

# Introduction to CRIMINOLOGY, LAW AND SOCIETY

With selections from:

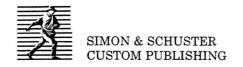
Hames/Ekern: Introduction to Law

Calvi/Coleman: American Law and Legal Systems, 3rd ed.

Vago: Law and Society, 5th ed.

Barkan: Criminology: A Sociological Understanding

Edited by William C. Thompson, J.D., Ph.D.



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#### **Preface**

This textbook is custom published for use in the course titled *Introduction to Criminology, Law & Society* (J7) at the University of California, Irvine. It is a compilation of materials from four textbooks published by Prentice-Hall, Inc.: Joanne Hames and Yvonne Ekern, <u>Introduction to Law</u> (1997); James Calvi and Susan Coleman, <u>American Law and Legal Systems</u> (1997); Steven Vago, <u>Law & Society</u> (5th Ed. 1997); and Steven Barkan, <u>Criminology A Sociological Understanding</u> (1997).

The textbook and course begin with a survey of American law and the American legal system. They then introduce the field of scholarship that has come to be known as Law & Society--a field which concerns the origin of laws, the organization and function of the legal system, the impact of law, and the role of law in producing social change. Finally, they cover the field of Criminology, which concerns the biological, sociological and psychological explanations for crime, society's reaction to crime, and the operation of the criminal justice system. In keeping with the focus of Department of Criminology, Law & Society, the textbook and course emphasize interdisciplinary approaches to understanding law, including the social, cultural, economic, psychological and political forces that influence law creation, interpretation, violation and enforcement.

It is my sincere hope that students find this textbook interesting, readable and intellectually challenging.

William C. Thompson June, 1997 Irvine, California

# PART I OVERVIEW OF AMERICAN LAW

# CHAPTER 1

(Hames & Ekern, Introduction to Law, Chapter 2)

# The American Legal System

- 2-1 Introduction
- **2–2** Federalism—The Relationship between Federal and State Government
- **2–3** The Federal Government and the Legal System
- **2–4** State Governments and the Legal System
- 2–5 The Courts and Their Roles

#### INTEROFFICE MEMORANDUM

To: Terry-Jacobs, Paralegal Intern

From: Supervising Attorney

Torry I am afraid that I am going to be tied up i

Terry, I am afraid that I am going to be tied up in court today on the Beswick family law matter. I do need you to run some errands for me, though.

- 1. Janet is finishing the Anders complaint for damages and I would like you to take it to court and file it with the court as soon as possible.
- 2. A criminal complaint has been filed against our client Rory Eberhardt for federal income tax evasion. Go to the prosecutor's office and pick up a copy of the complaint and its investigative reports. Their staff is expecting you.
- 3. File the appellate brief in the Swanson patent infringement case.

All of these courts are in the same general area, so it shouldn't take you too long to get everything done. If you finish early, come by and watch the Beswick case.

P.S. Sorry I couldn't be in the office on your first day of work.

Terry Jacobs was lost! Terry was finally working in a law office, even if it was without pay, and the first assignment seemed impossible. At first, the assignment seemed so simple and straightforward. Terry did not know where the court was, but was industrious enough to look up the address in the telephone book. The telephone book, however, listed multiple courts, all at different addresses. There were county municipal courts, county superior courts, county traffic courts, U.S. district courts, and state district courts of appeal. Terry had no idea what happens at any of these courts. Where does one file a complaint for damages? Where are appeals heard? Terry did not know. Terry was even confused about the prosecutor's office. The telephone book listed addresses for a county prosecutor and for a federal prosecutor. Terry did not know which of these was handling the case against Mr. Eberhardt. The only thing that Terry could tell about all the courts and the prosecutors was that they all seemed to be part of some government. Some were county, some were state, and some appeared to be federal.

