in the legislative process by signing or vetoing proposed laws. State governors and the U.S. president provide leadership on many proposed laws by either supporting or opposing them and by providing information about proposed laws.
2. *The executive branch:* Agencies within the executive branch of government administer and enforce laws. Law enforcement agencies are found within the executive branch of government and are charged with the enforcement of criminal laws, in addition to the performance of other duties.
3. *The judicial branch:* People who are charged with crimes have a right to be tried before a judge or a jury in a court in the judicial branch of government. Fact finders (jury or judge) determine the issues in cases presented to them, including the issue of guilt or innocence. Judges in the United States have the power of judicial review in determining the constitutionality of laws or ordinances.

certiorari A form of review of lower court decisions by the U.S. Supreme Court. Certiorari is discretionary with the Court, and most petitions requesting it are denied. Traditional legal doctrine is that no conclusion can be drawn from a denial of certiorari.

habeas corpus A writ that compels the authority holding a person in confinement to explain the basis for that confinement. Used frequently as a method for state and federal prisoners to attack the constitutionality of their imprisonment. Both the federal government and states have some form of habeas corpus laws, often called post-conviction relief laws.

public law Laws or statutes that apply to all people within a state or nation. Criminal laws in England and the United States are examples of public law.

Tort A noncontractual civil wrong.

In the United States each state and the federal government has its own judicial system. These systems are generally independent of one another. Each state has a tier of trial courts, where jury trials take place. After a defendant has been convicted of a crime, the conviction may be appealed to the state's appellate courts. Many states have a two-tiered appellate court plan: a first tier, generally called the court of appeals, and a top tier, generally called the supreme court. Appeals of convictions for violation of criminal law proceed first in the state's appellate court system.

Once a conviction has been affirmed by the highest state court, it is usually final. However, if the defendant raises an issue about the constitutionality of the conviction, under the U.S. Constitution he or she is entitled to ask the U.S. Supreme Court to review that issue. The defendant would do so by asking the Supreme Court to issue a writ of **certiorari**, a discretionary writ issued by the Court to review the decision of a lower court. Writs of certiorari are infrequently granted. If the writ is denied, the conviction is final. Limited post-conviction review is possible under state post-conviction review laws, and through use of the writ of **habeas corpus**, discussed later in this chapter.

In the federal system, federal district courts serve as trial courts. The United States is divided into eleven judicial circuits, plus the District of Columbia Circuit and the Federal Circuit (which handles special areas such as patent law). The judicial circuits each have a court of appeals, which hears appeals from the federal district courts located in the circuit. Decisions of the circuit courts may be reviewed by the Supreme Court through the certiorari process, though here also such review occurs infrequently.

As discussed more fully later in this chapter, criminal law in the United States traces its beginnings to the criminal law and its development in England. In early England, actions we now define as crimes, such as robbery, murder, or theft, were classified as private matters. As a result, victims were responsible for remedying their own problems. Victims and their families usually responded with violence if they knew or suspected the identity of the offender. They also had the option of bringing the matter before a civil court, but such courts were few and the chances of success minimal. During the reign of Henry II (1154–1189), English law began to recognize that crime was more than a personal affair between the victim and the perpetrator and that punishment should not be left to individuals.

Today, criminal law in England and the United States is part of each nation's **public law**. The criminal law applies to all persons within each country, and it is enforced by public officials rather than by the victims of criminal conduct. Apprehension and prosecution of criminals are public matters. Public law enforcement agencies, public prosecutors, courts, jails, and correctional institutions make up the criminal justice systems in both countries.

Because the same action can be a violation of the criminal law and a civil wrong known as a **tort**, victims of a crime may bring civil actions in civil courts to seek compensation from the offender. The crimes of sexual assault, battery, theft, and criminal libel are examples of actions that may be prosecuted as crimes under public law, and also serve as a basis for a civil action. If the victim obtains a judgment in the civil action, the victim is responsible for collecting that judgment from the offender. The tort laws governing such a civil action are examples of private law. Private law deals with relationships between individuals in matters such as divorce, contractual issues, real estate law, and private inheritance.

