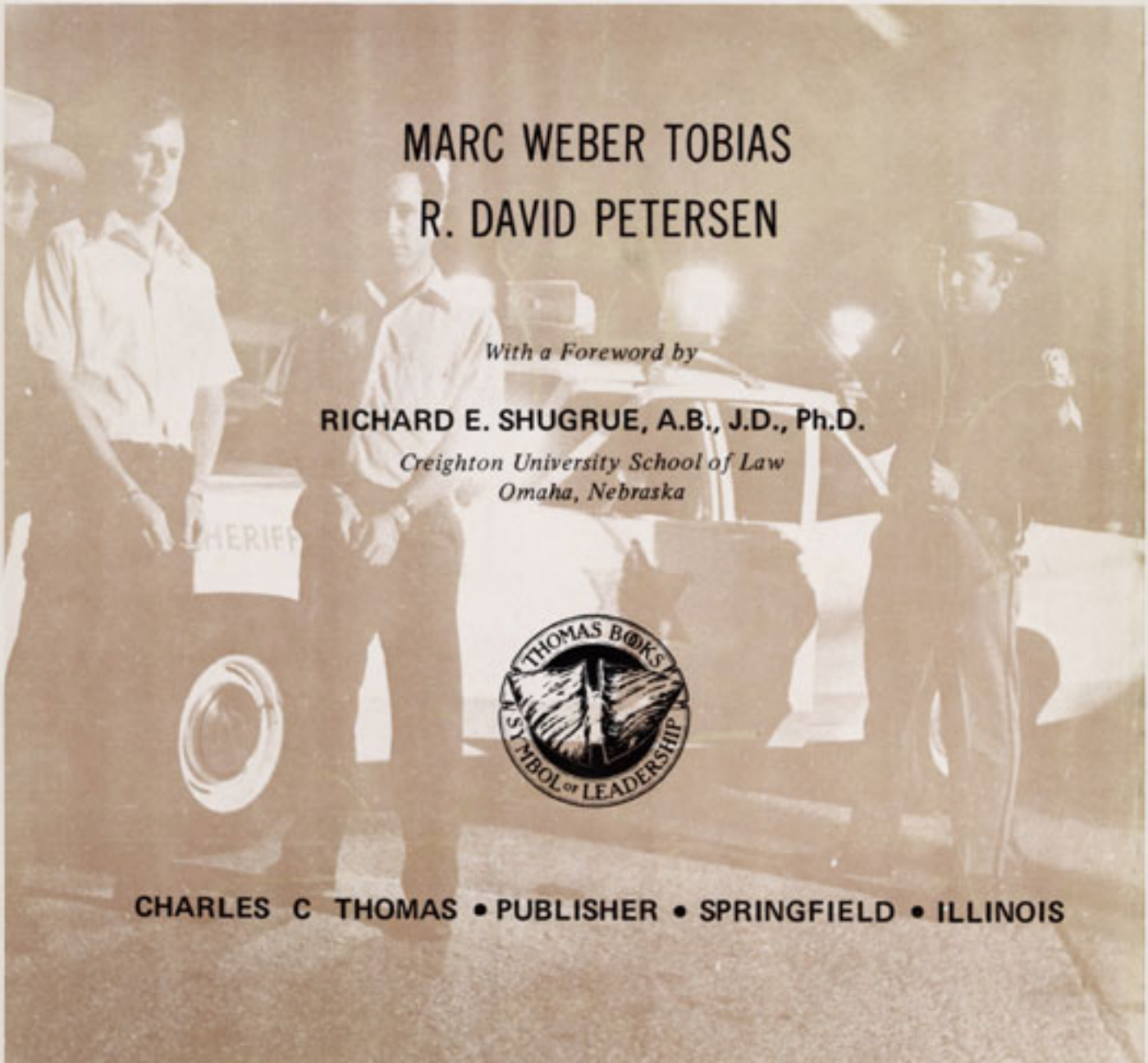
PRE-TRIAL CRIMINAL PROCEDURE

A Survey of Constitutional Rights



MARC WEBER TOBIAS

R. DAVID PETERSEN

With a Foreword by

RICHARD E. SHUGRUE, A.B., J.D., Ph.D.

