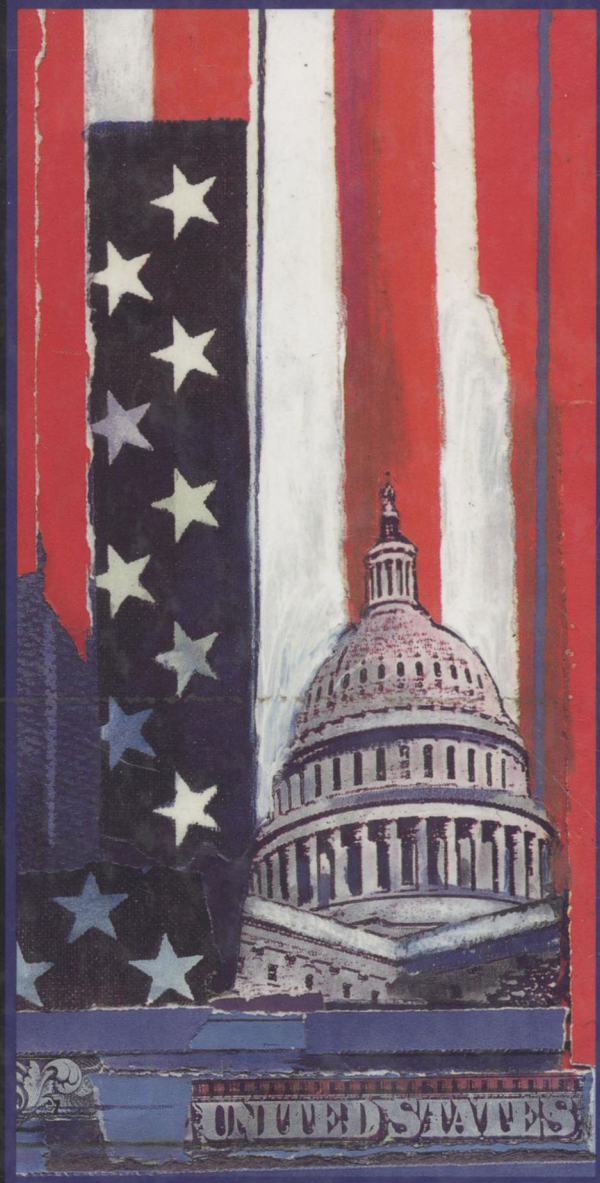


Procedures in the Justice System

Sixth Edition



Gilbert B. Stuckey ★ Cliff Roberson ★ Harvey Wallace

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Preface



This edition, like the 5th edition, is dedicated to our colleague, Gilbert B. Stuckey, who passed away in December 1995.

The 6th edition of *Procedures in the Justice System* continues the tradition of providing the reader with a thorough understanding of our justice system from the time of arrest through the sentencing of the criminal offender. Legal rules of procedure are presented in language that is easy to understand.

The crime rate continues as one of society's major problems, not only in the United States but throughout the world. It is the primary responsibility of those directly connected with the justice system, such as members of law enforcement agencies, the courts, and correctional officers, to fight crime. Yet to effectively curb crime, society needs the assistance of every law-abiding person.

By studying history, we often see the mistakes of the past and can make efforts not to repeat those mistakes in the future. One past mistake was the failure to recognize that the members of the justice system are a team who must work together. Yet, to work as a team, it is necessary for each member to understand his or her own responsibility as well as those of the other members.

In this 6th edition, the coverage of victims' rights and the effects of gangs on the crime problem has been expanded. The discussion of constitutional and civil rights of an accused, the laws of arrest, and juvenile procedures have been expanded. We have also included selected court cases to provide the reader with experience in reading court decisions and to assist the reader in understanding the legal issues involved. Also included in the 6th edition are motions and reports taken from actual trial records. These are submitted to provide the reader with a better idea of the practical issues involved in trying criminal cases.

This book was written for those interested in our justice system, particularly for police and correctional science students. It explains duties and responsibilities of the law enforcement agencies, courts, and correctional departments, in relation to law violators, from the time of accusation until completion of sentence. Criminal justice students should, however, study more than just judicial procedures. The student should have some knowledge of why we have laws and why

those laws are broken, be cognizant of the constitutional rights of an accused, and have a better understanding of the philosophy of correctional endeavors. Thus, material on these subjects is incorporated into this text. The information in this text will help the student, as well as others, attain a more thorough knowledge of our justice system and of the role each member must play to achieve, through teamwork, law and order for all.

