

STRIKING_{the} **BALANCE**

Debating Criminal Justice and Law



MATTHEW
LIPPMAN



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PREFACE

ORGANIZATION OF THE TEXT

Striking the Balance is organized around clashing points of view on contemporary issues in criminal justice and criminal law. The text features a debate format in which contrasting views are presented through original sources. The material in most instances is drawn from majority, concurring, and dissenting judicial opinions that are edited to highlight disagreements on significant public policy questions. An effort has been made in editing the selections to minimize technical legal discussions. The book is premised on the view that reading and analyzing adversarial policy discussions engages students and helps them develop skills in critical thinking and analysis. There also is obvious educational value in asking students to consider various points of view.

The chapter topics in the text are independent of one another, and instructors are able to arrange the material to fit their individual course organization. Each topic features a **Question for Debate**, a list of **Learning Objectives**, and an **Introduction**, which is followed by a point/counterpoint **Debate** that presents contrasting views on the topic. As noted, these selections in most instances are based on judicial opinions that are edited to highlight public policy considerations. The **Summary of the Arguments** provides an overview of the debate, clarifies the arguments, and notes points of agreement and disagreement. **Questions for Discussion** poses questions that highlight the points made in the debate selections. The **You Decide** feature provides you with the opportunity to apply the arguments and insights in the debate to related legal cases decided by state and federal courts and to contemporary public policy issues that are raised in the debate; these case reprints and article resources are found in the **Responses to the “You Decide”** Features section in the back of the book. Each topic ends with a list of **Web Resources** that references sources that supplement the material in the text.

The text is divided into four sections that cover issues in criminal law and justice.

Introduction. A brief introduction to the U.S. judicial system and to the public policy dimension of judicial decisions assists students in understanding the material in the text.

Criminal and Regulatory Laws. Contrasting views are presented on various contemporary public policy issues. This includes assault weapons, hate crimes, stand your ground laws, police use of deadly force, the “gay panic” defense, stash house entrapment, “battered spouse syndrome,” assisted suicide, felony murder, chemical battery, and legalization of prostitution.

Administration of Justice. Significant aspects of the administration of justice are covered: plea bargaining, peremptory challenges and jury selection, jury nullification, the use of rap music to establish criminal intent at trial, and mandatory minimum sentences.

Prison, Punishment, and the Eighth Amendment. Issues in criminal punishment are discussed including solitary confinement, life imprisonment for juveniles, the death penalty, the death penalty for the rape of a child, and lethal injection.

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Part 1

Introduction

Criminal law is simply whatever the law defines as a criminal offense and punishes with a penalty. The essence of a crime is that it is officially condemned and carries a sense of public denunciation and humiliation. We may not like that someone “cut into line” ahead of us to buy tickets, but this objectionable behavior is not defined as a crime and is not subject to official punishment. The only available remedy may be to confront the “line cutter” or to complain to management.

Where can we find the 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 common customs and practices of the locale. The principles that compose the common law began to be written down and were transported to the new American colonies where they formed the foundation of the colonial legal system that in turn was adopted by the thirteen original states following the American Revolution.

The federal government and the 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 and the law should be the product of elected legislators rather than the product of unelected judges. State legislatures at times have abandoned or expanded the common law. For example, in creating the crime of chemical endangerment of a child (discussed in 2.10), the Alabama state legislature created a crime that was unknown in the common law. Alabama and other states also abandoned the common law rule that an assailant who injures a fetus in the womb only is liable for murder if the fetus is born “alive” and then dies as a result of injuries suffered in the womb. Legislators in those states abandoning the “born alive” rule reasoned that a viable fetus is a “life-in-being” and that the criminal law should punish an injury to a fetus in the womb regardless of whether the fetus is born alive.

The interpretation of laws adopted by state legislatures falls within the jurisdiction of state courts. State courts typically are divided into trial courts that hear minor cases and into intermediate courts that hear most criminal and civil cases. Some states provide an automatic appeal from the intermediate court to the state supreme court while others give the supreme court discretion to hear cases that the justices conclude deserve their attention. A single judge typically sits on state trial courts and appellate courts, but state supreme courts are multijudge panels.