Creighton University School of Law
Omaha, Nebraska

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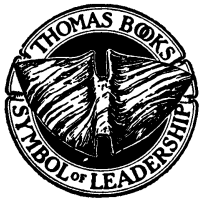

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To

Dr. Manuel L. Weber

and

Carl J. Worgren

FOREWORD

A CRITICAL problem facing American society is attaining an even-handed administration of justice. The typical citizen has his earliest encounter with the system of law when confronted by a law enforcement officer with a charge of wrongdoing. Whether that charge will result in a dismissal, conviction, fine, jail term or one of the other sanctions of American justice, it is imperative that the police are well trained in the basic rules of constitutional-criminal law and procedure.

It is a truism that police are expected to possess a vast reservoir of knowledge on subjects ranging from first aid and psychology to scientific investigation. In no field is the possession of up-to-date information more important than in law and the processes surrounding it. There can be little doubt that vast changes have taken place in criminal law and procedure within the past dozen years. The Warren Court has been charged with handcuffing the police and making criminal convictions more difficult. However, in a constitutional system in which basic guarantees of freedom are as old as the nation and for that matter, the underlying cause of establishing the country, a scrupulous regard for the rights of the individual is essential.

The police officer is charged with many duties, including keeping the peace, apprehending the criminal suspect and preserving evidence vital to the state's case against the accused. Each of these responsibilities must be carried out within the framework of the constitutional system. When fundamental rights of the citizen are shunted aside in the name of efficient administration, organized society becomes the loser. When the state can obtain a conviction without preserving due process of law (so vital in the American scheme of things), disrespect for the law is generated and the rationale for a nation of free men breaks down.

It is a prerequisite for the preservation of a nation of laws, and not of men, that the first line of societal protection—the law en-

forcement agencies—be the best trained in the world. The myriad of rules in the field of criminal law and procedure makes this a tremendously difficult task. Decisions (requiring instant judgment on the part of the police officer) made at the scene of a crime or in a hostile neighborhood are simple to criticize after the fact.

It is obvious that a significant part of the continuing training of the professional law man must be in the fields of criminal justice and constitutional law. The "fruits" of an unconstitutional search, formerly admitted into evidence at trial, are now banned. An unwarranted arrest may result in dismissal of the complaint against the accused. A confession coerced from a suspect may not be used to make the task of the prosecutor easier. Careless methods of suspect identification are now prevented by the requirement that counsel be present during a lineup. All these rules emerge directly from the constitutional mandates found in the American Bill of Rights and in no agencies should protection of those rights be more diligently observed, than by the police forces of the nation.

The seeming dilemma faced by police departments can be resolved by excellent training programs for the officers. This book is designed to provide a storehouse of knowledge for law enforcement officers, as well as for lawyers who desire an accessible collection of basic rules.

This book accomplishes three important tasks. First, it is a thorough, accurate statement of the law with sufficient illustrative material to cover the many contingencies which a law enforcement officer is likely to encounter. It sets down the rules of law without oversimplifying them—a task absolutely vital in a field where simplification can result in a miscarriage of justice.

Second, the text is organized in such a way that in the hands of a professional educator it will be an outstanding teaching tool in courses relating to police practices and the law. It does not attempt to make excuses for the rules of law nor does it provide questionable loopholes for avoiding the high standard of constitutionality demanded by all levels of American courts of the professional.

These two accomplishments alone commend the book to the student of criminal procedure, yet there is a third task which the

book performs. Many individuals criticize the work of the courts without understanding what the tribunals have done. This book offers the reader an opportunity to become involved in the actual case decisions by explaining the rather mystifying system of legal citations which are second nature to the attorney and judge. In this respect, the book encourages independent study and research by personnel of law enforcement agencies so that they may understand the reasons behind the decisions which have altered the practices of criminal procedure.