To help the instructor present the material in this edition, an Instructor's Manual contains objectives, chapter outlines, teaching aids, and examination questions and answers, including true-false, multiple-choice, and fill-in questions.

A special thanks to Dr. Wojciech Cebulak, Minot State University, for his contributions to the 6th edition.

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c h a p t e r 1

Historical Development of Laws and Crime Causation



The law embodies the story of a nation's development through many centuries, and it cannot be dealt with as if it contained only the axioms and corollaries of a book of mathematics.

—Oliver Wendell Holmes, *The Common Law*, 1881

THE COST OF CRIME

From birth until death, everyone is affected either directly or indirectly by criminals. A person may be directly affected by being the victim of a violent criminal act. Others may be only indirectly affected by the mere fear of going out after dark.

In 1996 the National Institute of Justice released *Victim Costs and Consequences: A New Look*, an in-depth study of the costs of victimization.¹ The study raises serious questions regarding previous estimates of the cost of crime. Using the data from the Bureau of Justice Statistics and including “quality of life” or intangible losses, the study concludes that the cost of crime is higher than previously suggested.

It is fairly easy to establish the tangible costs of crime. These costs include a number of easy-to-measure items such as medical care, police services, and other items that have a specific monetary value. However, it not so easy to value the loss of quality of life or intangible losses suffered by victims of crime. How much is a murder victim's life worth? What is the cost for the pain and suffering experienced by a rape victim? Additionally, costs associated with society's response to crime are difficult, if not impossible, to measure. The following chart lists the major tangible and intangible costs, as well as society's costs, associated with crime.²

As this chart indicates, society's response to crime includes a variety of items that are not normally considered when discussing costs of crime. Measuring our actions and resulting costs based upon our fear of crime is difficult. On the other hand, measuring items such as alarms for cars and homes, which are typical of the precautionary expenditures associated with protecting ourselves from criminal

Cost of Crime	Cost of Society's Response to Crime
Direct property losses	Precautionary expenditures
Medical and mental health care	Fear of crime
Victim services	Criminal justice system
Lost workdays	Victim service organizations and volunteer time
Lost school days	Other noncriminal programs
Lost housework	Incarcerated offender costs
Pain and suffering/quality of life	Over deterrence costs
Loss of affection/enjoyment	Justice costs
Death	
Legal costs associated with tort claims	
Second-generation costs	

activity, is relatively easy. Additionally, everyone understands the costs associated with running the criminal justice system and keeping offenders incarcerated. Thus, it can be observed that society's response to crime includes both tangible and intangible costs. The costs of crime section also includes tangible and intangible losses suffered as a result of criminal acts. These costs include tangible items like medical and mental health treatment cost. The intangible costs include quality of life and loss of companionship.

The following chart examines, in monetary terms, both tangible and intangible costs of crime.³

The chart indicates that quality-of-life losses generally exceed all tangible losses combined. The tangible losses amounted to \$105 billion each year, and the intangible losses were more than three times that amount at an annual cost of \$345 billion.

Thus with the physical and mental anguish suffered and the property losses inflicted upon the people of this nation, there is little wonder that there is concern over the high crime rate and that demands are being made to do something about it. As was stated in the preface, curbing crime is actually everyone's business, but primarily responsible are those who compose the justice system, that is, the law

Crime	Tangible Costs	Intangible Costs	Total Costs
Murder	\$1,030,000	\$1,910,000	\$2,940,000
Rape/sexual assault	\$5,100	\$81,400	\$86,500
Robbery/attempt with injury	\$5,200	\$13,800	\$19,000
Assault or attempt	\$1,500	\$7,800	\$9,350
Burglary or attempt	\$1,100	\$300	\$1,400

enforcement agencies, the courts, and the correctional departments. It is their function to properly administer justice in this country. In so doing, they must take the necessary action against the criminal offender so that our society will be protected. Therefore, when a criminal law is broken, the justice system must begin to operate. An arrest must be made by the appropriate law enforcement agency. The accused is entitled to a speedy trial, so the courts must function, and if the accused is convicted and sentenced, the correctional officer comes into the scene. In the administration of justice, many judicial procedures must take place between the time of the arrest and the sentencing, each of which will be explained in detail throughout this text.

