CHAPTER

2

Criminal Law: The Foundation of Criminal Justice

OBJECTIVES

1. Grasp the relationship between civil and criminal law, and describe how the law distinguishes among different levels of seriousness.
2. Identify the essential elements of a crime, including *actus reus* and *mens rea*.
3. Know the meaning and uses of the various justifications, excuses, and exemptions that may bar legal liability.
4. Understand the Constitutional amendments that deal with due process, the rights of the accused, and the applicability of these principles.

PROFILES IN CRIME AND JUSTICE

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As a board-certified forensic psychologist, I travel from Dallas to other parts of the country. Most of my work involves evaluations and testimony related to sentencing decisions in death penalty cases. Evaluations for capital sentencing require extreme breadth, typically meaning a retrieval of all available records and extensive interviews of the defendant, the defendant's immediate and extended family, and numerous other third parties. These evaluations are also literature intensive, drawing on research linking adverse developmental factors to criminal violence and on correctional data that inform risk assessments of future prison behavior. When in the office or in my seat on an airplane, I review and analyze these records and research findings as I prepare reports or testimony.

I also author scholarly publications regarding standards and special considerations in capital evaluations, perform research regarding capital offenders, participate in investigations of rates and correlates of prison violence, and teach workshops. I enjoy the intellectual stimulation, as well as the constantly changing routine and travel of this work and scholarship.

I came to these professional roles by a circuitous route that was part professional evolution and part serendipity. My doctoral training was in clinical psychology, and my early practice focused on providing treatment services. This experience would later prove invaluable in developing the clinical skills that I would bring to bear in the forensic arena. Over time, I was called on to provide expert witness evaluations for the courts. My increasing involvement in forensic cases led to a several-year process of intensive reading and workshop attendance in pursuit of board certification in forensic psychology. The sustained board preparation reawakened the scientist in me and also resulted in my first capital case referral. My scholarship and practice in the capital sentencing arena grew from there.

Introduction

Throughout history, the creation and evolution of law have been instrumental in promoting and regulating social behavior. Aristotle, for example, believed that law is the essence of social order: Good social order can be built only on good law; bad law can also produce social order, but such order may not be desirable.[1] Law, however, is not inherently good or bad, nor has it always accomplished its goals. Law is good to the extent that it is used or adhered to lawfully. If those individuals who are responsible for administering law fail to operate according to the accepted rules, law may become oppressive and a tool of manipulation.

Laws are formalized rules that prescribe or limit actions. Criminal law is one category of law, which consists of the two subcategories of substantive criminal law and procedural criminal law. **Substantive criminal law** identifies behaviors considered harmful to society, labels those behaviors as crimes, and specifies their punishments. **Procedural criminal law** specifies how crimes are to be investigated and prosecuted. Together, substantive criminal law and procedural criminal law form the foundation of the U.S. system of criminal justice.

Common Law and the Concept of *Stare Decisis*

Although the early legal codes laid a foundation for formalizing principles and customs into law, it was the emergence of English common law that held the greatest significance

for the development of criminal law in the United States. The tradition of **common law** allowed judges to determine which behaviors constituted crimes and what appropriate punishment should be imposed when they were violated, thus establishing a body of law common to the entire nation.

One of the most important concepts operating in common law was the doctrine of precedent, or ***stare decisis*** (literally, "to stand by the decisions"). This doctrine allows courts to interpret and apply law based on previous court decisions. According to *stare decisis*, judges were required to decide new cases in a manner consistent with principles established in prior cases. To the extent that a new case was substantially similar to a previous one, the judge was required to interpret the law in the same way and follow the precedent. Judges were not supposed to create laws, but they could study past legal decisions, discover the principles embodied in them, and apply those principles to new situations.[2]

All laws in the United States must be in accordance with the Constitution.

Contemporary Sources of Criminal Law

Criminal law in the United States has largely grown out of English common law, which was first brought over to America during the colonial period. However, Americans desired a codified system of law to provide greater uniformity, standardization, and predictability. As a result, the states and the federal government began to formalize law by developing statutes and by drawing upon a number of other sources—case law, administrative rules, and the constitutions of the various states and the federal government.

