

Criminal Law

SEVENTH EDITION



Thomas J. Gardner

Terry M. Anderson

Criminal Law

Principles and Cases

Seventh Edition

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Introduction

Despotism has been defined as the anarchy of lawless rulers, and anarchy as the despotism of lawless crowds. The fifty-five men who met at the Philadelphia Convention in 1787 feared both extremes as they wrote a proposed new constitution for their society, which was in crisis because of severe economic, political, and foreign problems.

The Constitution that emerged from the Philadelphia Convention continues to be used today as the supreme law of the land. Its vitality is attributed to the fact that it permits a balance to be maintained between individual liberties and the collective needs of the society; between personal freedoms and the need for public order; and the right to different lifestyles and the need for some degree of uniformity.

This Constitution and the system of government established under it have served the American people well for more than two hundred years. It is not a perfect system of government because there never has been and never will be an absolutely perfect government in this world. Under this system, Americans have emerged from the ten years of the severe Depression of the 1930s and the four years of intense war in the early 1940s to become the most prosperous and affluent people in the world. Americans are also the freest people in the world, as they enjoy more personal, economic, social, and political freedom than any other people in the world.

Rational thinkers since the early Greek philosophers have recognized that personal freedoms are never absolute. The personal freedom of one person ends when his or her activities come into conflict with the rights and freedoms of other people or are contrary to the overall needs and good of the society as expressed by the statutes and laws. The cliché that “your freedom extends as far as the end of my nose” is sometimes used to express the limited concept of freedom. Therefore, in a democratic society, government must regulate conduct to a limited extent, by use of criminal and civil laws, to ensure the rights and freedoms of the society as a whole.

Only a responsible society may be free. People in the society must generally respect the rights and dignities of others. They must also recognize their obligations and duties toward the society as a whole. In a democracy, this means bowing to the will of the majority upon occasion, because in a democracy as in a marriage, the individual does not always get his or her own way if the marriage or the democracy is to survive.

The eighteenth-century member of British Parliament, Edmund Burke, expressed this requirement of responsibility in a democracy in this way:

Men are qualified for civil liberty in exact proportion to their own disposition to put moral chains upon their own appetites. Society cannot exist unless a controlling

power upon will and appetite be placed somewhere and the less of it there is within, the more there is without. It is ordained in the external constitution of things that men of intemperate minds cannot be free. Their passions forge their fetters.

Personal freedoms and rights may be infringed on in many ways. The elderly who do not venture out of their homes at night because of the fear of being criminally assaulted have had their personal freedoms infringed on. The victims of a crime have had their rights infringed on. There is always the possibility in a democracy that the government (or one of the agencies of government) will abuse the power and authority vested in it and will infringe on the liberties and rights of the people. Overseas, totalitarianism in the form of Fascist, Nazi, and Communist governments have presented severe threats to the free people of the world.

The struggle for freedom and liberty goes on constantly in all democracies. American history is a record of this struggle and of the efforts to define the rights of the individual. Criminal law is a study of the authority of government to regulate conduct within constitutional limitations so that maximum freedoms and liberties may be enjoyed by all.

Explanatory Note

The authors have presented the general principles of criminal law in this textbook. However, a few states will vary somewhat in their laws because of statutes or court decisions within that state.

For this reason, it is recommended that students and law enforcement officers consult with their legal advisers before assuming that the law applicable in other states is used in their state.

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Criminal Law in a Democracy

Crime has been part of the human condition since people began to live in groups. When groups of people began to live together as a society, crimes began to occur.

Ancient documents indicate that conduct such as murder, theft, and robbery was defined as criminal by civilizations that existed before biblical times. The Bible tells of crimes, such as Cain killing Abel and the parable of the Good Samaritan who came to the assistance of a man who had been assaulted and robbed (Luke 10:25–37).

Criminal laws regulate human conduct and tell people what they cannot do and, in some instances, what they must do under certain circumstances. Throughout history, all societies have had criminal codes regulating conduct.

