

*Defining Crimes* began in 1986 as a collaboration between the late Bill Stuntz at Harvard Law School and me, Joe Hoffmann, at Indiana University Maurer School of Law. Bill and I shared the feeling that most of the then-available casebooks for teaching introductory criminal law courses were missing something important.

Those casebooks (including the ones Bill and I regularly used in our own classes) were rich with interesting issues of blame, culpability, voluntariness, and free will—in short, the stuff of moral philosophy. That made them fun to teach. But those materials tended to lack an essential connection with the equally rich and intellectually challenging issues that arise from the everyday practice of criminal law.

*Defining Crimes* was then—and still is today—designed 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 American criminal justice system?”). Although in terms of both coverage and content this casebook still resembles most others in common usage today, the fundamental shift in perspective is reflected in the following key features that continue to make this casebook 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. In particular, 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. Instead, in most jurisdictions today, key common-law doctrines like general intent, specific intent, malice, and mistake remain at the heart of modern criminal law—which is why this casebook emphasizes those doctrines.

(3) Introduction of many other 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) Extensive coverage of drug crimes and other “low-level” crimes (such as trespass, vandalism, and prostitution) that are 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) Treatment of sentencing law, including sentencing discretion, guideline sentencing, “three-strikes” laws, and victim restitution, illustrating how the line between “crime” and “punishment” is largely arbitrary and increasingly has become subject to legislative manipulation.

This casebook continues to be constructed around contemporary cases—most decided since 2000, and many even more current than that—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. This casebook also includes the most compelling empirical studies and journalistic accounts that illuminate 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, exploring 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*), starts with a discussion of “voluntariness” and “causation” (two doctrines that are more important in criminal law theory than in practice), but then 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 *mens rea*, and the Model Penal Code’s alternative “element” approach, encouraging 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, in the belief that federal cases raise interesting issues that can contribute to a fuller understanding of 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: trespass, vandalism, theft (including burglary), receiving stolen property, extortion, and fraud. Chapter 6 addresses Drug Crimes, including drug possession (with and without the intent to distribute), special *mens rea* issues, “drug-free” zones, and the relationship between drug crimes and the practice of medicine.

Chapter 7 takes 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 it seems sensible 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. Chapter 8 starts with “sex for money” (prostitution, pimping, and pandering), and then proceeds to fraudulent sex, and finally to coerced sex (rape). The latter section focuses heavily on how best to define “consent” in the context of acquaintance rape, and also includes discussions of rape by intoxication and statutory rape. Chapter 8 is intended primarily to facilitate hard (but necessary) conversations about the present and future of rape law in America.

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 general 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.

Chapter 10 deals with Defenses, including self-defense, public authority (especially as applied to police use of deadly force), duress, necessity, entrapment, consent (other than in sexual assault cases), and insanity. Along the way, Chapter 10 also introduces “stand your ground,” imperfect self-defense, the “battered spouse” defense, and diminished capacity. Chapter 11, Sentencing, illustrates 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, Chapter 12 presents 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. Hopefully this casebook provides 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 wide range and immense depth of the criminal law. Criminal law is a challenging and fascinating subject to teach and to learn; above all, this casebook seeks to make it enjoyable as well!

Although my dear friend and co-author, Bill Stuntz, passed away in 2011, his name continues to appear on this casebook, in recognition of the way that his

genius and insight permeates every part of it. Indeed, anyone (professor or student) who wishes to explore more deeply the themes of this casebook would be well advised to read Bill's last book, "The Collapse of American Criminal Justice" (Belknap Press: An Imprint of Harvard University Press, 2011), which further develops many of the same themes. I see my own role as ensuring that this casebook remains true to Bill's vision and preserves his unique voice, while at the same time keeping the casebook fresh and constantly updated to reflect the ongoing evolution of American criminal law. I sincerely hope I've succeeded.

Throughout this casebook, wherever author footnotes might be confused with those contained in the primary material, author footnotes are identified by asterisks. This Fifth Edition of the casebook contains court decisions and legislative materials current through December 2024.

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