Although Terry was still uncertain about the assignment, Terry did make an important observation about our legal system. The operation of a legal system in America is primarily the function of government. Any legal system must have a mechanism for making laws, for enforcing laws, and for interpreting and applying laws to real-life factual situations. In the American legal system, these functions are performed primarily by different branches of our government. That is, laws are made, enforced, and interpreted by various branches of the government. This process is complicated in the United States because of the way government is structured. In the United States, citizens are regulated primarily by two separate governments, federal and state, each maintaining separate and largely independent legal systems. Local governments also play a role, but most often local and state governments work together in the operation of one combined legal system. In this chapter you will see how the various branches of our federal government act to create a legal system. You will also see how the various branches of state and local governments act to create a different legal system.

#### SEC. 2–2 FEDERALISM—THE RELATIONSHIP BETWEEN FEDERAL AND STATE GOVERNMENT

#### **Federalism**

A system of government in which the people are regulated by both federal and state governments.

In the United States, government operates under a principle called **federalism**. *Federalism* means that citizens are regulated by two separate governments, federal and state. The federal government has *limited* power over all 50 states. State governments have power only within their state boundaries. These powers are also limited in the sense that states cannot make laws that conflict with the laws of the federal government.

#### Powers of the Federal Government

The power of the federal government to regulate and make laws is not unlimited. It has only that power given to it in the U.S. Constitution. In particular, express powers are granted to the U.S. Congress in Article I, Section 8 of the Constitution, which gives Congress the right to regulate such matters as the coining of money, the post office, and the military. See the following box for a more complete list of these powers. Along with the express powers given in this section, the federal government is also given the power to make all laws which are necessary and proper for carrying into execution any of the stated powers. See Appendix I for a copy of the U.S. Constitution.

# ARTICLE 1, SECTION 8 OF THE UNITED STATES CONSTITUTION: POWERS GRANTED TO THE U.S. CONGRESS

- 1. Collect taxes; pay debts; provide for the common defense and welfare of the United States
- 2. Borrow money
- 3. Regulate commerce with foreign nations and between states
- 4. Establish rules for naturalization and bankruptcy
- 5. Coin and regulate money
- 6. Punish counterfeiting
- 7. Establish post offices
- 8. Establish copyright and patents
- 9. Establish inferior courts
- 10. Define and punish piracies and felonies on the high seas
- 11. Declare war
- 12. Raise and support armies
- 13. Maintain a navy
- 14. Regulate land and naval forces
- 15. Call forth a militia
- 16. Organize, arm, and train a militia
- 17. Govern the area to become the seat of federal government
- 18. Make all laws necessary to carry out the foregoing powers

While Article I, Section 8 grants powers to the federal government, those powers are limited by the Tenth Amendment to the Constitution, which provides: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." As a practical matter, however, the power of the federal government to pass laws and to regulate is extensive, in part due to the Court's broad interpretation of the power to regulate interstate commerce. The power to regulate interstate commerce is not limited to laws dealing with trade be-

tween the states. Congress has used this section to justify numerous laws, including civil rights legislation, where almost any connection with interstate activity exists. The case of *Katzenbach v. McClung* illustrates this.

#### Katzenbach, Acting Attorney General, v. McClung 379 U.S. 294 (1964)

The following is an excerpt from a case brought by the U.S. Attorney General against the owner of a small restaurant seeking an injunction against the owner, ordering him to stop violating provisions of the Civil Rights Act of 1964. The Civil Rights Act is referred to as "the Act" by the Court. In this case, the Court makes numerous references to other cases it had decided. One case, Heart of Atlanta Motel v. United States, was decided at the same time as this case. Other cases had been decided much earlier.

#### Opinion

#### The facts

Ollie's Barbecue is a family-owned restaurant in Birmingham, Alabama, specializing in barbecued meats and homemade pies, with a seating capacity of 220 customers. It is located on a state highway 11 blocks from Interstate 1 and a somewhat greater distance from railroad and bus stations. The restaurant caters to a family and white-collar trade with a take-out service for Negroes. It employs 36 persons, two-thirds of whom are Negroes.