The Law as the Will of the People Within a Democracy

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 should be 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.¹

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

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.

The debate over public policies and which laws should be enacted commences in many instances when candidates seek election to public office. Candidates for public office state their positions as to what laws they will seek to enact. Debates then continue in the state legislative body and in the Congress of the United States.

Government Regulation of Conduct

Government may regulate conduct of persons by means of

1. Fines or forfeiture for civil offenses (for example, speeding is ordinarily a civil offense punishable by a fine and forfeiture of points)
2. Imprisonment for some criminal offenses

Law enforcement officers do not make laws. Their traditional tasks are to enforce laws and maintain public order. They are also called upon to provide a wide range of other public services, such as minimizing traffic problems, mediating violent family disputes, rendering aid to injured persons, coping with community tensions, guiding community crime prevention efforts, and responding to emergencies and disasters.

Criminal Law and Related Fields of Law

Public and Private Law

In early England, crimes such as robbery, murder, and theft were classified as private matters, which made victims 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 (1154–89), 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 public law. 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. Crime victims can bring lawsuits in civil courts if the offender is known and has resources to pay money judgments.

Private law deals with relationships between individuals in matters such as divorce, contractual issues, real estate law, and private inheritance.

Criminal Procedure

Criminal procedure is a subfield of criminal law and consists of the steps that are followed from the criminal incident through punishment and release of the offender.

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

Why Some Conduct May or May Not Be Designated as Criminal

Reasons a Legislative Body Might Designate Specific Conduct as Criminal

- To protect the public from violent or dangerous conduct
- To protect public health
- To maintain public order
- To protect the right of privacy of individuals
- To protect public morality
- Because 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.

developed. *Criminalistics* 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 ancient times and on the frontiers in America, people had to protect themselves and thus moved about armed with weapons. If the law could not (or would not) punish an offender, the victim or family and friends would take on the punishment of the offender. Such retaliations could trigger blood feuds that went on for years between families and clans.

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.²

Legal Wrongs

Legal wrongs are either civil or criminal. A *civil wrong* is a private wrong, such as a tort or a contract violation, done to a person or property. 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, hearing civil cases in which private wrongs are alleged, as criminal courts, hearing criminal cases involving public wrongs. In cases of public wrong, the state may either begin a criminal action in a criminal court or take the alleged public wrong to a civil court, as is done occasionally in obscenity, antitrust, or consumer fraud cases.

Distinction Between a Crime and a Tort

A **tort** is a civil wrong done to a person or to his or her property. Of the civil private laws, the law of torts is the closest to criminal law. Often the same wrong may constitute both a tort and a crime. For example, battery, rape, theft, criminal libel, and criminal damage to property are all torts and also crimes. Both civil actions by the injured parties and criminal actions by the state may be brought against the offenders. The offenders may be convicted of the crime in a criminal court and then found to be civilly liable in a civil court and ordered to pay compensatory and punitive damages to the victims for the torts that were committed.

A defendant acquitted of a crime may nonetheless be found civilly liable, as occurred in the O. J. Simpson murder case. O. J. Simpson was found not guilty of the two murders by a criminal jury, but in the following civil lawsuit the civil jury found him liable.

A person who has thrown rocks at the windows of a private building, breaking ten windows and injuring one of the occupants has committed both crimes and torts. Not only may a criminal action be brought against this person for the actual conduct, but civil tort actions may also be brought by the person who was injured and by the person whose property was damaged. However, someone who has seriously injured another person in an automobile accident, in which the police and a prosecutor determine that neither a criminal violation nor criminal negligence has occurred, cannot properly be charged with a crime. In this case, only a civil action may be brought by the injured person or his or her representative. If the defendant were found to be civilly liable, the case would then be an example of a tort that was not also a crime.

Distinguishing Crime, Tort, and Moral Wrong

Type of Wrong	Court Determining Wrong
Crime A public wrong against society	Criminal court
Tort A private wrong against an individual or individuals	Civil court
Moral wrong Violation of a moral or religious code	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.	