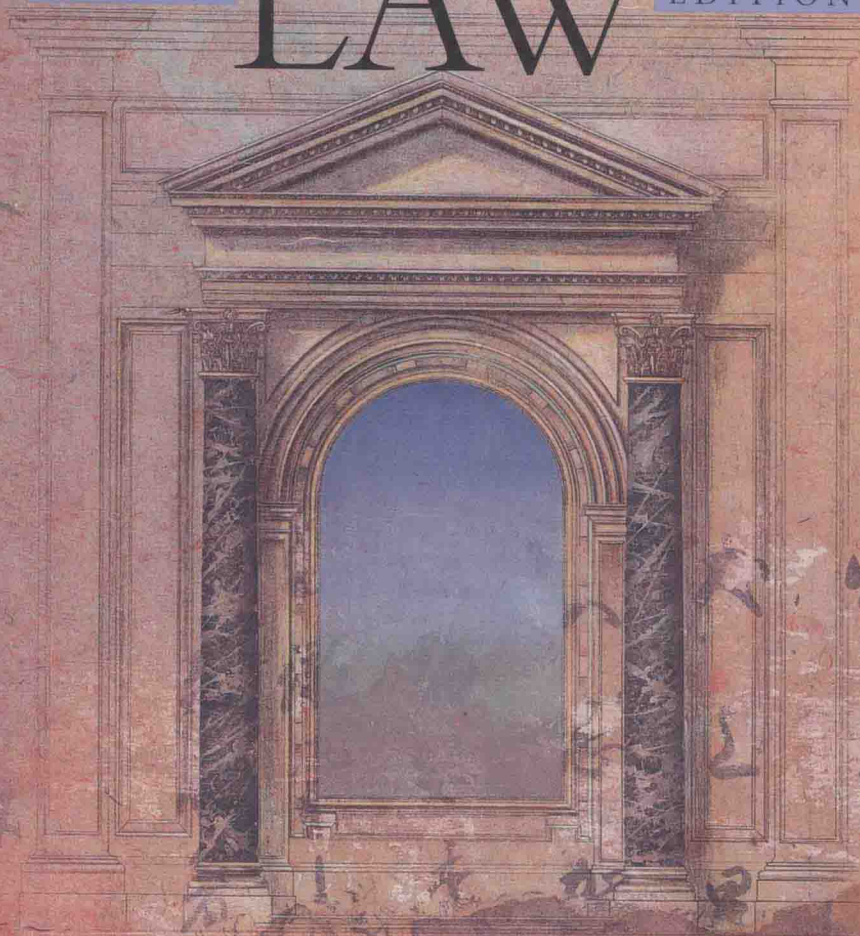


PRINCIPLES OF  
**CRIMINAL**  
LAW  
SECOND EDITION



HARVEY WALLACE  
CLIFFORD ROBERSON

# PRINCIPLES OF CRIMINAL LAW

2ND EDITION

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# PREFACE

The study of criminal law is more than a study of specific crimes; it is also an examination of the rules of criminal responsibility. Criminal law is based on moral values, and most of our crimes are also violations of our moral codes. Accordingly, the subject is controversial and exciting. For example, is abortion the exercise of a woman's "right of privacy" or is it "murder"? Like many other criminal law issues, the answer to that question depends on one's values and beliefs.

An important, but seldom mentioned, function of criminal law for social scientists is to define the subject matter of criminology. Criminology is the sociological and psychological study of the causes of crime, the control of crime, and the reasons for crime. Accordingly, defining certain acts as criminal and others as noncriminal directly affects the subject matter of criminology. As a comedian once stated, the only way to eliminate crime is to abolish our criminal laws—then there would be no crime.

Too often, books on general criminal law devote a considerable portion of the text to comparing majority and minority positions on specific issues. The result is that most readers are confused and lack a general understanding of settled concepts. For the most part, we have presented the prevailing positions with only an occasional reference to the majority/minority conflicts.