Statutes

Criminal law is contained in written codes called **statutes**. According to the balance of powers established in the Constitution, the law-making function resides in the legislative branch rather than in the judicial branch of government. Congress and state legislatures are responsible for enacting statutes that define crimes (substantive laws) and specify the applicable penalties for their violation as well as law governing legal procedures (procedural laws).

Case Law

Case law is a continuation of the common-law tradition in which judicial decision making in individual cases involves interpreting existing law, looking at relevant precedent decisions, and making judgments about the legitimacy of the law. Because gaps will inevitably exist between what a legislative body intends when it passes a law and what actually happens when that law is enforced, the practice of case law allows the courts to interpret the law as they apply it.[3]

Administrative Rules

The rules, orders, decisions, and regulations established by state and federal administrative agencies are another source of law. The Federal Trade Commission (FTC), Internal Revenue Service (IRS), Food and Drug Administration (FDA), and Environmental Protection Agency (EPA), for example, have all established a multitude of rules and regulations that have the full force and effect of law. These agencies investigate and impose criminal sanctions for such violations as securities fraud, the willful failure to pay income tax, the intentional sale of contaminated food, and the dumping of toxic wastes.

Constitutions

The U.S. Constitution and each of the 50 state constitutions are the final arbiters of substantive and procedural law. A law enacted by a state legislature may be found to

be in violation of either that state's constitution or the U.S. Constitution. Federal laws, regulations, or administrative acts may be judged only against the U.S. Constitution. In addition, the Bill of Rights, which was added to the U.S. Constitution in 1791, includes protections afforded to defendants in criminal prosecutions (such as the right to counsel, prohibitions against illegal search and seizure, and the right to due process), reflecting the framers' fear of a strong centralized government.

Conceptualizing Crime

Crime is an intentional act or omission in violation of criminal law, committed without defense or excuse, and sanctioned (i.e., punishable) by the state. Crime is essentially a legal construct, because the law narrowly defines the specific elements of the forbidden act and the conditions under which they occur. For example, intentionally taking the life of another person may or may not constitute a crime. Although it would be a crime for a person to intentionally kill his or her spouse to collect life insurance, it would not be a criminal act for a police officer to intentionally kill an armed suspect in self-defense.

Crime is also a failure to act (e.g., not paying income tax). At various times in history, a condition of being or status was included in definitions of crime. For example, during the seventeenth century, Massachusetts Bay Colony made it a crime to be a Quaker. Until 1962, in California it was illegal to "be addicted to the use of narcotics" (the statute was eventually declared unconstitutional by the U.S. Supreme Court).[4]

Seriousness of the Crime

Generally speaking, acts that are defined as crimes are considered more serious violations of norms (rules that regulate behavior) than are noncriminal acts. Nevertheless, perceptions of the seriousness of certain crimes may vary between different times, cultures, and societies. According to public opinion polls, most Americans agree that violent crimes are more serious than property crimes, but there are gradations—most people see a parent's assault on a child as more serious than a husband's assault on his wife, and selling heroin is generally considered to be a more serious crime than selling marijuana.[5] In the United States, people who engage in sexual relations before marriage may be breaking the law in some states (e.g., Florida, Michigan, Mississippi, North Dakota, and Virginia), though there is little chance of prosecution. In China, however, persons engaged in the same behavior may be charged with prostitution (for the female) and rape (for the male).[6]

Mala in Se Crimes versus *Mala Prohibita* Crimes

In the early development of criminal law, all crimes were considered wrong for one of two reasons: They were considered inherently wrong or evil (***mala in se***) or they were wrong merely because they were prohibited by a criminal statute (***mala prohibita***). Only nine common-law crimes were classified as *mala in se* offenses:

- Murder
- Manslaughter
- Rape
- Sodomy
- Robbery
- Larceny
- Arson
- Burglary
- Mayhem

These offenses were also the first group of crimes to be referred to as felonies. The *mala prohibita* crimes, by comparison, were considered less serious and consequently were classified as misdemeanors.