Criminal law in the broadest sense refers to the many laws and statutes that define and regulate prohibited, criminal conduct. These laws and statutes are called substantive criminal law. In addition, criminal law in this sense includes many rules and statutes designed to set out and regulate the steps that are followed from the criminal incident through punishment and release of the offender. This part of criminal law is called criminal procedure. Many of the rights guaranteed by the U.S. Constitution in criminal investigations and prosecutions serve as limitations on the process used by the government in those investigations and prosecutions. For example, the well-known *Miranda* rule requiring police to inform a suspect of his rights at the time of arrest stems from the Fifth Amendment. The requirement that police obtain a search warrant based on probable cause is found in the Fourth Amendment; the rights to have the assistance of counsel and confront witnesses against an accused are contained in the Sixth Amendment. There are also many statutory rules in both the federal and state criminal codes regulating the procedures that must be followed in criminal investigations and prosecutions. Because of the immense scope and complexity of criminal procedure rules and principles, it is generally treated as a subject distinct from substantive criminal law. See Gardner & Anderson, *Criminal Evidence* (8th edition, Cengage Learning, 2013). Thus, while this chapter discusses many of the constitutional limitations on the power of governments to define and punish conduct, such as the Ex Post Facto Clause and the “overbreadth” doctrine, it should be remembered that a significant part of the constitutional and statutory limitations on the investigation and prosecution of criminal conduct must be learned by studying criminal procedure.

criminology The sociological and psychological study of the causes, development, and control of crime, as well as the conditions under which criminal law developed.

forensic science scientific principles and tests used in courts of law.

Criminology and criminalistics are fields that are separate from but related to substantive criminal law. **Criminology** is the sociological and psychological study of the causes of crime, the control of crime, and the conditions under which criminal law developed. Criminalistics, often called **forensic science**, is the professional and scientific discipline directed to the recognition, identification, individualization, and evaluation of physical evidence by application of the natural sciences. Criminology is a branch of sociology; criminalistics is the application of science to criminal investigation, and encompasses forensic science.

Substantive Criminal Law

Substantive criminal law is an important branch of public law. It defines the standards of conduct that the society and the community require for the protection of the community as a whole. It establishes the standards necessary to preserve public order and to protect property rights. It seeks to protect the right of individual privacy and the right to move about freely without fear of molestation. It does this primarily by defining conduct that is unacceptable and punishable.

In earlier times in our history people “took the law in their own hands” to punish criminals. With the establishment of a system of laws and the growth of public confidence in the ability of the criminal justice system to preserve ordered liberty, people have generally ceased taking the law into their own hands. Public

confidence that the government, as an agent of the people, has the ability and the desire to maintain public order is an indispensable ingredient of a successful criminal justice system.³

Not all legal wrongs come under substantive criminal law. Some legal wrongs are only civil violations. A *civil wrong* is a private wrong, such as a tort or a contract violation, done to a person or property, and involves only the private individuals affected by the wrong. A *criminal wrong* is one in which the state and the public have declared an interest. Ordinarily, when a private wrong occurs, only the injured party or the party's representative may seek civil redress in a civil court of law. Nearly every large American community has three or four times as many civil courts, which hear civil cases of alleged private wrongs, as criminal courts, which hear criminal cases involving public wrongs. In cases of public wrong, the state may file a criminal action in a criminal court, seek relief for the alleged public wrong in a civil court, or do both concurrently, as is done occasionally in obscenity, antitrust, or consumer fraud cases.

Criminal Law and Moral Law

Criminal laws are strongest when they reflect the moral and ethical beliefs of the society. Murder, for example, is considered morally wrong, and most people would not murder another person even if it were not a crime. Murder is forbidden not only by the criminal law but also by the moral law. This moral or ethical commitment to the law is important because it compels most people to conform to standards necessary for public order regardless of whether a police officer is watching them. Public order is not possible without that commitment,

WHY SOME CONDUCT MAY OR MAY NOT BE DESIGNATED AS CRIMINAL

Reasons a Legislative Body Might Designate Specific Conduct as Criminal

- The conduct may be designated as criminal to protect the public from violent or dangerous conduct.
- The conduct may be designated as criminal to protect public health.
- The conduct may be designated as criminal to maintain public order.
- The conduct may be designated as criminal to protect the right of privacy of individuals.
- The conduct may be designated as criminal to protect public morality.
- No other apparent way to promote a desired public policy is available.