This book is designed as an introductory text on criminal law and not as a research book. Accordingly, to reduce its size and enhance its readability, in some chapters involving noncontroversial subjects endnotes are used sparingly. The text presents basic concepts or principles of criminal law in definitions, focus boxes, and practicums. All of these features are designed to assist the student in understanding this often confusing area of the law. A set of review questions follows each chapter.

We have chosen to present this material in a narrative form rather than approach it from a traditional law school casebook perspective. While we believe both techniques may be used to teach criminal law, our goal is to present a clear, concise text that discusses background information necessary to understand the principles involved in criminal law and sets forth the elements of the major crimes.

In an effort to improve this text, we have consulted with our colleagues, professionals in the field, and students who use it as a learning tool. Many reviewers suggested leaving the majority of the text the same—if it isn't broken, don't fix it. However, we did receive other feedback that suggested the need for modification. This second edition contains several

significant changes. We have updated many of the practicums. We owe a debt of gratitude to CSUF criminology student Matt Webber for his assistance in this area. However, because many of those who use the text liked the existing practicums, we have left them intact and simply added new cases where appropriate. We have also added short, succinct, edited cases to certain chapters to improve the students' grasp of important concepts. Finally, we have added a new chapter dealing with special crimes. These crimes involve violence within the family that are becoming more important to professionals in the criminal justice system with the passing of each year.

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# CHAPTER 1

## SOURCES OF CRIMINAL LAW

### CHAPTER OUTLINE

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Punishment  
Principles of Criminal Responsibility  
Morals Versus Law  
Classification of Crimes  
Origins of Criminal Law  
Case Law  
Reform of Criminal Law  
Summary

### LEARNING OBJECTIVES

---

*After reading this chapter, you should be able to:*

- Explain the origins of criminal law.
- Define the term *crime*.
- List and explain the various classifications of criminal law.
- Discuss the development of common law.
- Explain the importance of case law.
- Understand the difference between moral lapses and crimes.
- Trace the sources of criminal law.
- Explain the basic theoretical concepts of punishment.

- Understand the concept of administrative crimes.
- Distinguish between crimes and torts.
- Explain the principles involved in the reform of criminal statutes.

## KEY TERMS

---

*After reading this chapter, you should understand the following key terms:*

**Common Law:** Early English law developed by the judges, into which was incorporated Anglo-Saxon tribal customs, feudal rules, and everyday rules of the villages. Common law became the standardized law of the land in England and later in the United States.

**Crime:** A violation of an existing societal rule of behavior as expressed in a criminal statute, for which a criminal punishment may be imposed.

**Felony:** A serious crime for which the accused, if convicted, may be sentenced to a prison term or the death penalty.

**Infraction:** The least serious violation of a criminal statute. Normally punishable only by a fine. In many states, minor traffic offenses are considered infractions.

**Jail:** A local place of confinement for those awaiting trial and those who have been convicted of misdemeanors.

**Misdemeanor:** A crime that is punishable by fine and/or jail confinement. Less serious than a felony.

**Stare Decisis:** The legal principle that binds courts to stand by prior decisions and use them as the standards by which to judge subsequent cases.

**Statutory Law:** Law created by legislative bodies to meet changing social conditions, customs, and public opinion.

In this chapter, we will examine the sources of criminal law. The study of criminal law is a study of crimes, moral principles, and common law. Our system of criminal law should be viewed not as a set of rules for memorization, but as a cluster of ideas, principles, and values about which reasonable persons can and do disagree. The system is not fixed in stone; it is changing and flexible. Understanding our concept of justice requires a thoughtful comprehension of the historical background, social values, moral standards, and political realities that give direction to our system.

Criminal law is used to fully define and to establish the limits of prohibited criminal behavior. Roscoe Pound describes two needs that can be considered the controlling force behind most philosophical thinking in the

area of criminal law.<sup>1</sup> First is society's need to maintain security in the community by regulating and controlling governmental and individual activity. Second is the need to provide for and allow changes in the law in response to changes in the society.