In the 12 months preceding the passage of the Act [Title II of the Civil Rights Act of 1964], the restaurant purchased locally approximately \$150,000 worth of food, \$69,683 or 46% of which was meat that it bought from a local supplier who had procured it from outside the State. The District Court expressly found that a substantial portion of the food served in the restaurant had moved in interstate commerce. The restaurant has refused to serve Negroes in its dining accommodations since its original opening in 1927 and since July 2, 1964, it has been operating in violation of the Act. The court below concluded that if it were required to serve Negroes it would lose a substantial amount of business.

The basic holding in *Heart of Atlanta Motel* answers many of the contentions made by the appellees. There we outlined the overall purpose and operational plan of Title II and found it a valid exercise of the power to regulate interstate commerce insofar as it requires hotels and motels to serve transients without regard to their

race or color. In this case we consider its application to restaurants which serve food, a substantial portion of which has moved in commerce.

#### The act as applied

Section 201(a) of Title II commands that all persons shall be entitled to the full and equal enjoyment of the goods and services of any place of public accommodation without discrimination or segregation on the ground of race, color, religion, or national origin; and § 201(b) defines establishments as places of public accommodation if their operations affect commerce or segregation by them is supported by state action. Sections 201(b)(2) and (c) place any "restaurant ... principally engaged in selling food for consumption on the premises" under the Act "if ... it serves or offers to serve interstate travelers or a substantial portion of the food which it serves . . . has moved in commerce."

Ollie's Barbecue admits that it is covered by these provisions of the Act. The Government makes no contention that the discrimination at the restaurant was supported by the State of Alabama. There is no claim that interstate travelers frequented the restaurant. The sole question, therefore, narrows down to whether Title II, as applied to a restaurant annually receiving about \$70,000 worth of food which has moved in commerce, is a valid exercise of the power of Congress. The Government has contended that Congress had ample basis upon which to find that racial discrimination at restaurants which receive from out of state a substantial portion of the food served does, in fact, impose commercial burdens of national magnitude upon interstate commerce. The appellees' major argument is direct to this premise. They urge that no such basis existed. It is to that question that we now turn.

# The power of congress to regulate local activities

Article I, § 8, cl. 3, confers upon Congress the power "to regulate Commerce ... among the several States" and clause 18 of the same Article grants it the power "to make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers...." This grant, as we have pointed out in Heart of Atlanta Motel "extends to those activities intrastate which so affect interstate commerce, or the exertion of the power of Congress over it, as to make regulation of them appropriate means to the attainment of a legitimate end, the effective execution of the granted power to regulate interstate commerce." United States v. Wrightwood Dairy Co., 315 U.S. 110, 119 (1942). Much is said about a restaurant business being local but "even if appellee's activity be local and though it may not be regarded as commerce, it may still, whatever its nature, be reached by Congress if it exerts a substantial economic effect on interstate commerce...." Wickard v. Filburn, 317 U.S. 111, 125 (1942). The activities that are beyond the reach of Congress are "those which are completely within a particular State, which do not affect other States, and with which it is not necessary to interfere, for the purpose of executing some of the general powers of the government." Gibbons v. Ogden, 9 Wheat. 1, 195 (1824). This rule is as good today as it was when Chief Justice Marshall laid it down almost a century and a half ago.

This Court had held time and again that this power extends to activities of retail establishments, including restaurants, which directly or indirectly burden or obstruct interstate commerce.

Confronted as we are with the facts laid before Congress, we must conclude that it had a rational basis for finding that racial discrimination in restaurants had a

direct and adverse effect on the free flow of interstate commerce. Insofar as the sections of the Act here relevant are concerned, §§201(b)(2) and (c), Congress prohibited discrimination only in those establishments having a close tie to interstate commerce, i.e., those, like McClungs, serving food that has come from out of the State. We think in so doing that Congress acted well within its power to protect and foster commerce in extending the coverage of Title II only to those restaurants offering to serve interstate travelers or serving food, a substantial portion of which has moved in interstate commerce.

The power of Congress in this field is broad and sweeping; where it keeps within its sphere and violates no express constitutional limitation it has been the rule of this Court, going back almost to the founding days of the Republic, not to interfere. The Civil Rights Act of 1964, as here applied, we find to be plainly appropriate in the resolution of what the Congress found to be a national commercial problem of the first magnitude. We find it in no violation of any express limitations of the Constitution and we therefore declare it valid.

