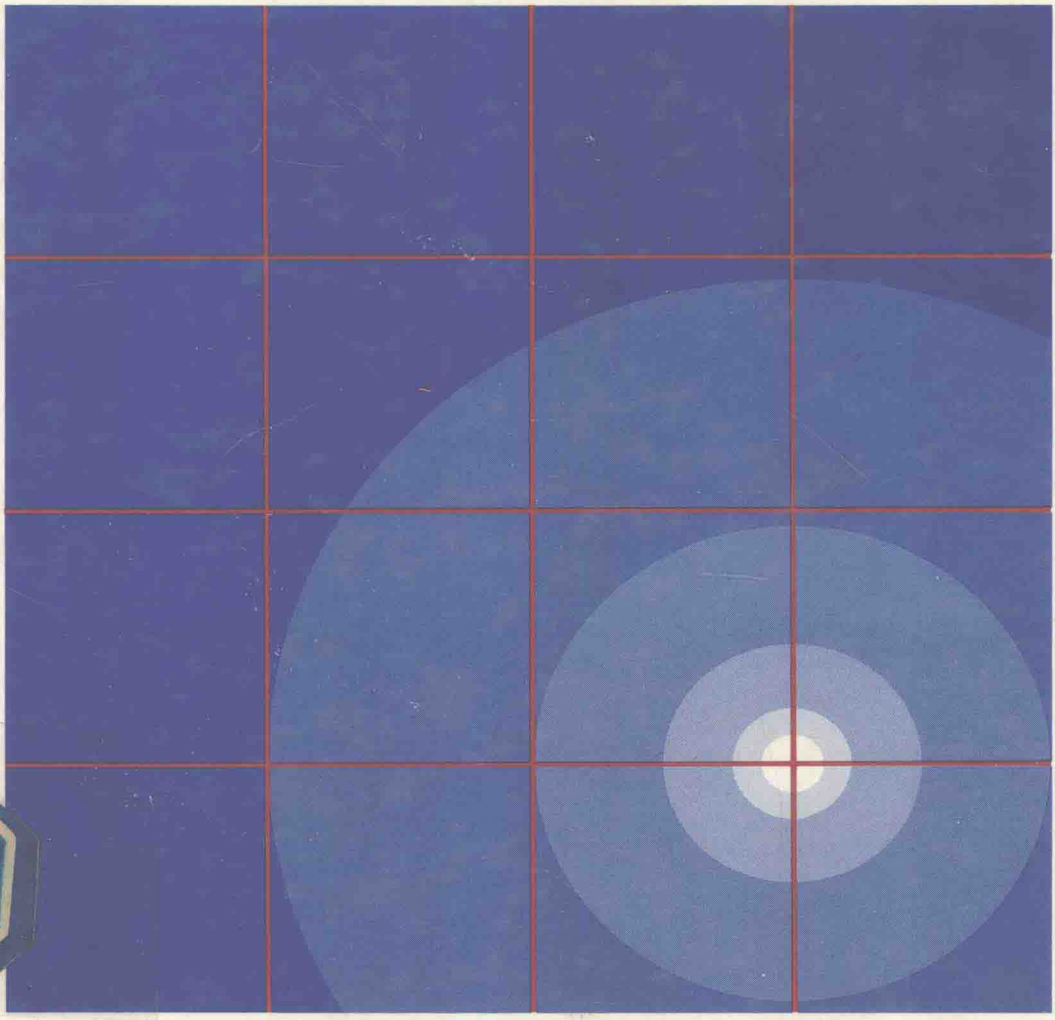
FOURTH EDITION

CRIMINAL LAW FOR POLICE OFFICERS



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CRIMINAL LAW FOR POLICE OFFICERS

Fourth Edition

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PREFACE TO FOURTH EDITION

As is true for any new edition of a text book, the purpose of change is to expand, clarify, update, and further illustrate the basic principles of the work. There have been some exciting developments in the substantive criminal laws since the publication of the last edition. We have tried to incorporate many of those changes in this edition. Even more important, we have updated and expanded explanations of some of the more complex topics that have been reported to us as needing additional clarification. Emphasis has been placed on using examples based on actual court cases without burdening the student with numerous legal citations. By using the facts of documented criminal appeals decisions, more emphasis has been placed on defining differences among the states in their treatment of various issues. This is being done basically to illustrate that even those rules defined as "black letter law" are subject to varying interpretations. This ever-changing, ever-developing, ever-evolving process is what makes the study of substantive criminal law so exciting for a student and so enlivening and challenging for an instructor.