There are longer studies of criminal procedure; there are volumes for the attorneys which emphasize fine points of evidence; and there are books which examine highly technical issues of constitutional law in extreme detail. Yet there is probably no better statement of the current law status for the individual charged with day-to-day administration of society's rules than is found in this text. Mr. Tobias and Mr. Petersen have provided a genuine service to the continuing task of raising the level of professionalism for the first line of America's criminal justice system—the law enforcement officer.

RICHARD E. SHUGRUE

INTRODUCTION

"THE Constitution in its words is plain and intelligible, and it is meant for the homebred, unsophisticated understanding of our fellow citizens." In spite of this statement by former Vice President George M. Dallas, different interpretations and new understanding seem to be a daily occurrence with the United States Constitution.

In the past few years, the Supreme Court has given an expanding, liberal interpretation to the Constitution. A suspect demands his "constitutional rights" or an accused claims that his "rights" were violated. If the court agrees, the evidence in the case may be thrown out, or the lower court conviction reversed. Accordingly, a continuing education in recent Supreme Court case law is a necessity, particularly to those in the law enforcement field.

This book is intended to acquaint law enforcement personnel, law students studying constitutional law and criminal procedure, and students in law enforcement curriculums with pre-trial criminal procedure as implemented by the law enforcement officer and experienced by the accused, under the guidelines of the United States Constitution as viewed in the light of current court decisions.

The topics are chosen according to their frequency of occurrence in the field and at the stationhouse. The text should aid law enforcement agencies in the training of cadets, and in the continuing education of the experienced officer in the area of pre-trial police procedures.

The book is divided into three major parts; the first contains a brief history of the "law," the concept of the "criminal sanction," and the meaning of "due process."

The second part deals with the role of the officer and the rights of the accused under the fourth, fifth, and sixth amendments to the Constitution. To aid in the understanding of court

rulings, actual case examples are presented throughout this section. At the end of each chapter are key cases, quoted in part, which are generally considered as turning points in criminal procedure.

Part three is devoted to a discussion of bail, pre-trial detention, and the basic functions of the courts.

M. W. T.
R. D. P.

Marc Weber Tobias
5820 E. 1st Avenue
Denver, Colorado 80220

R. David Petersen
Box 3911
Omaha, Nebraska 68103

LEGAL CITATIONS

MOST states publish the decisions of the highest court in the state, for example, the Supreme Court of the State of Nebraska, in "official reports." Some states however, such as Florida, have discontinued the publication of official reports, and hence one must look to the "unofficial" reports. The West Publishing Company publishes unofficial reports of both the states and the federal court systems.

The state reports are contained in regional reports such as the *North Western Reporter* and are grouped by geographic regions.

When a citation to a case is given, it tells where the case may be found.

The following is a citation to a decision written by the Supreme Court of the State of Iowa—*State v. Mullin,* 349 Iowa 10, 85 N.W.2d 598 (1957). The opinion appears both in the "official" and "unofficial" reports. The "official" citation 349 Iowa 10, indicates that the case may be found on page 10, volume 349 of the Iowa State Supreme Court Reports. The "unofficial" citation, 85 N.W.2d 598, indicates that the same decision may also be found on page 598, of volume 85 of the 2nd series of the *North Western Reporter.* The year the decision was handed down is 1957.