What is a crime? A simple definition is that a crime is any act that has been so designated by the lawmakers. For our purposes, we will define *crime* as conduct that has been prohibited by law and that subjects the *offender to punishment*. To understand our criminal law, it is necessary to focus on the one characteristic that differentiates it from civil law. That characteristic is punishment.<sup>2</sup>

## PUNISHMENT

*If you did not punish crimes you would help wickedness.*

Publilius Syrus, Latin writer, c.43 B.C.

One of the core functions of criminal law is to punish wrongdoers. This section presents a brief introduction to the concepts of punishment. Chapter 14 discusses punishment in greater depth. While almost everyone advocates that criminals should be punished for their criminal behavior, any definition of punishment can be criticized as being arbitrary. Joshua Dressler defines punishment as the suffering imposed on a defendant by an agent of the government pursuant to the authority given to that agent by reason of the defendant's criminal conviction.<sup>3</sup>

All societies punish those who have committed crimes. There is a lack of agreement, however, on the purposes of punishment, which may include rehabilitation, incapacitation, retribution, and deterrence.

The belief that punishment will cause a wrongdoer to reform is a noble one, but is it realistic? Most criminologists contend that punishment generally does not reform. This conclusion is supported by the high degree of recidivism among those persons presently serving time in jails and prisons.

Incapacitation as the rationale for punishment is based on denying the criminal the opportunity to commit other crimes by virtue of his or her restraint (confinement).

The theory of punishment for retribution purposes is different from the other theories in that its goal is to take revenge on the individual rather than to reform an offender or restrain the would-be criminal. Under the concept of retribution, the criminal has committed a wrong to society and, therefore, must pay his or her debt to society. As one nineteenth-century scholar wrote in support of retribution, "criminal law thus proceeds upon the principle that it is morally right to hate criminals . . . and that it is highly desirable that criminals should be hated . . ."<sup>4</sup>

There are two types of deterrence: general and specific. General deterrence is based on the idea that punishment of a criminal will cause other people to forgo criminal behavior in the future. Special deterrence is the punishment of a wrongdoer to deter that individual from misconduct in the future.

In many cases, one of these purposes would suggest severe punishment, whereas another purpose would suggest limited or no punishment. The concepts involving punishment are explored in depth in Chapter 15.

## PRINCIPLES OF CRIMINAL RESPONSIBILITY

---

*Laws undertake to punish only over acts.*

de Montesquieu, *The Spirit of Laws*, 1748

The criminal law of a state includes not only a list of crimes but also a body of principles that help us decide under what circumstances individuals should be considered criminally responsible for their conduct. These principles are also used to determine when it is fair to impose criminal sanctions on individuals. In general, a person is criminally responsible only for voluntary acts of misconduct. There are, however, some rules that hold persons guilty for nonvoluntary acts. In addition, the rules regarding self-defense and justification are used to excuse certain behavior that would otherwise be criminal. The principles of criminal responsibility determine which acts will be considered criminal and under what circumstances the law will excuse an otherwise criminal act. The principles of criminal responsibility include the following:

- Those defenses that excuse conduct that would otherwise be criminal—for example, insanity, self-defense, and necessity
- The requirements for *actus reus* and *mens rea*
- The requirement for joinder of intent and act

## MORALS VERSUS LAW

---

*A creep is not a criminal.*

Anonymous

While the criminal statutes are in general a reflection of our moral codes and values, there is often a difference between what is morally wrong and what is legally prohibited. Many acts that are considered criminal may not

be morally wrong. For example, insider trading on the stock market is a statutory crime that does not violate everyone's moral code. In addition, some acts that most of us would consider morally wrong are not illegal. If you are standing on a boat dock and see a young man (a stranger) drowning, you are normally under no duty to rescue him even if you could without endangering yourself. There may, however, be a moral duty to do so. Crimes that are also violations of our moral and ethical codes receive the strongest condemnation from the public—for example, rape, murder, and child sexual abuse. As a general rule, the standards that we set for moral and ethical reasons are higher than the standards required by our criminal laws. This is based on the fact that our moral and ethical codes attempt to establish perfect personal character, whereas the criminal codes tend to establish minimal levels of conduct. In addition, criminal conduct is ordinarily considered unjustifiable and inexcusable.

