

# PREFACE TO THE THIRD EDITION

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It has been fifteen years since the Second Edition. Substantive criminal law remains largely the same, although this edition covers some important changes, particularly in the law of sexual offenses. At the same time, the effect of criminal law as applied in the U.S. criminal justice system has received increasing attention, with frequent debates over incarceration, decarceration, punitiveness, failures to punish crime, and disparities in criminal justice outcomes. Such topics are increasingly referenced in introductory criminal law courses and form core areas of debate among criminal law academics and policymakers. This edition adds a new Part VII providing an introduction and overview of such important criminal justice topics. All such topics can and have been politicized, but it is our sincere hope that Part VII will be useful to students, scholars, and practitioners across the political and ideological spectrum by providing important facts and perspectives on these questions. It is meant to be a first word on such topics for interested readers, not the last.

This edition preserves the accessible, student-friendly presentation approach of previous editions, with frequent margin headings and teaching hypotheticals to improve clarity and understanding. Many of the valuable contributions of a previous co-author, Michael Cahill, are preserved, while a fresh perspective is added by a new co-author, Jeffrey Seaman.

Criminal law remains one of the most important bodies of law to learn and poses some of the deepest questions for students and scholars alike. Life and death can literally hang in the balance. Why do we punish? Who is blameworthy? When should we aggravate or mitigate? Where is justice failing? How can we make the law more coherent, nuanced, and just? These are questions each society, generation, and individual must answer for themselves. Our hope is that this treatise will continue to provide an effective general education on these issues.

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Paul H. Robinson  
Jeffrey Seaman

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# PREFACE TO THE SECOND EDITION

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It has been fifteen years since the completion of the First Edition. While substantive criminal law concerns itself with many fundamental issues that do not change with time, new legal issues and theories have arisen that deserve attention. This new edition is also somewhat more ambitious in its coverage, especially in relation to greater coverage of specific offenses. Finally, the perspective of the volume has been broadened with the addition of the views of a co-author, Michael Cahill.

Perhaps as important as the substantive revisions are the changes in presentation and approach. This edition has the advantage of a decade and a half of feedback on readers' use of the previous volume. It has in particular been made more accessible and useful to students, while attempting to retain its authority as a reliable general treatise for scholars and practitioners.

Criminal law remains at the heart of some of the most important and challenging issues facing any society: defining our shared norms and aspirations, ensuring justice and fair treatment, and providing for our collective safety. Our hope is that this volume can contribute in some way to a general education on those issues and, at the same time, provide an effective and stimulating pedagogical experience.

Paul H. Robinson  
Michael T. Cahill

September 2011



# PREFACE TO THE FIRST EDITION

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In one sense, work on this treatise began two decades ago when I started teaching criminal law and began putting in writing my attempts to sort it out. It became a formal project one decade ago, growing out of my work on the Teacher's Manual for the first edition of *Fundamentals of Criminal Law*. That birth has shaped the book. The book's three primary goals are all typical of what a teacher would think important in a treatise: It seeks to convey, first, a description of the existing rules of American criminal law, second, an understanding of each rule, its application and the reasoning behind it and, third, a conceptual framework of criminal law that explains the interrelation among the rules.

Perhaps more than any other area of law, criminal law rules are codified. This is the demand of the legality principle, a doctrine of special application to criminal law. Two-thirds of the States have recodified their criminal law during or since the drafting of the Model Penal Code in the 1950s. Because of the influence of that code on state recodifications, with a few important exceptions, the Model Penal Code now represents American criminal law as much or more than does any other code. Thus, this volume's study nearly always includes a discussion of the Model Penal Code's position, as well as of the most common deviations from it.

In addition to summarizing existing rules, the Treatise illustrates the application of the rules. Knowing the abstract rule and knowing how it applies are different things. Nearly every section of the treatise begins with a hypothetical case, typically a variation on a real case. The cases are selected for factual situations that force the important issues of the section. The text then typically relates the discussion back to the hypothetical case in order to give it a factual context. Only with an understanding of its application can a rule and its implications be understood.

Full understanding of a rule also requires an understanding of why the rule was drafted as it was. A lawyer who knows the drafters' reasoning has a powerful advantage in arguing for a particular interpretation of a code provision, for in many instances judges will want to follow what they see as the drafters' intention. Also useful can be a familiarity with the scholarly critiques of a rule and its rationale. A single-volume treatise such as this cannot hope to examine the academic literature on any but the most important points of law. The best it can do is to signal where such literature may be found for further study, which it does with a bibliography at the conclusion of each section.

Finally, the Treatise provides a conceptual framework of criminal law that defines the interrelation among the many rules. In some respects, this may be the book's most important contribution. In studying an individual rule, one can look to many sources, including the rich academic literature cited in the section bibliographies. But only a single comprehensive volume can give a sense of how each rule relates to all other rules. This is also, in my view, what has been missing from much of American criminal law scholarship, which I think has been too inclined to consider every rule in isolation, to be justified or criticized according to its own terms. That approach is a throwback to the time before modern criminal codes, a time when every code provision was drafted to stand alone and when codes were organized alphabetically—arson through weapons—with few, if any, general provisions. In modern codes, and in modern criminal law, each rule serves as only a piece of a larger machine for determining criminal liability. Modern

criminal codes, with their greater sophistication and comprehensiveness, need lawyers, judges, and academics who understand that each rule serves a limited role in the larger enterprise and who will apply and judge rules accordingly.

The decade of work on this book has brought me into the debt of many people. The editors at Little, Brown & Company — Rick Heuser, Carol McGeehan, and Carolyn O’Sullivan in particular — have set a record for patience with an author who wanted to make just a few more revisions. David Van Zandt, Bob Bennett, Roger Dennis, and Rick Singer, my deans at Northwestern and Rutgers-Camden, have provided invaluable support. Mike Przyuski, Rob Dennis, Dreama King, and Valerie Mercurio at Northwestern and Celia Hazel and Mary Perrine at Rutgers each contributed substantially to typing and organizing the text and tables. Many research assistants have labored at the oars of “the treatise,” including Ethan Skerry, Scott England, John Beery, Andrew Shih, Jamie Lane, Peter Berke, and Natasha Goldstein at Northwestern and Timothy Burke, Richard Gervase, Perry Jost, Janine Long, and Barbara DiPaolo at Rutgers. Professors Cynthia Bowman and Leigh Bienen were kind enough to give me comments on the sexual offenses section, and Professor Kathleen Brickey the sections on organizational liability.

I am indebted as well to my criminal law students of the past decade. They were the involuntary guinea pigs for countless new hypotheticals and new approaches in presenting material. Their questions and reactions shaped my thinking and this book.

My greatest debt, as usual, is to my family. The youngest ones have escaped much of the familial cost of this book, although they may well be worried about what I will do with myself now that it is finished. My dearest spouse, Sarah McAlpine Robinson, has cheerfully endured the book and me.

I am thrilled to have the manuscript move out to wider circulation than my lecture notes. At the same time, I am a bit sad, and perhaps a bit anxious. No doubt I will come across parts of the book while teaching next year’s criminal law course that I could have refined or improved, if only I had given the book one more pass. But enough is enough. The book is far from perfect and always will be, no matter how many passes. It is time to move on to other things.

Paul H. Robinson

May 15, 1996