Abbreviations used for the state reporters are as follows:

P.	Pacific
N.W.	North Western
S.W.	South Western
N.E.	North Eastern
A.	Atlantic
S.E.	South Eastern
So.	Southern
Cal. Rptr.	California Reporter
N.Y.S.	New York Supplement

The national reporter system by the West Publishing Company also includes the following: a) the Supreme Court Reporter, which reports the decisions of the Supreme Court of the United States; b) the Federal Reporter, which among other courts reports the decisions of the United States Court of Claims and the United States Court of Appeals; c) the Federal Supplement, which among other courts, contains decisions of the United States District Courts since 1932; and d) the Federal Rules Decisions, which contains reports of the United States District Courts which do not appear in the Federal Supplement and which involve the Federal Rules of Criminal Procedure since 1946 and the Federal Rules of Civil Procedure since 1939.

United States v. Wade, 388 U.S. 218 (1967) is found on page 218 of volume 388 of the *United States Reports.* This is a United States Supreme Court decision handed down in 1967.

Cortez v. United States, 337 F.2d 699 (1964) is found on page 699 of volume 337, of the *Federal Reporter,* 2nd series. This is a United States Court of Appeals decision handed down in 1964.

Johns v. Smyth, 176 F. Supp. 949, 1959, is found on page 949 of volume 176 of the *Federal Supplement.* This is a United States District Court decision handed down in 1959.

United States v. Reid, 43 F.R.D. 520 (1967) is found on page 520 of volume 43, of the *Federal Rules Decisions.* This is a United States District Court decision handed down in 1967.

ACKNOWLEDGMENTS

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M. W. T.
R. D. P.

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Section 1. THE CRIMINAL JUSTICE SYSTEM IN DEVELOPMENT

THE first division of this text outlines the foundation and component parts of our modern legal system. The brief discussion which follows presents a look at several interrelated concepts which, taken as a composite, make up "the law" as we know it today. It was felt that an overview tracing the development of our legal framework would furnish a logical beginning for a text dealing with specific rights and immunities provided by our form of government.

1.1. Law as a Concept

The term "law" is often used incorrectly as a synonym for "crime," which is to say, a system of controls placed upon members of society to limit, alter, deter, or encourage certain forms of behavior; however, the concept of law goes much deeper, and in order to fully understand its many facets, it becomes necessary to examine the term "law" and to probe the underlying reasons for its development.

Law can mean many things to many people. To a natural scientist, the law differs considerably from what it means to a philosopher, attorney, or police officer. A beginning definition of law might be "the enforcement of justice among men."

Three general theories or rationale have evolved, all of which attempt to explain the law with respect to its different facets and periods of history. These are the Natural Law Theory, the Imperative Theory, and the Historical Theory.

1.2. Natural Law

Natural law stresses the interrelation between justice and morality. Its supporters consider the basis of law to lie in Right and Reason, that is to say, man is a moral, rational being. In essence,

the moral element predominates the legal process in the Natural Law theory.

1.3. Imperative Law

This school of thought places emphasis on the relation between law and political power. It considers the origin of the law in the Will of the State, meaning the law consists of the commands of the highest political authority, backed by coercive sanctions. The Imperative theory sees the law as a body of technical rules and concepts to be analyzed (hence analytical jurisprudence).

1.4. Historical Law

The Historical model sees law in the perspective of the development of man and state. Proponents of this theory consider the law as a product of tradition and custom, interbound with the mind and spirit of the people. The law, it is said, develops in custom, and is then solidified by juristic activity. A society's laws represent an expression of the common conscience of the people at a given time; a complex of ideas, institutions, and techniques, all in a state of continuing development.

Each of the three legal theories contributes to an understanding of our modern legal system. In the formative era of Western legal thought, the eleventh to the fifteenth century, legal thinking was based on the Natural Law model, expounding such definitions as "a theory of *right* and *wrong*," "an art of the good and equitable," and "reason unaffected by desire." Other definitions during this period related to human nature and the Divine law. In this context, Sir Thomas Aquinas, Roman philosopher, defined law as "nothing else than an ordinance of reason for the common good, made and promulgated by him who has care of the community."

A case tried on the Common Bench (England) in 1345 stated the feeling of the day saying the law is not just the "will of the justices, but that which is *right*."