The judgment is therefore reversed.

#### Case Questions

- This case deals with the validity of Title II of the Civil Rights Act of 1964. Why is the Court discussing the interstate commerce clause of the U.S. Constitution?
- 2. Does a small family-owned business really have a substantial impact on interstate commerce? Why or why not?
- Do you think that, under the interstate commerce clause, Congress would have the power to make a law that makes it a crime for a person to possess a gun in areas around schools? See *United States v. Lopez*, \_U.S.\_, 115 S.Ct. 1624, 131 L.Ed. 2d 626 (1995).
- 4. Could the U.S. Congress make it a federal crime for any business to discriminate because of race, sex, national origin, or age? Why or why not?

#### Powers of the State Government

Preemption

A doctrine referring to the right of the federal government to be the exclusive lawmaker in certain areas.

Ex Post Facto

After the fact; refers to laws that impose criminal responsibility for acts that were not crimes at the time the acts occurred.

#### **Jurisdiction**

The power or authority to act in a certain situation; the power of a court to hear cases and render judgments.

#### **Exclusive Jurisdiction**

The sole power or authority to act in a certain situation.

#### Concurrent Jurisdiction

Situations where more than one entity has the power to regulate or act.

States have very broad powers to make laws that control within the state boundaries. They cannot, however, make laws that conflict with federal laws in areas that are **preempted** by the federal government. The term *preempted* means that the federal government has the exclusive right to regulate a particular subject area. Some subject areas that cannot be regulated by states are set out in Article I, Section 10 of the Constitution, and include such activities as entering into treaties, coining money, and passing *ex post facto* laws. *Ex post facto* laws are those that make a person criminally responsible for an act that was committed before the act was made a crime. Areas that are commonly regulated by states include criminal conduct, contractual relationships, civil tort liability, and forms of business such as partnerships and corporations.

#### Exclusive and Concurrent Powers of Federal and State Governments

The power of government to regulate is sometimes referred to as jurisdiction. When the power to regulate a certain area belongs solely or exclusively to either the federal or state government, we say that the government has exclusive jurisdiction. For example, only the federal government has the power to regulate the coining of money. States cannot have their own currency. However, some areas can be regulated by both the federal and state government. A clear example of this is income tax. The federal government has the power to impose an individual income tax on its citizens. But states also have that power. When both state and federal governments have the right to regulate an area, those governments have concurrent jurisdiction. Another example of concurrent jurisdiction involves some of our criminal laws. For example, all states have laws making kidnapping a crime. If the victim is taken across a state line, the act is also a federal crime. The state government has the general right to make and enforce criminal laws, such as those against kidnapping. While the federal government does not have general power to make criminal laws, it does have the power to make all laws necessary to enforce its express powers. Making laws against kidnapping and taking the victim across state lines is considered to be within the power of the federal government under its express power to regulate interstate commerce. (The U.S. Supreme Court has given a broad interpretation to the term commerce, not limiting it to normal commercial transactions.) Thus, both state and federal governments have the power to make such laws.

#### Conflicts between Federal and State Law—The Supremacy Clause

Because there are areas of concurrent jurisdiction, conflicts often exist between laws made by the federal government and laws made by states. Where a conflict exists, then federal law controls. This is because of the **supremacy clause** of the Constitution (Article VI): "This Constitution, and the Laws of

#### **Supremacy Clause**

The clause in the U.S. Constitution making the Constitution and the laws of the United States the supreme law of the land. the United States which shall be made in Pursuance thereof . . . shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." When a state passes a law that conflicts with the Constitution, the U.S. Supreme Court has the power to declare that state law unconstitutional and unenforceable.

Texas v. Johnson 491 U.S. 397 (1989)

#### Opinion

After publicly burning an American flag as a means of political protest, Gregory Lee Johnson was convicted of desecrating a flag in violation of Texas law. This case presents the question whether his conviction is consistent with the First Amendment. We hold that it is not.