Reasons a Legislative Body Might Not Designate Specific Conduct as Criminal

- The government does not have constitutional power to prohibit such conduct.
- The conduct in question is constitutionally protected.
- No influential public or private groups or individuals have demanded the regulation of such conduct.
- Enforcing a law criminalizing such conduct would not be economically feasible.
- Passing a law criminalizing such conduct would not be politically popular.

RIGHTS OF CRIME VICTIMS

A majority of states have amended their state constitutions to include a guarantee of rights for crime victims. This guarantee, which is often posted on courtroom doors, generally includes provisions such as the following:

- The right to notification of all court proceedings related to the offense
- The right to be reasonably protected from the accused offender
- The right to have input at sentencing, such as by offering a victim impact statement
- The right to information about the conviction, sentencing, imprisonment, and release of the offender
- The right to an order of restitution from the offender
- The right to notice of these rights
- The right to enforce these rights

Source: See FS 00301, United States Office for Victims of Crime, April 2002.

because not enough police officers are available to enforce criminal law without this moral and ethical backing.

The standards set by moral laws are often higher than those set by criminal laws. Moral law attempts to perfect personal character, whereas criminal law, in general, is aimed at misbehavior that falls substantially below the norms of the community. Criminal conduct is ordinarily unjustifiable and inexcusable.

Criminal law alone cannot bring all conduct into conformity with the standards expected by the community. Society uses many sanctions besides criminal law to encourage people to behave properly. Civil law judgments, licensing regulations and revocations, loss of employment, and simple peer pressure are examples of the ways a society can use sanctions other than the criminal law to control offensive conduct.

DISTINGUISHING CRIME, TORT, AND MORAL WRONG

Type of Wrong

Crime

A public wrong against society

Tort

A private wrong against an individual

Moral wrong

Violation of a moral or religious code

Court Determining Wrong

Criminal court

Civil court or individuals

No punishment unless the moral wrong is also a crime or tort

A crime may also be a tort and a moral wrong. For example, murder is a crime, a tort, and also a moral wrong.



FACTORS INFLUENCING WHETHER TO COMMIT A CRIME

Why a Person Would Not Commit a Crime

Moral or ethical commitment to obey the law

Fear of arrest and punishment

Social and peer pressures of friends, associates, family, and community

Fear of embarrassment to self, family, and friends

Lack of motive or compelling drive to commit crime (no compelling desire to steal, murder, assault, rape, and so on)

Lack of opportunity, or lack of capacity or skill, to commit crime

Fear of economic sanction, such as loss of job or promotion, lawsuit and damages, or loss of license (driver's license, liquor license, credentials for lawyer, doctor, nurse, and so on)

Why a Person Would Commit a Crime

Insufficient moral or ethical commitment to obey the law

Belief in ability to get away without detection, arrest, and punishment

Peer pressure

Belief that detection and associated embarrassment can be avoided

Compelling desire or motive to achieve illegal objective (narcotic addiction, for example, provides motive for a person who would probably not otherwise commit a crime)

Opportunity combined with capacity and skill

Sees crime as a quick, easy way of obtaining money, drugs, power, or other objectives. (Even if caught, the odds are good that the person will not go to prison. Few persons convicted of nonviolent felonies go to prison.)

Goals and Purposes of Criminal Law

People in all societies have the inherent right to protect their society and those living in that society from acts that threaten either the society or the people. Societies throughout history have exercised this inherent right, through laws either written or unwritten forbidding and punishing acts or omissions considered detrimental to the group or the individual.

From colonial days through World War I, the criminal codes of the various American states were generally limited to those crimes that were considered serious wrongs against the society. Moreover, because criminal laws were used to define and enforce public morality, the traditional attitude of lawyers and judges was that a crime was essentially a moral wrong and should primarily be enforced through family, religious, and social pressures.

The first decades of the twentieth century saw the rapid change of the United States from an agricultural society to an industrial one. This transformation, plus the unbelievable array of economic, social, and political changes that accompanied it, hastened the arrival of the mass industrial society. These changes reduced the influence of American religious institutions, the community, and the home in molding