By the sixteenth century, as nations were developing, the Imperative theory of law came to the fore, and by the nineteenth century, predominated. Hobbs wrote, "Law properly is the word

of him, that by right hath command over others." A leading English jurist of the nineteenth century wrote, "Law is a command proceeding from the supreme political authority of a state, and addressed to the persons who are subject to that authority." Justice Holmes said that law was "a statement of the circumstances under which the public force will be brought to bear on persons through the courts."

The nineteenth century saw the beginning of the Sociological School of Jurisprudence, which was a combination of Historical and Imperative theories. The Sociological theory sought to explain society's legal rules as the balancing of various interests. Each legal decision thus becomes a balancing of social consequences and interests.

Each of the three schools of legal thought help explain the modern legal concepts that our society accepts, yet they are not a complete definition of "the law."

At this point in our discussion, it might be well to consider the function of the law; what does it strive to accomplish? Basically, the law seeks to perform three broad tasks.

1.5. Functions of the Law

1.5.1. EQUILIBRIUM. The law seeks to maintain and restore social equilibrium when disturbed, as for example, in the resolving of disputes. By the resolution of disputes, the law serves as an alternative to private vengeance, self help, and the employment of brute force. This first concept becomes vitally important when speaking of the criminal law, to be discussed.

1.5.2. PREDICTABILITY. The law allows the citizen the ability to calculate the consequences of his actions. This provides for reliability in action and sets forth precise obligations and related sanctions for violations. Legal predictability facilitates the regulation of social conduct, rationally and efficiently. It assists in accomplishing things, and at the same time, permits one to accurately predict what others will do.

1.5.3. EDUCATION. The law teaches right beliefs, right feelings, and right action. It forms and molds legal attitudes and concepts of society. The legal goals of equilibrium, predictability,

and education are universal to all legal systems. In addition, Western law has sought to maintain historical continuity.

In summary, our legal system is a formal process, definite and deliberate, to a) resolve disputes, b) facilitate and protect voluntary arrangements, c) mold moral and legal conceptions of society, and d) maintain historical continuity.

1.6. The Development of the Law

The reader may well be asking at this point, just where did our law come from? From the common law, a constitution, statutes, or possibly from legislative bodies?

The law, in fact, is derived from all of these areas, and more. Before exploring the roots of our law, however, it becomes necessary to point out not only that our law developed from a number of sources, but that our law is also subdivided into a number of different areas, developed to fulfill different needs of society. Accordingly, as our discussion of the law progresses, we will also consider the present legal divisions found within our system.

The Latin phrase *lex non scripta* simply means law without a writing, or unwritten law, as contrasted with statute law, which is set forth in a writing. The common law or unwritten law is said to be the primary source of our modern legal system. But what is the common law, and where did it come from?

The basis of the common law lies in reason, conscience, honor, conventions, morality, customs, and religion. The common law developed as the needs of society called for it. It is a continuing expression of a conception of justice by each generation subscribing to it.

The common law, which initially guided the Royal Courts in England, set forth certain procedures, rules, and remedies to adjudicate disputes. The Royal Courts were the "law" courts, primarily concerned with criminal matters, contrasted with the later developed Chancellor Courts, or courts of conscience, which dealt with equity problems. The common law was a law made by judges, rather than a lawmaking body such as Parliament. The common law is found by reading the decisions of the courts.

An 1817 judicial decision in discussing the unwritten law stated,

> No just government ever did, nor probably ever can, exist without an unwritten or common law. By the common law, is meant those maxims, principles, and forms of judicial proceedings which have no written law to prescribe or warrant them, but which, founded on the laws of nature and the dictates of reason, have, by usage and custom, become interwoven with the written law, and by such incorporation, form a part of the municipal code of each state or nation, which has emerged from the loose and erratic habits of savage life, to civilization, order, and a government of laws. (*Ohio v. Lafferty,* C.P. (5th Cir. 1817.))