While the Republican National Convention was taking place in Dallas in 1984, respondent Johnson participated in a political demonstration dubbed the "Republican War Chest Tour." As explained in literature distributed by the demonstrators and in speeches made by them, the purpose of this event was to protest the policies of the Reagan administration and of certain Dallas-based corporations. The demonstrators marched through the Dallas streets, chanting political slogans and stopping at several corporate locations to stage "die-ins" intended to dramatize the consequences of nuclear war. On several occasions they spray-painted the walls of buildings and overturned potted plants, but Johnson himself took no part in such activities. He did, however, accept an American flag handed to him by a fellow protestor who had taken it from a flagpole outside one of the targeted buildings.

Of the approximately 100 demonstrators, Johnson alone was charged with

a crime. The only criminal offense with which he was charged was the desecration of a venerated object in violation of Tex. Penal Code Ann. § 42.09(a)(3) (1959). After trial, he was convicted, sentenced to one year in prison, and fined \$2,000. The Court of Appeals for the Fifth District of Texas at Dallas affirmed Johnson's conviction, 706 S.W. 2d 120 (1986), but the Texas Court of Criminal Appeals reversed, 755 S.W. 2d 92 (1988), holding that the State could not, consistent with the First Amendment, punish Johnson for burning the flag in these circumstances.

Johnson was convicted of flag desecration for burning the flag rather than for uttering insulting words. This fact somewhat complicates our consideration of his conviction under the First Amendment. We must first determine whether Johnson's burning of the flag constituted expressive conduct, permitting him to invoke the First Amendment in challenging his conviction. . . .

The First Amendment literally forbids the abridgment only of "speech," but we have long recognized that its protection does not end at the spoken or written word. While we have rejected the "view that an apparently limitless variety of conduct can be labeled 'speech' whenever the person engaging in the conduct intends thereby to express an idea," *United States* 

<sup>&</sup>lt;sup>1</sup>Texas Penal Code Ann. § 42.09 (1989) provides in full:

<sup>&</sup>quot;§ 42.09. Desecration of Venerated Object

<sup>(</sup>a) A person commits an offense if he intentionally or knowingly desecrates:

<sup>(1)</sup> a public monument;

<sup>(2)</sup> a place of worship or burial; or

<sup>(3)</sup> a state or national flag.

<sup>(</sup>b) For purposes of this section, 'desecrate' means deface, damage, or otherwise physically mistreat in a way that the actor knows will seriously offend one or more persons likely to observe or discover his action.

<sup>(</sup>c) An offense under this section is a Class A misdemeanor."

v. O'Brien, 391 U.S. 367 (1968) at 376, we have acknowledged that conduct may be "sufficiently imbued with elements of communication to fall within the scope of the First and Fourteenth Amendments," Spence v. Washington, 418 U.S. 405 (1974) at 409.

The State of Texas conceded for the purposes of its oral argument in this case that Johnson's conduct was expressive conduct and this concession seems to us as prudent. Johnson burned an American flag as part-indeed, as the culmination-of a political demonstration that coincided with the convening of the Republican Party and its renomination of Ronald Reagan for President. The expressive, overtly political nature of this conduct was both intentional and overwhelmingly apparent. At his trial, Johnson explained his reasons for burning the flag as follows: "The American Flag was burned as Ronald Reagan was being renominated as President. And a more powerful statement of symbolic speech, whether you agree with it or not, couldn't have been made at that time." In these circumstances, Johnson's burning of the flag was conduct sufficiently imbued with elements of communication to implicate the First Amendment.

If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.

In short, nothing in our precedents suggests that a State may foster its own view of the flag by prohibiting expressive conduct relating to it.

Johnson was convicted for engaging in expressive conduct. The State's interest in preventing breaches of the peace does not support his conviction because Johnson's conduct did not threaten to disturb the peace. Nor does the State's interest in preserving the flag as a symbol of nation-hood and national unity justify his criminal conviction for engaging in political expression. The judgment of the Texas Court of Criminal Appeals is therefore affirmed.