Two new areas have been added to the chapter on matters affecting criminal responsibility. These defenses have increased in frequency and importance, and a major portion of the section on use of force as a defense has been totally rewritten to conform with a recent United States Supreme Court case of major importance.

We wish to extend a special thanks to Mildred Alley and Celine DiSantis for their assistance in the preparation of this manuscript.

Neil C. Chamelin
Kenneth R. Evans

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1 HISTORICAL BACKGROUND OF CRIMINAL LAW

1.0 The Nature of Law

A. Why Law?

The question "What is law?" invites a multiplicity of answers, for "law" is a broad concept with many definitions. For purposes of this book, law can be defined as a group of rules governing interaction. Law is a set of regulations governing the relationship between man and his fellow men, and between man and the state.

The need for law lies in the history of the human race. In early times, when humans first appeared on this earth and were living alone in caves, laws were not needed for conflicts did not arise, but when people began to live in groups, communities, and societies, laws became necessary. People still remained individuals whose desires, needs, and wants differed from those of others. These differences caused conflict. Law was necessary as a means of social control attempting either to alleviate these conflicts or to settle them in a manner most advantageous to the group.

B. Law as Language

Law is nothing more than language. Just as a carpenter uses a hammer and saw, a lawyer's tool is his ability to communicate. Communication is defined not merely as the conveyance of words but, more properly, as the conveyance of words with the ability to make oneself understood to the listener or reader. The more one studies and delves into the complexities of the law, the more one realizes the truth of the statement that language is the essence of law. The importance of being able to communicate in terms that mean the same thing to the parties on both the sending and receiving ends of a communication cannot be overemphasized. What the law strives for is uniformity of interpretation. The question then arises, "Well, why are not the laws so pointedly written that everyone knows exactly what they mean?" This question is relatively easily answered when the problem is seen in proper perspective. Laws must be stable yet flexible enough to be interpreted so that they may be molded to fit the problems of a complex and changing society. If every law were written to cover only one specific fact situation, two major problems would arise. First, the number of laws would increase at least one hundred times over, each law covering a specific subject. The civil law systems in France and Germany are subject to this weakness. Second, many of these laws would become obsolete so quickly that legislatures would spend most of their time repealing them. However, when laws can be interpreted flexibly, they can be read to include new and unexpected situations that arise.

The U.S. Constitution operates on the same principle, and we use that document to illustrate this point. The framers of the Constitution could not foresee the problems of the twentieth century. If the Constitution had been prepared only for the problems of 1789, it would have collapsed many years ago. It could not function today because the problems of society in the twentieth century are not the same as the problems encountered by the framers of the Constitution in the eighteenth century. Thus, the Constitution was purposely drafted to be stable and yet flexible in the sense that it might be capable of interpretation in light of contemporary problems.

Any number of contemporary problems could be used to illustrate this point. Let us consider a few. At one time, the federal government's right to regulate commerce between the states was limited to prohibiting the erection of such barriers as tariffs. Georgia couldn't prevent Florida from shipping chickens to Georgia merely to protect Georgia chicken farmers. But certain related commerce problems arose. States were unwilling to prevent certain abuses to members of the labor force. As a result, our federal labor laws came into being. Congress cited the commerce clause of the Constitution as authority for these acts. The U.S. Supreme Court upheld the labor laws so that today wages, working conditions, and hours are regulated. This problem was not foreseen by the framers of the Constitution.

Years ago, segregation was said to be supported by the Constitution. However, due to the changing times and attitudes of the people, in 1954 segregation was said to be in opposition to the Constitution. Finally, the right to counsel, which is found in the Bill of Rights, was said to apply only to federal courts and federal cases. However, in the now famous *Gideon* case, the right to counsel was said to apply to state courts and state criminal cases. The same document was used; times had changed.

1.1 Crime Defined

Criminal law is only a small part of the entire legal field. If a state statute requires two witnesses for a valid will, having only one witness will render the will invalid but will not result in criminal charges. A crime may be defined as a public wrong. It is an act or omission forbidden by law for which the state prescribes a punishment in its own name. What does this mean? A crime must be a wrong against the public, not merely a wrong against a particular individual. There are many laws, in many jurisdictions, governing the rights and duties of people in their relationships to others. However, only those violations that wrong the public are considered criminal and make up the body of the substantive criminal law.