(The reader will note the reference to the Natural law theory discussed earlier in the chapter.)

The unwritten law is preserved and evidenced by court decisions. The decisions, however, are not "the law" nor is legal authority to be derived from the decisions. Rather, they merely reflect the current trend in legal thinking relative to a certain point.

Sir James Stephen, a nineteenth century English jurist and author, said of the unwritten law,

> It is not till a very late stage in its history that law is regarded as a series of commands issued by the sovereign power of the state. Indeed, even in our own time and country, that conception of it is gaining ground very slowly. An earlier, and to some extent a still prevailing view of it is that it is more like an art or science, the principles of which are at first enumerated vaguely, and are gradually reduced to precision by their application to particular circumstances. Somehow, no one can say precisely how, though more or less plausible and instructive conjectures upon the subject may be made, certain principles come to be accepted as the law of the land. The judges held themselves bound to decide the cases which come before them according to those principles, and as new combinations of circumstances throw light on the way in which they operated, the principles were, in such cases, more and more fully devolved and qualified, and, in others, evaded or practically set at naught and repealed. Thus, in order to ascertain what the principle is at any given moment, it is necessary to compare together a number of decided cases, and to determine from them the principle which they establish. (1 Stephen, Criminal Law, viii.)

The common law, developed in England, is the primary source of our United States criminal law. Said Judge Tappan, in *Ohio v. Lafferty,*

> But although the common law, in all countries, has its foundation in

> reason and the laws of nature, and therefore is similar in its general principles, yet in its applications it has been modified and adapted to various forms of government; as the different orders of architecture, having their foundation in utility and graceful proportion, rise in various forms of symmetry, and beauty, in accordance with the taste and judgment of the builder. It is also a law of liberty, and hence we find that when North America was colonized by emigrants who fled from the pressure of monarchy and priestcraft in the old world, to enjoy freedom in the new, they brought with them the common law of England, claiming it as their birthright and inheritance. In their charters from the Crown, they were careful to have it recognized as the foundation on which they were to erect their laws and governments: not more anxious was Aeneas to secure from the burning ruins of Troy its household gods, than were these first settlers of America to secure to themselves and their children the benefits of the common law of England. From thence, through every every stage of the colonial government, the common law was in force, so far as it was found necessary or useful. When the revolution commenced, and independent state governments were formed; in the midst of hostile collisions with the mother country, when the passions of men were inflamed, and a deep and general abhorrence of tyranny of the British government was felt; the sages and patriots who commenced the revolution, and founded those state governments, recognized in the common law a guardian of liberty, and social order. The common law of England has thus always been the common law of the colonies and states of North America; and indeed in its full extent, supporting a monarchy, aristocracy, and hierarchy, but so far as it was applicable to our more free and happy habits of government.

1.7. Branches of the Law

Our system of law is further divided between civil and criminal, constitutional, statute, administrative, and canon law.

1.7.1. Civil Law. The civil side of our law is mainly composed of the law of Contracts, the law of Torts, and the law of Property. The term *civil,* as contrasted with *criminal,* indicates a legal basis founded on personal disputes or controversies, where private rather than public interest predominates. In the area of contracts, for example, the main interest is the protection of private contractual rights. The criminal law, on the other hand, is primarily interested in the good of the state and the population of society as a whole.

Tort law allows the aggrieved individual a compensatory rem-

edy, usually in the form of monetary damages. Tort law involves all of those injuries arising exclusive of contract, and is the civil counterpart of criminal law. Whereas the prosecution of an action in tort, for example, of assault and battery, will allow the plaintiff an award of damages; the same action, brought in the name of the people, rather than the individual, would not give the plaintiff any compensation, but would render justice to all those involved. The civil law allows the individual to obtain compensation and redress, while the criminal law protects the good of the state.