#### Case Questions

- What gave the U.S. Supreme Court, a federal court, the right to review a Texas state law?
- 2. Suppose that Johnson had burned a Texas state flag instead of the U.S. flag.
  - **a.** Would the U.S. Supreme Court have jurisdiction to hear the case?
  - b. If the Supreme Court did hear the case, do you think the decision would have been any different?
- In which court was Johnson first tried? List all of the courts that heard this case in the order in which they heard it.

However, the fact that both state and federal governments regulate an area does not necessarily create a conflict. For example, if a defendant kidnaps a victim and takes the victim across state lines, both federal and state laws have been violated and the defendant could be tried in either the state or federal court (or both!) for the crime. Furthermore, in this situation the federal court has no priority over the state court.

In determining whether a conflict between state and federal law exists, a particular problem arises in the area of criminal procedure. If an individual is arrested for a state crime, such as murder, that individual is tried in the state court; the states are allowed to formulate their own procedural rules for this process. Furthermore, each state has a state constitution, which, like the federal constitution, affords certain rights to individuals within that state. On the other hand, the U.S. Constitution affords criminal defendants certain basic rights not only in federal cases but also in state cases. In federal cases, those rights are specifically spelled out in the Bill of Rights (specifically the Fourth, Fifth, Sixth, and Eighth Amendments). These specific amendments were intended to apply only in federal cases. In state criminal cases, each state is bound to follow the Fourteenth Amendment to the Constitution, which pro-

vides in part: "nor shall any State deprive any person of life, liberty, or property, without due process of law, . . ." The U.S. Constitution does not set out specific rights that states must follow. Rather, it sets out a minimum standard that all states must follow, *i.e.*, due process. What this minimum standard means in specific instances has been decided by the Supreme Court. But remember that it is a *minimum* standard. States can grant more rights to criminal defendants and not be in conflict with federal law, because the federal government has not preempted this area of law. On the other hand, once the Supreme Court sets forth a specific minimum standard, states cannot take away a right. States are allowed to make laws in this area as long as those laws do not violate due process. Just because the state and federal rules differ does not automatically mean a conflict exists.

#### A POINT TO REMEMBER

Where conflicts exist between federal and state laws, the federal law controls. However, not all differences result in a conflict. Do not assume that federal law will always control. In determining whether a difference results in a conflict, first determine whether the federal law has preempted the area of law. If it has, then the federal law controls. If the federal law has not preempted the area, then you must read the federal law carefully to determine its meaning. You must understand the federal law to determine whether a conflict exists in the state law.

#### Blanton v. North Las Vegas 489 U.S. 538 (1989)

The following Supreme Court case and state statute deal with the issue of the right to jury trials for misdemeanors that carry a sentence of less than six months in jail. Read them both and see if any conflict exists.

#### Opinion

The issue in this case is whether there is a constitutional right to a trial by jury for persons charged under Nevada law with driving under the influence of alcohol (DUI). Nev. Rev. Stat. § 484.3792(1) (1987). We hold that there is not.

DUI is punishable by a minimum term of two days' imprisonment and a maximum term of six months' imprisonment. § 484.3792(1)(a)(2). Alternatively, a trial court may order the defendant "to perform 48 hours of work for the community while dressed in distinctive garb which identifies him as [a DUI offender]." The defendant also must pay a fine ranging from \$200 to \$1,000. § 484.3792(1) (a)(3). In addition, the defendant automat-

ically loses his driver's license for 90 days, § 483.460(1)(c), and he must attend, at his own expense, an alcohol abuse education course. § 484.3792(1)(a)(1). Repeat DUI offenders are subject to increased penalties.

Petitioners Melvin R. Blanton and Mark D. Fraley were charged with DUI in separate incidents. Neither petitioner had a prior DUI conviction. The North Las Vegas, Nevada, Municipal Court denied their respective pretrial demands for a jury trial. On appeal, the Eighth Judicial District Court denied Blanton's request for a jury trial but, a month later, granted Fraley's. Blanton then appealed to the Supreme Court of Nevada, as did respondent city of North Las Vegas with respect to Fraley. After consolidating the two cases along with several others raising the

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