The determination as to whether a particular act is criminal or merely civil in nature is a function of the law-making body of each jurisdiction. In tribal times, this decision was made by the people. They considered criminal those acts that they felt injured the welfare of the entire community. Today, this function rests with the legislatures of the states.

Crimes differ from civil wrongs in many respects, but the sole reason they differ is that the legislature says they differ. In other words, only a fine line distinguishes crimes from civil wrongs, and that line is drawn by the legislature where and when that body so desires within the limits of what the public will tolerate.

Crimes are prosecuted by the state in its own name. In a civil case, the action is instituted by the wronged individual. Persons convicted of crimes are punished by fines, imprisonment, or death, whereas defendants who lose civil cases are usually ordered to pay the injured party. A crime is a public wrong, whereas a civil wrong is private in nature, not involving the state as a party. Punishment is prescribed and must be prescribed for convictions of criminal acts, but there is no set amount of damages to which a wronged person is entitled in a civil suit. These are only a few of the major differences between crimes and civil wrongs, differences that exist solely as a consequence of the legislature's having attached the label "crime" to one act and not the other. This is not to say that the legislature has only an "either/or" choice. The lawgivers may choose to declare a particular act both a crime and a civil wrong, as in the case of assault and battery.

An act of this nature may be both criminally and civilly wrong, in which case the victim may proceed civilly and the state may prosecute. Both avenues are open, and the outcome in one does not affect the proceedings in the other.

Although this explanation is factually correct, it is somewhat mechanical and simplistic. Many other social and political considerations affect legislative prescriptions of criminal and noncriminal wrongs.

The purpose of the criminal law is twofold. First, it attempts to control the behavior of human beings. Failing this, the criminal law seeks to sanction uncontrolled behavior by punishing the law violator.

Within the framework of criminal law, punishment may take one of three forms: fine, imprisonment, or death. The advantages, disadvantages, and effectiveness of imprisonment and death involve some of the most controversial social problems in society today. However, an in-depth study of these problems is beyond the scope of this book.

1.2 Early Development of Criminal Law

Criminal law is an offspring of personal vendetta. At some time in the development of each society, when one individual injured another, it became the responsibility of the victim or the victim's family to seek redress. The community in no way became involved. This led to the theory of retributive justice. The Code of Hammurabi, circa 2100 B.C., codified the rules that called for punishment to fit the crime: "An eye for an eye." Eventually, despite the setback of the Dark Ages, societies began treating certain offenses as crimes against the sovereign, and the state began punishing individuals who committed offenses against the public. This practice became the keystone of modern criminal law.

During this developmental period, the law did not take the responsibility of the accused into consideration. That is, the law did not ask why an individual had committed a crime or whether that individual was accountable for his actions. Defenses such as insanity, justification, excuse, intoxication, infancy, and the like were not considered. The mere doing of the act was all that was required to show the commission of a crime. Today, of course, this is no longer true in most instances. The fact that a person commits a wrongful act does not make that act criminal until the perpetrator is convicted, due to the defenses that may bar his conviction. These defenses are discussed in Chapter 6.

The key to the doctrine of responsibility is the legal approach to human psychology. The law is based on the assumption that people act of their own free will. Their fate is not predetermined or predestined. Therefore, the law may hold a person accountable for his actions. If the law accepted

the concept of determinism, it would hold that people are not responsible for their conduct; everything that they do would be predestined, determined by their early environment and their genetic history. Individuals should not be on trial for their criminal acts but, rather, fate should be on trial. This theory, for obvious reasons, would be totally unacceptable in any society as a legal theory. Many deterministic theories have been propounded throughout the history of criminal law. Some of them have either been wholly or partially rejected. The great Italian sociologist, Lombroso, felt that he could predict criminality and guilt by measuring the accused's head, ears, nose, or some other area. Fortunately, this theory was rejected. In 1968 an Australian court acquitted a man charged with murder on the theory that he was born with imbalanced chromosomes, and, that as a consequence of this physiological deficiency, he was destined to commit crimes for which he could not legally be held accountable. The defendant in this case had the support of several professional medical men. Shortly after the decision of this court, a commission was appointed in the United States to research the feasibility of applying this theory. Their conclusion was that there was no correlation between the existence of "XYY" chromosomes and criminality.

1.3 Legal Systems and the Beginning of the Common Law

There are two major legal systems prevailing throughout nine-tenths of the civilized world. They are the **civil law** and **common law** systems. The civil law system is the predominant legal system of the civilized world; the common law system is prevalent in England, its dominions, and North America. These systems had their beginnings in completely different ways.

