

## **CHAPTER 1**

### **THE NATURE AND HISTORY OF CRIMINAL LAW**

#### **CHAPTER OUTLINE**

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##### III. Historical and Philosophical Perspectives

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## **LECTURE OUTLINE**

#### I. Introduction

Discuss how criminal laws reflect the values of society, and how they have evolved over time (e.g., in Florida as late as 1964, it was a first degree misdemeanor for persons of different races to marry or even occupy the same hotel room.) Also, discuss how laws differ between federal and state, and from state to state.

#### II. What is Criminal Law?

Discuss the difference between crime, deviance, and norm violation. Crimes are those acts which may subject an accused to legal consequences such as imprisonment, jail, fines, or probation. The harm in criminal law is to the society since the law exists to protect everyone. Explain why criminal charges are brought in the name of the government against the accused.

#### III. Historical and Philosophical Perspectives

A. Discuss the influence of natural law, or that which is found from the rational intelligence of man based upon conforming to principles of the mental, moral,

and physical constitution. Natural law advocates believe that criminal law should reflect these same principles (Abortion issue discussion).

Positive law is law that is created and enforced by the government.

#### C. Ancient laws

Code of Ur-Nammu from Mesopotamia is similar to contemporary U.S. law. It distinguished between compensation and punishment—or in contemporary terms, civil law and common law.

Code of Hammurabi codified offenses, their punishment, and emphasized retribution.

Civil and common law traditions- Briefly discuss the Justinian Code, Roman law codified under the emperor that influenced our common law tradition when Rome conquered England in the first century.

#### IV. Common Law

- A. Civil law distinguished – Explain how criminal law governs the relationship between man and society, while civil law governs the relationships among men. These laws are not prosecuted by the government or the subject of punishment. Instead, the aggrieved person may be entitled to monetary damages or specific performance.

There are three forms of torts –negligence, intentional behavior, and strict liability.

The primary intention of civil actions is to provide compensation for losses, known as damages.

In instances of extremely negligent or intentional behavior, civil suit plaintiffs may be awarded punitive damages.

- B. Criminal procedure distinguished – How a criminal case is processed through the legal system, including any challenges to the manner in which evidence may have been seized or a search conducted, is the subject of criminal procedure.
- C. Types of crimes may include felonies, misdemeanors, and infractions, violations, or petty offenses (depending upon how the legislature has named those offenses). Classification is generally by the punishment that may be imposed; felonies, more than one year imprisonment; misdemeanors, less than

one year in a jail; infractions, violations, or petty offenses, usually no incarceration and a fine only.

Crimes are either *mala in se*, or those that are inherently wrong, or *mala prohibita*, or those offenses that are wrong because they are prohibited by law.

#### V. Purpose of Criminal Law

Discuss the purpose of society regulating the conduct of its citizens through the democratic process. Those designated representatives are charged with creating, enforcing, and interpreting those laws. The purpose and goal is toward an orderly society through a set of rules applicable to everyone.

#### VI. Sources of Criminal Law

- A. The U.S. Constitution and state constitutions provide the authority for the government to create laws through the legislative process. Explain the difference between federal laws and state laws, which are created through the inherent police authority the states have.
- B. Statutes, Ordinances, and Regulations – Explain how a legislative body may determine what to call its set of criminal laws, how they are organized, and the elements that make up a particular law.
- C. The Common Law still has an influence in today’s legal system. For instance, many state legislatures have a specific provision that recognizes the enforceability of the common law through its courts, provided that law is not inconsistent with the Constitution or laws of that state. Also, the common law provides a persuasive authority in the interpretation of the criminal law.
- D. Model Penal Code – A guide for legislative bodies, created by the American Law Institute. Not binding unless adopted and passed by the government through the legislative process.

#### VII. The Modern U.S. Legal System

- A. Federalism – Discuss the relationship between federal and state court systems, and the dual sovereign doctrine.
- B. Separation of Powers
  - 1. Legislative branch, its function in making law, and the ability to override an executive veto.

2. Executive branch, its function in signing the law into effect and enforcing the law.
3. Judicial branch interprets the law and determines whether the law comports with Constitutional standards (Discuss a hypothetical law that is passed and signed into effect that is contrary to the Constitution).

C. An Adversarial, Accusatorial, Due Process System – Explain the criminal process of the government, bringing charges, in an adversarial position to the accused, representing the interests of the people. Remind students of due process requirements (notice, opportunity to be heard, see, hear and cross examine witnesses).

#### VIII. The Rule of Law

This means in theory that no man is above the law and applied uniformly to everyone.

The World Justice Project identified the following elements as essential to rule of law: the accountability of government officials, whether laws are enacted and implemented in a fair and efficient manner, the degree of clarity of laws, the degree to which laws protect fundamental rights, and whether access to justice is administered by fair and independent judicial officers.

#### **RESEARCH PAPER TOPICS**

1. Compare and contrast the different legal systems throughout the world.
2. Why does the Constitution limit the U.S. government's authority to pass criminal laws?

#### **STUDENT ACTIVITIES**

1. After reading the case of *Payne v. Tennessee*, have the students split into three groups: The first group will advocate the holding of the case to allow victim impact evidence. The second group will counter that the allowance of such evidence has serious issues regarding inflammatory evidence influencing the decision of the jury. The third group, the observation group, will not take a position but question the legal reasoning of either group.

2. Have students briefly research and report on the various legal systems in place throughout the world. Have them identify the relevant characteristics of those systems and compare those to our system of American jurisprudence.

## **CASE STUDIES**

After considering the case of *Payne v. Tennessee*, read the case summary of *Powell v. Alabama* at <http://supreme.justia.com/us/287/45/>. Consider and discuss the concept of time and the swift administration of justice. Do the ends justify the means in the legal system? Has the goal of retribution become the primary focus in the enforcement of the criminal law? Why do cases take so long to be tried, appealed, and have sentence carried out if the accused is obviously guilty?

## **REFERENCES AND RESOURCES**

1. Learn on-line about legal history:

[www.questia.com/library/law/legal-theory/legal-history.jsp](http://www.questia.com/library/law/legal-theory/legal-history.jsp)

2. A **History of American Law**, Revised Edition (A Touchstone Book) by Lawrence M. Friedman at [www.amazon.com/tag/legalsystems](http://www.amazon.com/tag/legalsystems).