THE EARLY DEVELOPMENT OF LAWS

Since the evolvement of the justice system begins with the breaking of a criminal law, it may be well to digress momentarily from the study of the legal procedures and determine what a law is and whether laws are necessary in our form of society. A law in its simplest form is merely *a guideline for human behavior*. Its purpose is to encourage people to do what is right and discourage them from doing wrong. It has been described as a social tool to mold and regulate human conduct. Legally, a law is defined as an act of a legislative body written and recorded in some public repository informing people of what is right and wrong. In the case of *Koenig v. Flynn*, it was stated as "that which must be obeyed and followed by citizens, subject to sanctions or legal consequences, is a law."⁴

The next question to be answered is: are laws necessary today? It has been stated frequently that laws are made to be broken. Also it has been alleged that if there were no laws, they would not be broken. In fairness to the declarant of this statement, it is only logical to assume that if there were nothing to break, nothing would be broken. So we return to the question: are laws necessary? Before answering, it may be well to consider the origin of laws and why they came into being.

A human being comes into the world with certain basic needs that remain throughout his or her life. These are the needs for food, shelter, companionship, and sexual gratification. If untrained and uncontrolled, a person may attempt to satisfy these needs in a most animalistic manner. If one were completely isolated from all other human beings, the fashion in which he or she might try to accomplish satisfaction of personal needs would be relatively unimportant. However, the moment one comes in contact with another person, the needs of each individual must be considered, and each must respect the desires of the other. Each person must learn to realize that his or her liberties cease where the other's begin. Certain restraints upon activity must be imposed. Thus there is a necessity for some guidelines about satisfying personal needs without infringing upon the rights of others.

They may agree upon a division of territory, and each will confine his or her activities to that territory. If this takes place, there is little reason for other guidelines, but if they should agree to combine their efforts, further regulations must be made. It must be decided who will do what and how they will share. As more and more persons enter the picture, the necessity for more rules becomes apparent. Eventually, it will be necessary to choose a leader or chief to see that the rules are followed and to keep order within the tribe or society.

Undoubtedly, many of the early established guidelines came about through trial and error. When it was recognized that a tribal member committed an act that threatened the existence of the tribe, a restraint against that act was created, and a violation of that restraint was what we now know as a crime. It probably did not take long for members of a primitive tribe to learn that they could not go about killing each other and have the tribe continue to exist. Therefore rules against murder were established. To satisfy man's need for food and shelter, he devised certain tools that became his property. The taking of these tools by another, depriving the owner of their use, was a serious act, so a rule against theft was enacted. People took mates to satisfy their needs for companionship and sexual gratification. The mate was also personal property and to violate that property right was an offense, so rules against adultery were formed.

As tribes, or societies, grew in number and became somewhat more sophisticated, so did their regulations. As time passed, people developed belief in a deity. Regulations respecting these beliefs were also established, and the violation of these rules was a serious offense against the society. Biblical historians tell us that when Moses led the Israelites out of Egypt some thirteen hundred years before Christ, he quickly realized that these people must have some guidelines to follow if they were to exist. Through an inspiration from God, ten basic rules known as the Ten Commandments were established. Included were not only those laws that earlier tribes found necessary for existence, that is, rules against murder, theft, and adultery, but also more sophisticated rules that pertained to admonitions against not respecting God. In addition were admonitions against certain thoughts that people may conceive that might lead them into greed. Thus a person should not covet his or her neighbor's property. When Moses gave these guidelines to the people of Israel, he commanded that they obey them since they would ensure life and entrance into the possession of the land. He further indicated that these laws were not to be tampered with in the interest of human weakness. There was no mention that these laws were made to be broken. Nor has there been any such suggestion by anyone in authority since that time that laws are made to be broken.