1.7.2. CRIMINAL LAW. The "criminal law" is a collection of rules or norms, both unwritten (common law) and written (constitutional, statute, case) which have developed to protect society from various harms. The criminal law is founded on a) the public policy to be served in preventing injury to life and property, b) to deter interference or destruction of government processes or functions, and c) to guard vital institutions other than governmental.

The criminal law is derived originally from the law of Tort, where its principal goals were vengeance and reimbursement to the injured party. As law developed, the emphasis changed from allowing a private remedy such as vengeance, to the protection of the general public, the state. Thus, the distinction between tort and criminal law became more clearly defined.

The purpose of the criminal law, said Oliver Wendell Holmes,

> is to induce external conformity to the rule. All law is directed to conditions of things manifest to the senses. And whether it brings those conditions to pass immediately by the use of force, as where it protects a house from mob by soldiers, or appropriates private property to public use, or hangs a man in pursuance of a judicial sentence, or whether it brings them about mediately through men's fears, its object is equally an external result. In directing itself against robbery or murder, for instance, its purpose is to put a stop to the actual physical taking and keeping of other men's goods, or the actual poisoning, shooting, stabbing, and otherwise putting to death of other men. If these things are not done, the law forbidding them is equally satisfied, whatever the motive. (Holmes, *The Common Law,* p. 42.)

1.7.2.1. *Goals.* The criminal law strives to achieve a number of goals, chief among which are to recognize and define certain

forms of conduct considered harmful to the state. Basically, the first set of criteria to be considered in proscribing conduct would be the following: a) Is the conduct injurious to the public? b) Is the activity immoral, to the prejudice of the community? c) Is the conduct or result of such conduct against sound public policy?

After defining the prohibited conduct, the law must set up appropriate machinery to empower the state to commence action against the individual. This would encompass the legislative function, that of lawmaking, the executive function, that of enforcing the laws made by the legislature, and the judicial function, that of determining whether individual conduct in question falls within that prohibited or commanded by law.

In addition, the criminal law must a) be reliable in its process of determining guilt, b) preserve the right of the accused, and c) promote effective law enforcement.

1.7.2.2. *State and Federal.* The common law of England, and the United States Constitution form the basis of our system of criminal law. The Constitution allows both for the Federal judiciary system, and the Federal lawmaking function, the Congress. The Constitution provides for the states to rule themselves and set up the necessary legislative, executive, and judicial machinery, however, the United States government is held supreme and independent from the states. The common law, with its definitions of crime, is accepted by approximately half the states today. The other half rely strictly on statutory law to define and punish crime.

1.7.3. FEDERAL LEGISLATION. The United States Constitution grants power to Congress to define and punish crime falling within specified categories. Its power is limited to that either expressly given or implied by the Constitution. Unlike the state legislature, Congress has no inherent power to make law. There are *no* common law crimes within the federal system. All crimes must be specifically set forth, as must be the punishment for said crimes.

Congress may legislate in such areas as treason, commerce, currency, piracy, and the broad area of protection and promotion of the public safety, health, and welfare. Congress may also make

laws to protect the rights, privileges, powers, and immunities as set forth in the thirteenth, fourteenth, fifteenth, and nineteenth amendments. Federal crimes are set forth in the United States Code, Title 18.

1.7.4. STATE LEGISLATION. Except for the specified areas in which Congress may legislate, the states have been vested with the general power to form their own legislatures and to make laws that are consistent with the Constitution. Thus, states may declare, define, and punish crimes, subject to the qualifications that a state may not make or enforce laws which abridge the privileges or immunities of United States citizens, nor deprive citizens of life, liberty, or property without due process of law, nor deny any person within the jurisdiction equal protection of the laws. Laws enforced by state governments may come from the state constitution, from the common law, or from statutes.

