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DEFINING CRIMES



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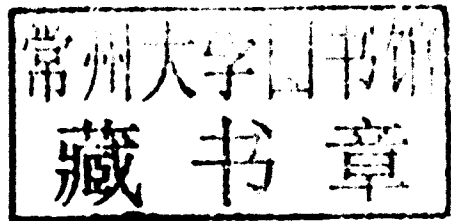
DEFINING CRIMES

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To my wife, Ruth, and my children, Sarah, Sam, and Andy.

—*Bill Stuntz*

To my wife, Mary, and my children, Becky, Maureen, and Michael.

—*Joe Hoffmann*

Preface

Defining Crimes is a new casebook that has been under development for almost a decade. But the genesis of this project occurred much earlier. Since 1986, we have been teaching the introductory course in Criminal Law to our students at Harvard Law School, Indiana University Maurer School of Law, and (before that) the University of Virginia School of Law. For most of that time, we have shared the feeling that something important was missing.

Most of the available materials for teaching criminal law (including the leading casebooks we have regularly used in our own classes) are rich with interesting issues of blame, culpability, voluntariness, and free will—in short, the stuff of moral philosophy. That makes them fun to teach. But those materials tend to lack an essential connection with the equally rich and intellectually challenging issues that arise from the everyday practice of criminal law.

Defining Crimes is intended to help remedy that disconnect. This casebook provides a set of teaching materials that moves the study of criminal law out of the classic law-and-philosophy framework (“Why do we punish?”) and into the real world (“How is criminal law defined, interpreted, and applied in today’s criminal justice system?”). Although in terms of both coverage and content this casebook certainly resembles most others in common use today, our fundamental shift in perspective is reflected in the following key features that make our book distinctive:

(1) Emphasis on the political economy of criminal justice—the complex relationships between the key institutional players (legislatures, prosecutors, police, judges, and juries) that share responsibility for defining, interpreting, and applying criminal law. This casebook reveals to students how criminal justice institutions sometimes reinforce and support each other’s efforts, but at other times come into conflict over both the goals and the methods of criminal law.

(2) A balanced presentation of the Model Penal Code and the traditional common-law approach to criminal liability, illustrating both the advantages *and* the disadvantages of the MPC and the common law that it sought (but has largely failed) to replace. This casebook explains how the MPC, in its pursuit of analytical precision, tried to eliminate much of the discretion that allowed common-law judges and juries to use their moral intuitions to “do justice”—which is a big part of the reason why the MPC never managed to occupy the field.

(3) Introduction of many of the important general concepts of criminal law—such as causation, omission liability, attempt, conspiracy, and

accomplice liability—in the specific legal contexts where those concepts are most frequently applied.

(4) Coverage of drug crimes and other “low-level” crimes (such as vandalism and prostitution) that are most often used by local governments as instruments of social control, and that often lead to serious concerns about arbitrary and discriminatory law enforcement.

(5) Discussion of core aspects of federal criminal law, such as federal jurisdictional elements, strict liability for at least some federal regulatory offenses, and requirements of factual and legal knowledge for others, that raise interesting issues not discussed in most criminal law casebooks.

(6) Full treatment of sentencing law, including sentencing discretion, guideline sentencing, “three-strikes” laws, and victim restitution, demonstrating how the line between “crime” and “punishment” is largely arbitrary and increasingly has become subject to legislative manipulation.

We have constructed this casebook around contemporary cases—most of them decided since 2000, and many since 2005—that raise issues as timely as today’s headlines. The traditional “chestnuts” of criminal law are here (indeed, the casebook begins with the famous 1884 cannibalism case of *Dudley & Stephens*), but the primary focus on modern cases provides a rich and challenging set of materials that shows how American criminal law continues to evolve in today’s world. We have also included the most compelling empirical studies and journalistic accounts that depict current issues in criminal law.

Chapter 1, *The Character of Criminal Law*, opens with a discussion of one of the casebook’s major themes: the political economy of criminal justice. In Chapter 1, we explore the respective primary roles of the legislature and the judiciary in defining and applying the Criminal Law. Chapter 1 next introduces two constitutional doctrines, proportionality and vagueness, that—at least in theory, if not so often in practice—allow the judiciary to exercise some control over the legislature’s definition of crimes. Chapter 1 concludes with a brief overview of the relationship between criminal law and crime.