Because of the effect of ecclesiastical law on the nations of Europe, most of these Commandments were incorporated into their laws and, in turn, were brought to this country by the colonists. Our early criminal laws included rules against murder, theft, adultery, working on Sunday ("blue laws"), profanity, perjury, and those describing family responsibilities. Although we have become a more

permissive society and take some of the earlier guidelines less seriously, a few of the Commandments are still found in the criminal laws of all the states of this nation because they are necessary for the existence of any society. These are the laws against murder, theft, perjury, and adultery; other laws are added to these from time to time. As societies become more complex, so do their laws. New restraints are placed upon people's activities. These laws are designed with the hope that people can and will live more peacefully and pleasantly with their fellow human beings. Again we see, from a sociological standpoint, that laws are necessary for humankind's existence. From a legal standpoint, laws are necessary to inform people what is right and what is wrong. They must be made aware of the acts for which, if committed, they may be prosecuted. In our form of government, each criminal law must be spelled out in detail so that a person may know the exact act that, if committed, is a violation of the law. If a law is considered too vague, it will be declared null and void.

The Common Law

Much of the basic criminal law of this country originated from the common law of England. Originally, the common law of England was nothing more than a set of unwritten regulations and customs that acted as guidelines in settling disputes, determining the inheritance of property, and dealing with persons who committed misdeeds of a serious antisocial nature. As time passed, court decisions were made a part of the common law. Thereafter, the common law was further enlarged by legislative enactments and was brought to this country by the colonists to act as guidelines for conduct.

Modern Criminal Law

Today, the criminal law of the various states is a written set of regulations that is largely the result of legislative action. These regulations are recorded in some official record within the states and are often referred to as the *penal code*. Criminal laws vary somewhat between the states. In some states, there is no reliance upon the common law to determine what is right and wrong. The statutes spell out specifically the act that is made a crime and the punishment that may be inflicted for the commission of such an act. For example, the code may state that *manslaughter* is the unlawful killing of a human being without malice. This definition will be followed by a statement that one convicted of manslaughter may be imprisoned for a period not to exceed four years. The statutes of other states provide that "manslaughter" is punishable by imprisonment not to exceed a prescribed number of years. But this statute does not define what act constitutes manslaughter. The courts must then look to the common law to determine the interpretation of manslaughter.

CLASSIFICATION OF CRIMES AND PUNISHMENT

In our present form of jurisprudence, not only do we tell people what a criminal act is, but we also tell them the punishment they may be subjected to if they commit the act. The following definition is generally found in the statutes of the states: A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it and to which is annexed, upon conviction, one or more of several punishments. The basic forms of punishment are death, imprisonment, fines, removal from office, or disqualification to hold and enjoy any office of honor, trust, or profit. We have classified criminal laws in accordance with their seriousness to society and stated the punishment that could be inflicted upon conviction. Earlier in our history, we classified criminal laws as *treason*, *felonies*, and *misdemeanors*. Most states eliminated treason as a category of crime and listed it merely as another felony violation. Thus two classifications remained: felonies and misdemeanors. However, in recent years, many states have added a third and fourth classification, an *infraction* and a *state jail felony*.

With the felony being the most serious crime, the violator is subjected to the most severe punishment either by death, imprisonment in a state prison, or carrying a sentence of more than one year. The misdemeanor, being a less serious threat to the existence of a society, carries a lesser punishment, the most severe of which is usually not more than a year in jail. The infraction is the least serious crime, carrying a fine or probation but, in most states, no imprisonment. The state jail felony is a crime that is more serious than a misdemeanor, but not as serious as a felony.

The procedure by which one accused of a crime is brought to trial and punished is known as a *criminal action*, and the one prosecuted is known as the *defendant*. Criminal actions are commenced with the filing of a formal written document with the appropriate court. In some states, there is no requirement to file a formal written document in cases involving infractions. The charging document is referred to as an accusatory pleading. In most felony prosecutions, the document will be an indictment or an information, both of which will be explained in detail in Chapter 5. In misdemeanor prosecutions, the accusatory pleading is generally a complaint, as explained in Chapter 4. When a criminal law is broken, it is against society as a whole, so the prosecutive action is brought in the name of the people; thus, the action is generally entitled “People versus [the defendant],” “State versus [the defendant],” or “Commonwealth versus [the defendant],” stating the defendant’s name.