Laws passed by the U.S. Congress are interpreted in the first instance by one of the ninety-four federal district trial courts, which, in turn, are grouped within one of eleven regional circuit courts. A single judge presides over a district court; courts of appeals, in contrast, sit in three-judge panels. An individual may appeal the verdict in the court of appeals to the U.S. Supreme Court, which in most instances has the discretion whether to hear a case and only hears a small percentage of appeals. The Court typically will hear a case when there is a disagreement between circuit courts and there is a need for clarification. There are nine Supreme Court justices, and a majority opinion requires a vote by five of the nine judges. A judge also may concur with the majority opinion, meaning that he or she agrees with

the majority for a different reason. Justices also may dissent or disagree with the majority opinion. Keep in mind that dissenting opinions in some instances eventually succeed in attracting majority support and become enshrined as the majority opinion of the Court.

What does it mean to “interpret” a statute? A legislative statute may not be entirely clear. A defendant who is charged with prosecution for a terrorist attack on a subway car used by commuters may claim that he or she cannot be prosecuted under a statute that punishes an attack on a “vehicle.” A court may be asked by a defendant to determine whether the legislature intended to include subway cars under the category of vehicles and whether the defendant can be prosecuted under the terrorist law. Judges may argue that the legislative branch makes the law and courts should apply the law as it appears on the face of a statute. Other judges will look at “legislative history” or legislative hearings on the law and the debate on the floor of the legislature to determine whether the legislature intended (“legislative intent”) to include subway cars within the term *vehicle*.

Judges under either approach to interpreting the meaning of *vehicle* likely will weigh the public policy concern that given the ongoing terrorist threat the term *vehicle* should be broadly interpreted to include subway cars and other modes of mass transportation. Some judges may conclude that the protection of civil liberties dictates that individuals should be informed of the requirements of the law and only should be criminally punished under a law that explicitly defines the acts that constitute a crime, and that the defendant's conviction accordingly should be reversed.

In an example from the text, the North Carolina Supreme Court in considering whether a defendant may rely on the “battered wife syndrome” in claiming self-defense in addition to examining the law explicitly considered the public policy consequences of narrowly or broadly interpreting the law of self-defense under North Carolina law (discussed in 2.4).

A defendant in a criminal case or a plaintiff challenging a statute in state or federal court may raise a constitutional objection. The U.S. Constitution is the “supreme law of the land,” and the Supreme Court has held that the requirements of the Bill of Rights, the first ten amendments to the Constitution, in addition to being applicable to the federal government, are binding through the Fourteenth Amendment Due Process Clause on the states. As a result, a case may begin in the state system but because there is a federal constitutional issue eventually may be litigated in the federal system and go all the way to the U.S. Supreme Court. A case involving a federal law, of course, will begin and end in the federal system and ultimately may be resolved before the U.S. Supreme Court.

State courts in considering the question of whether hate crimes violated defendants' freedom of expression (discussed in 2.2) differed from one another, and the U.S. Supreme Court ultimately resolved the conflict over whether hate crime legislation violates the First Amendment to the Constitution. The Supreme Court in this instance was acting as the chief interpreter of the Constitution under its power of judicial review. Under the power of judicial review, the Supreme Court defines the meaning of the Constitution and will hold unconstitutional federal, state, and local laws that do not conform to the Constitution.

Legal positivism is a theoretical perspective that claims that judges are like umpires who “call balls and strikes” whose judgments are not influenced by their personal views or by “nonlegal” considerations. The starting point for any legal analysis is the law. Judges rely on precedent (*stare decisis*) and look to the decisions of prior cases in deciding the case before them.

Judges in considering federal constitutional claims, although they are deciding the fate of a single defendant, based on the law may consider the broad public policy aspects of the case along with their legal analysis. A Supreme Court justice, in particular, might ask him- or herself about the impact of a decision that will serve as precedent for every state and federal court. In *Tennessee v. Garner*, both Justice Byron White in his majority decision and Justice Sandra Day O'Connor in her dissenting opinion considered the impact on the police and public of holding that the police may use deadly force against a felon fleeing a nighttime residential burglary (discussed in 2.5).

A judge's consideration of public policy may be influenced by his or her legal philosophy, political sympathies, and personal worldview. The differing views of judges on crime, prison, and punishment, for example, clearly influenced the legal judgments in the text on capital punishment (discussed in 4.3–4.5), and judges' diverse perspectives on privacy and the sanctity of life impacted their decisions on the right to medically assisted suicide (discussed in 2.7).