## CLASSIFICATION OF CRIMES

---

*A crime is anything that a group in power chooses to prohibit.*

Freda Adler, *Sisters in Crime*, 1974

Crimes may be classified in many ways. First, they are classified as either *mala in se* or *mala prohibita*. *Mala in se* crimes are those acts that are not only crimes but are also considered morally wrong—for example, rape, murder, and theft. Generally, all common law crimes are considered *mala in se* crimes. *Mala prohibita* crimes are those that are not considered morally wrong even though they are crimes—for example, insider trading or failure to have a business license. *Mala prohibita* crimes are wrong simply because they are prohibited by statutes.

Crimes are also classified as crimes against the person, crimes against property, sex crimes, victimless crimes, professional or white-collar crimes, and crimes against public order.

*White-collar crime* is a term originated by Edwin Sutherland in the 1930s to describe nonviolent crimes of personal or corporate gain committed by people in their work, occupation, or business or in defrauding other people or the government.<sup>5</sup> White-collar crimes are also called business crimes, commercial crimes, or occupational crimes.

*Victimless crimes* are those in which there are no direct victims, such as gambling, prostitution, and using drugs. Unlike murder, rape, or robbery, a victimless crime is usually committed by two or more people, all of whom readily participate in the crime. In some cases, it is also called a "public order" crime. While many of these offenses are called "victimless

crimes," some authorities believe that society is the victim. Additionally, some crimes such as drug use lead certain people to prostitution to pay for their addiction.

## FELONY OR MISDEMEANOR

The most popular classification of crimes uses the categories of treason, felonies, misdemeanors, and infractions. Treason, since it threatens the very existence of the nation, is considered the most serious. Because of its rarity, treason will not be further discussed in this text. The majority of our crimes are classified as either felonies or misdemeanors. The key to distinguishing between a felony and a misdemeanor is not the punishment actually given in court, but the punishment that could have been imposed. For example, X commits the crime of burglary and could receive ten years in prison. The judge sentences him to only six months in the local jail, the sentence typically given for a misdemeanor. X has been convicted of a felony, even though he received only a jail sentence.

At common law, a felony was considered any crime for which the offender would be compelled to forfeit property to the king. Most common law felonies were punishable by the death penalty. The common law felonies include murder, rape, assault and battery, larceny, robbery, arson, and burglary. Presently, only aggravated murder may subject the offender to the death penalty.

Most states distinguish between misdemeanors and felonies on the basis of place of incarceration. If the offense carries a punishment of incarceration only in a local jail, then the offense is a misdemeanor. Felony offenders can be imprisoned in prisons or correctional institutions. Other states use a combination of place of incarceration and character of offense to make the distinction between felonies and misdemeanors. The Model Penal Code provides that a crime is a felony if it is so designated, without regard to the possible penalty. In addition, any crime for which the permissible punishment includes imprisonment in excess of one year is also considered a felony under the code. All other crimes are misdemeanors.

Several states, like California, have crimes that are referred to as "wobblers," based on the fact that the court can treat them as either a felony or a misdemeanor.

Felonies and misdemeanors are frequently subdivided into classes. For example, in Texas misdemeanors are subdivided into classes A, B, and C, and felonies are subdivided into classes of first, second, and third degree. Under this classification, promotion of prostitution is a felony of the third degree, and forcing someone to commit prostitution is a felony of the second degree. The burglary of an inhabited building is a felony of the first degree, whereas the burglary of an uninhabited building is a burglary

of the second degree. The Model Penal Code (MPC) also creates degrees of felonies. A first-or second-degree felony under the MPC carries a \$10,000 fine plus imprisonment and a third-degree felony carries a \$5,000 fine plus imprisonment.