Civil Laws

Although we are primarily concerned with criminal laws as they relate to our study of the administration of justice, we must not overlook other laws that regulate conduct between individuals. These we know as civil laws. Civil laws cover

many subjects, including rules against negligent or careless actions, defamation of reputation, and trespass onto property. Civil laws impose both the duty to perform contracts entered into voluntarily and the responsibility to pay debts. When one of these laws is broken, court action can be taken against the offender in an effort to get some redress in the form of damages. The violation is regarded as being against the individual or victim. Therefore, the victim must take the necessary action against the wrongdoer, and the suit is filed in the name of the victim, known as the *plaintiff* versus the wrongdoer, known as the defendant.

CRIME CAUSATION

To better understand the judicial processes involved in the administration of justice, and particularly the correctional philosophy, it may be well to consider both the causes and the extent of crime in the United States.

Crime in the United States

It has been alleged that the United States is the most crime-ridden nation in the world. This is a debatable statement since undoubtedly there are other nations that are equally crime-ridden. However, one could easily get the impression that the United States has the most serious rate of crime for three major reasons: freedom of the press, which devotes much space and time to coverage of criminal activities; outstanding records and statistics on crime; and efficient law enforcement agencies that make many arrests, which, in turn, are recorded in files and publicized in the news media.

Whether or not we are the most crime-ridden nation in the world, we certainly have too much crime. There are many reasons why this is true. These reasons should not operate as an excuse for lawlessness but as explanations with which we must work to control crime in the future. One reason for our high crime rate is that U.S. society contains mixed emotions concerning law and order. Perhaps there is no place on earth where people wish to live more comfortably and peacefully with others than in the United States, yet no group of people resents more than we do being told what we can and cannot do. We want to be protected by the authority vested in our government, particularly in law enforcement, but at the same time we do not hold authority in particularly high esteem. Too many of our citizens want their families to be safe from the hoodlum but do not want their favorite bookie arrested. They want their streams stocked with fish at all times, but they like to brag about "bagging" more than the limit. Americans want Junior to grow up as a wholesome, law-abiding citizen, but while on the Sunday drive, they station him in the back seat to be the lookout for "cops" while Dad speeds. Too many want the law to control the "other guy" but want complete freedom of

movement for themselves. These same people expect to be aided in an emergency but do not want to become involved in others' problems. In summary, as a nation our people love freedom and individuality—without restraint.

Another reason for our high crime rate is that the United States is a nation made up of an extremely heterogeneous people, from different nations, and of varied races and ethnic backgrounds. Such people tend to gather in cliques in certain sections of a city, often isolating themselves from other nationalities. Many are belittled and discriminated against, and they find becoming part of a community is a frustrating experience. This frustration frequently leads to resentment and hostility and a striking-out against society.

The constant urge to acquire material possessions contributes to the high American crime rate. We enjoy the luxuries of life—the comforts of a nice home; the joy of good transportation; the pride of nice clothes; and the pleasures that the radio, television, and other entertainment can give us. Since we live in an affluent society, many material things are to be had. The fact that one cannot always afford these luxuries does not make the desire for them any less. When these luxuries cannot be obtained legitimately, there is always the temptation to get them by various devious means, such as prostitution, pushing narcotics, stealing, or buying items at a low price from a questionable source without asking any questions.

An additional reason for the high crime rate is that the United States is a highly mobile society. We enjoy the right to move to any place at any time without restrictions. As a result, many are constantly on the move from one community to another. Therefore they establish no roots and do not become a part of any community. They care little about what takes place in the community as long as it does not affect them directly. Thus, general social disapproval of criminal acts, once a factor in curbing crime in a stable community, is unknown in a mobile society. With the weakening of the family, neighborhood, and community, the potential offender is more ready to challenge authority since his or her identity is more easily lost, thereby making discovery more difficult. And the offender, if caught, may feel that the punishment will be reduced because of the lack of local emotional involvement in the criminal act.

Individual Physical Traits

Up to now in our discussion of crime rates, we have been concerned with the population as a whole. But our high national crime rate is the result of many individuals committing crimes within our society. Thus, our study must now turn to why individuals commit crimes. As stated, laws are established so that society may exist and so that people may live more peacefully together. Why then are these humanitarian rules broken? In recent years, more has been written about this subject than about almost any other, but we still have no concrete answer for why people commit crimes or how to cure them. In view of the volumes of material that