Once the state legislature has enacted a law, and made certain conduct criminal, the courts may not question the authority of the lawmaking body to enact the particular legislation, with the exception of examining the constitutional validity of the law. Since the time of the French Revolution, the legislature has jealously guarded the power to define what is criminal and to prescribe the limits of punishment. Prior to the Revolution, judges *and* lawmaking bodies had equal power to declare crime and punishment. Although today judges do not, in fact, make the law, they do interpret it and thus share with the lawmakers the responsibility of the creative development of criminal law.

Section 2. CRIME

A crime may be defined as: The commission or omission of an act which the law forbids or commands under pain of punishment to be imposed by the state, proceeding in its own name. In cases of crime *mala in se,* the law will also require the element of unlawful intent.

2.1. The Commission or Omission of an Act

Some act or failure to act is always required. The act must be committed by human agency (the accused), rather than by natural occurrence. Some minor crimes require only an act, how-

ever, as the seriousness of the crime increases, intent, in addition to the act, becomes important.

The requisite act may be simple, complex, or a series of acts.

1. A *simple act* may be all that is required. Such would be the case of striking a person to constitute battery.
2. A *complex act* may require several interwoven actions such as (1) possession of (2) stolen property.
3. A *series of acts* may be needed to meet the statute such as the case for burglary, where breaking + entering + dwelling house + intent is required.

The actor may be liable for the consequences of his acts if harm is the result. For example, a simple battery may, in time, become murder if the injured party dies.

2.1.1. CAUSATION. A determinant relation must exist between the act of the accused and the prohibited result constituting the crime. The act must be the *proximate cause* of the injury. An act is said to be the proximate cause of the injury if: a) the injury is the natural and probable consequence of the act, b) the injury is reasonably foreseeable from the act, and c) the act is sufficiently connected with the injury to show causation. (Distance in time and space between the act and injury is immaterial.)

2.2. Proximate Cause of Crime

A *concurrent act,* where two persons commit a crime, can produce a single injury, where each contributing cause may be considered the *proximate cause* of the injury. When one's act combines with another person's act, and both contribute to the injury, both actors may be liable. The accused act need not be the sole cause of the injury, if it be the proximate cause. For example, actor A inflicts a mortal wound to X. Actor B then comes along and *also* delivers another mortal blow to X. Whether A and B were acting in concert, or independently, both A and B may be held for homicide, even though either's actions alone would have produced the death of X. Each act is said to be the proximate cause of the injury.

The defendant's act may be the proximate cause of the injury, even though alone it would have been insufficient to produce the injury. Such is the case when the act is an *intervening* cause.

Thus, when the defendant sets in motion an outside force, or chain of events which produce the unlawful result, he is held for the act. For example, where the decedent had a preexisting illness, and the combined act of the defendant with the illness produced death, he will be held, even though death probably would not have occurred but for the decedent's weakened condition.

If the defendant is engaged in an unlawful act and produces unexpected or unintended results, his acts may still be the proximate cause of the injury, and he will be held liable.

2.2.1. NEGLIGENCE. If the defendant's act was the proximate cause of the injury, the fact that the act was negligently done is immaterial, except to possibly show a lack of intent. If, however, the injury would have occurred with or without the defendant's negligent act, then in most instances, the actor will not be held liable.

2.2.2. ACCIDENT. If the defendant's act is accidental, as where a reasonable man could not have avoided the injury, there will be no criminal liability, regardless of causation. The law does not demand absolute perfection in action.

2.2.3. LAWFUL ACT. Where illegal conduct results from the doing of a lawful act, the actor is not held if there is no unlawful intent.

2.2.4. CORPUS DELECTI (the body of a crime). The corpus delecti governs rules of evidence which determine what proof is necessary for a particular crime. Ordinarily, there are four basic elements which are required to be proved in every criminal action, plus the specific elements peculiar to the crime. The four elements are as follows:

An injury has occurred
Which is a declared crime
Which was committed by a human agent
The human agency was the defendant.

2.3. Nullum Crimen Sine Lege

In the case of felonies and some high-grade misdemeanors, the act must be prohibited or commanded by competent legal au-