In many states, infractions are the lowest level of criminal activity. An infraction is an act that is usually not punishable by confinement, such as a traffic ticket. In several states, the term *petty misdemeanor* is used in lieu of infraction.

Similar to infractions are violations of municipal ordinances. In some states, ordinance violations are not considered crimes, based on the theory that a crime is a public wrong created by the state and thus prosecuted in the name of the state. An ordinance is a rule created by a public corporation (the municipality) and prosecuted in the name of the municipality.

The classification of a crime as a felony or misdemeanor is important for several reasons. First, a felony conviction on a person's record can prevent the individual from entering many professions and obtaining certain jobs. A felony conviction has been used to deny a person the right to enter the armed forces or obtain employment with a law enforcement agency, and it may even affect one's ability to obtain credit or adopt a child. In one state, a felon (a person who has been convicted of a felony) may not obtain a license to sell chickens wholesale. In addition, conviction of a felony can be grounds to impeach a public official. At one time, many states did not allow a convicted felon to vote, hold office, or serve on a jury. Today, in all but eight states, many of the disabilities commonly associated with a felony conviction have been abolished.

## ADMINISTRATIVE CRIMES

The Supreme Court, in *United States v. Grimaud*, held that Congress could delegate to an administrative agency the power to make regulations that may be enforced by criminal penalties.<sup>6</sup>

Today, state legislatures and the U.S. Congress have delegated to certain administrative agencies the power to make rules and enforce them by criminal penalties. For example, a private airplane pilot may be subject to criminal penalties for violation of the Federal Aviation Administration's regulations regarding flying rules. In delegating the authority to an agency, the legislature must provide specific guidelines to be observed by the agency. The delegation of such authority is generally constitutional if the following steps or guidelines are followed:

- The legislative delegation of authority must be limited and contain sufficient standards to guide the actions of the agency.
- The agency must operate within the specific guidelines established by the legislature.



- The agency rules must be explicit and unambiguous and within the standards established by the legislature.

## CRIMES AND TORTS DISTINGUISHED

Not all legal wrongs are crimes. Private wrongs are usually considered either a tort or a breach of contract. A crime is a public wrong, since it involves the violation of the peace and dignity of the state. In theory, it is committed against the interest of all of the people of the state. Accordingly, crimes are prosecuted in the name of the "State," the "People," or the "Commonwealth."

A tort is a wrong that violates a private interest and thus gives rise to civil liability. The same conduct, however, may be both a crime and a tort. For example, if a woman is forcibly raped by a neighbor, the criminal aspect of the conduct is a violation of the peace and dignity of the state. It is therefore a crime against all the people in the state. It is also a violation of the private interest of the victim, and she may file a civil suit and obtain civil damages against the offender.

An offender may be acquitted at a criminal trial, where proof of his or her guilt is required to be established beyond a reasonable doubt, and yet may be held accountable at a civil trial, where the degree of proof required is much smaller.

## PUBLIC AND PRIVATE LAWS AND WRONGS

Our laws are also classified as either public or private laws. Generally, private laws deal with relationships between people, in which the government has only an indirect interest. Family law (marriage, divorce, etc.), real property law, and probate law (wills and trusts) primarily regulate the relationships between individuals and companies. The government has only an indirect interest. Public laws are those in which the government has a more direct interest. Public laws include constitutional law, criminal codes, vehicle codes, and public health laws.

At one time in early England, rules prohibiting crimes against the individual, such as rape, robbery, and theft, were considered private laws, on the theory that these crimes did not affect the state. Eventually English law recognized that crime was not a personal affair but a wrong against society, a violation of the peace and dignity of the people.

A few public wrongs are, however, prosecuted in civil court. Usually the statutes that establish certain crimes provide the state or federal government the option to proceed civilly rather than criminally. The matters in which the government has this option include civil rights, antitrust, obscenity, and consumer fraud. In civil court, the offender may be found civilly liable and ordered to pay compensatory and punitive damages.