The common law began as a result of the habits of individuals and the customs of groups. These habits and customs were so entrenched in society that they became the acceptable norms of behavior. When courts developed, violations of these customs produced the cases heard. The courts began recording their decisions, and judges looking for assistance started following previous court decisions when confronted wi'h new cases. This procedure became known as ***stare decisis***—the following of precedents. Thus, the customs of the common people became the source of the common law, the law of the common people.

The remainder of the world grew under a different system of law, the civil law. We can trace this system back at least as far as the Roman Empire, where laws were written and codified by the rules of the "state" and imposed on the people. As will be seen, the law of the United States is a combination of common law and civil law. The two systems of law began at opposite ends of the legal spectrum. The common law was developed

by the common people and was imposed on the rulers of the country. The civil law was developed by the rulers and imposed on the people. Of course, this is a highly simplified explanation of the development of the legal systems, but it will serve as a useful frame of reference.

1.4 Common Law in the United States

The English colonists who settled America brought with them a large part of the body of law to which they were accustomed—the English Common Law. As a consequence of this, and of their political dominancy, this system predominated in the colonies with certain modifications—modifications caused by the feeling that certain English laws were oppressive and that it was these laws the colonists came to America to escape.

Under the federal-state relationship established by our Constitution, each of the United States is sovereign under a federal government. Consequently, each state is free to decide whether it will select the common law system or the civil law system as the basis for its criminal law. The basic difference between the ways these systems operate is that under the common law, any act that *was* criminal under the old common law remains criminal today, even though it is not found in statutory form. Under the civil law, all crimes are statutory. In the absence of a statute, there can be no crime.

Presently, nineteen states have expressly abolished common law offenses, and all offenses in those jurisdictions are statutory. In seven states, the common law offenses have been impliedly abolished or their status is uncertain. In the remainder of the states, the common law survives either expressly or by implication.

Even in jurisdictions that have abolished the common law, reference is still made to the common law for definitional purposes. For example, the State of Georgia has abolished all common law offenses. The Georgia statutes make murder a crime, however, and explain the situations under which that crime may be charged. But nowhere in Georgia statutes is the word murder defined. Thus, it is necessary to look to the common law for a definition of the term.

Today, when most crimes are statutory, how significant is the distinction between the common law system and the civil or statutory law system? The common law states have a distinct advantage in being able to reach back into the common law to find additional offenses that might not be covered by statute in their jurisdictions. Although this a rare occurrence, these states have the power to look to the common law if an offensive act occurs that is not covered by statute. If the offense was punishable at common law, then it is punishable in those states today. An example of this reaching back to the common law occurred in Pennsylvania when the de-

fendant made numerous obscene telephone calls to the complainant. Apparently, Pennsylvania had no statute governing this type of behavior, so the trial court looked to the common law and found a misdemeanor that in substance was defined as "contriving and intending to debauch and corrupt the morals of the citizens." The court invoked this offense and convicted the defendant. The conviction was affirmed on appeal. This conviction could not have been obtained in a jurisdiction that had abolished the common law offenses if there were no statute making this type of conduct criminal.

Any number of offenses that are the constant subject matter of police investigation today were unknown to the common law. The inventive genius of the criminal mind, accompanying the various stages of historical, industrial, and sociological development, has created new antisocial conduct against which society needs protection. Legislatures, in response to these new pressures, have established new offenses by statute. The list of legislatively established crimes could go on here for a number of pages. We shall examine many of them in this book. But, as an example of legislative response, the authors note that embezzlement, as discussed in Chapter 10, was created by statute and was not a common law crime.

The federal judiciary has no power to exercise common law jurisdiction. This comes about not by choice but by mandate. The federal government has only certain enumerated powers. This means that it can only exercise those powers that have been granted to it by the people. The people have given the Congress the power to enact laws, but not to adopt the common law. Therefore, the judiciary can only exercise authority over crimes enacted by Congress. The federal judiciary, however, like the states, must look to the common law for definitions to aid in interpreting federal laws.

Questions for Discussion

1. John has committed an act that under the common law of England would be criminal. The same act is not made criminal by any statute of any state or by federal statute. Can such an offense be successfully prosecuted in the federal courts or in your state? Why?
2. In the study of criminal law, why is it essential to understand the significance of the common law and its effect on the law of the United States?
3. What is meant by the statement that the Constitution must be stable yet flexible?
4. Of what significance is the concept of "responsibility" with regard to the criminal law today?