Chapters 2 and 3 address the two core subjects within the so-called general part of the criminal law (i.e., those general rules, principles, and doctrines that apply across many different crimes). Chapter 2, *Defining Criminal Conduct* (or, to use the old Latin terminology, *actus reus*), focuses primarily on the statutory interpretation of conduct elements on crimes, especially the modern rise of formalism. Chapter 3, *Defining Criminal Intent* (in Latin, *mens rea*) contains an extensive discussion of both the common law’s traditional “general intent” and “specific intent” approach to criminal intent, and the Model Penal Code’s alternative “element” approach, allowing students to draw their own informed conclusions about the relative strengths and weaknesses of each competing approach.

Chapter 4 deals with some unusual (and, in certain cases, unique) aspects of Federal Criminal Law. We believe that federal criminal law raises interesting issues that can contribute to a fuller understanding of the criminal law in general. But the chapter is designed to be enriching, rather than essential, to the rest of the casebook—and thus may be omitted, if the professor so chooses.

Chapter 5 begins the coverage of the so-called special part of the criminal law—those specific rules, doctrines, and issues that arise from the definitions of specific crimes. Chapter 5 is about Property Crimes: vandalism, theft (including burglary), extortion, and fraud. Chapter 6 addresses Drug Crimes, including drug possession (with and without the intent to distribute), special *mens rea* issues, the relationship between drug crimes and the practice of medicine, and the new frontier of medical marijuana.

In Chapter 7, we take a break from the “special part” of the criminal law to introduce the concepts of Inchoate Crimes and Accomplice Liability. These concepts, although generally applicable, arise so frequently in connection with drug crimes that we think it makes sense to discuss them immediately after the Drug Crimes chapter. However, Chapter 7 also can be taught earlier in the course, right after the chapters on Defining Criminal Conduct (Chapter 2) and Defining Criminal Intent (Chapter 3), if the professor so chooses.

Chapter 8 returns to the coverage of specific crimes by addressing crimes of Sex and Sexual Violence. In Chapter 8, we start with “sex for money” (prostitution, pimping, and pandering), and then proceed to fraudulent sex, and finally to coerced sex (rape). The latter section includes extensive coverage of date rape as well as the role of intoxication in rape law. Chapter 8 concludes with a brief treatment of contemporary child pornography laws.

Chapter 9 is about Homicide Crimes: murder (in the first and second degrees), manslaughter (both voluntary—“in the heat of passion”—and involuntary), and negligent homicide. Chapter 9 also deals with causation, a topic that tends to arise primarily in homicide cases, and reprises the general concepts of inchoate crimes and accomplice liability that were introduced back in Chapter 7.

Chapters 10 deals with Defenses, including self-defense, duress, necessity, entrapment, public authority, and insanity. Along the way, we also introduce imperfect self-defense, the “battered spouse” defense, and diminished capacity. Chapter 11, Sentencing, demonstrates how the line that divides crime from punishment is largely arbitrary and subject to legislative manipulation; the contemporary shift from traditional discretionary sentencing to modern guideline sentencing has helped to dissolve that line and has forced legislatures, courts, and litigants to address sentencing issues as part of the everyday practice of criminal law. Finally, in Chapter 12, we present several Constitutional Limits on the Criminal Law—including a brief reprise of vagueness and proportionality (first discussed back in Chapter 1), the

right of privacy, the issue of “constitutionalized intent,” and equal protection.

Of course, not all of the above chapters and subjects can be taught adequately in a one-semester Criminal Law course of 3 credit hours; most likely, even 4 or 5 credit hours would be insufficient to cover it all. We hope, however, that we have provided professors (and, by extension, their students) with enough material to be able to pick and choose, and to end up with a course that illuminates the range and depth of the criminal law. Criminal law is a wonderful subject to teach and to learn. We hope you enjoy it!

Throughout the casebook, wherever our own footnotes might be confused with those contained in the primary material, our own footnotes are identified by asterisks. This casebook contains court decisions and legislative materials current through December 2010.

William J. Stuntz
Joseph L. Hoffmann

February 2011

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