The significant historical distinction between these two categories of crimes reflects perceptions of the degree of public harm they present. Because *mala in se* crimes were believed to be inherently evil and to pose a major threat to the social order, it was understandable that they would be sanctioned by the law and more severely punished. *Mala prohibita* crimes, such as public drunkenness, loitering, prostitution, and gambling, did not carry the same broad moral condemnation. TABLE 2–1 presents a brief list of examples of *mala in se* and *mala prohibita* crimes today.

The basic distinction between these two groups of crimes persists in present-day criminal law. The offenses classified as *mala in se* crimes have largely remained the same, but the number of *mala prohibita* crimes has greatly expanded. For example, statutes have been enacted to prohibit driving under the influence of alcohol or drugs, copyright infringement, and the manufacture, distribution, and possession of illegal drugs. Statutes have been created to control cybercrimes, including theft of information, creation of computer viruses to cause mischief or damage data, copying software, downloading of copyright-protected music or movies, and identity theft.

Felonies, Misdemeanors, and Infractions

U.S. criminal law distinguishes between felonies, misdemeanors, and infractions and assigns punishments accordingly.

The most serious crimes, called **felonies**, result in a more severe punishment. In most states, felonies carry maximum sentences of death or imprisonment for a term greater than one year in a state prison and typically carry higher fines than misdemeanors. A felony conviction also may result in the loss of certain rights, such as the loss of a person's right to vote, hold public office, carry a gun, or be licensed in certain professions.

Crimes classified as **misdemeanors** carry less severe punishments than are meted out for felonies. Typically, the maximum incarceration sentence is one year or less in a local jail and a smaller fine than would be incurred in a felony.

The third category of crimes, called **infractions**, is composed of petty offenses. These involve violations of city or county ordinances and include such offenses as illegal parking, jaywalking, cruising, and violations of noise ordinances. Infractions are generally not punishable by incarceration; rather, fines or community service may be imposed.

TABLE 2–1 Examples of Contemporary *Mala in Se* and *Mala Prohibita* Crimes

Mala in Se	*Mala Prohibita*
Murder	Prostitution
Rape	Gambling
Robbery	Vagrancy (loitering)
Larceny	Panhandling
Arson	Fraud
Burglary	Public intoxication
Aggravated assault	Public nudity
Incest	Trespassing
	Possession of drug paraphernalia
	Copyright infringement
	Illegal possession of weapon
	Disorderly conduct

Elements of a Crime

As a legal definition, crime also includes what is known as the ***corpus*** (literally, "body of the crime"), which refers to the facts, or foundation, of the crime that must be established in a court of law. These elements include *actus reus* (criminal act), *mens rea* (criminal intent), and the concurrence of these two concepts.

Actus Reus

In his novel *1984*, George Orwell described a society in which both thoughts and acts were restrained and regulated by the Think Pol, or thought police.[7] Through constant surveillance, the Think Pol were able to monitor and then punish any expression of prohibited thoughts. U.S. law, however, generally limits criminal responsibility to ***actus reus***—an actual act, the planning or attempt to act in violation of the law, or the specific omission to act when the law requires action. The written or oral expression of certain thoughts, such as making threats or intimidating remarks to a witness, may also be viewed as *actus reus* and, therefore, may be prohibited by criminal law.

Mens Rea

According to an old Latin maxim, an act does not make a person guilty unless the mind is guilty. In other words, a defendant is not criminally liable for conduct unless ***mens rea*** (criminal intent) was present at the time of the act. For a crime to exist, the person must intend for his or her action to have a particular consequence that is a violation of the law. The mere fact that a person engages in conduct in violation of law is not sufficient to prove criminal liability; rather, the defendant must also intend to commit the crime. As former Supreme Court Justice Oliver Wendell Holmes once noted, "Even a dog distinguishes between being stumbled over and being kicked."[8]

However, **strict liability laws**, in which there is liability without culpability, are an exception. Strict liability laws provide for criminal liability without requiring intent; in other words, a person may be held criminally responsible even though he or she had no intent to produce the harm. For example, bartenders have been held criminally liable for the intoxication of patrons and hosts of parties have been held criminally liable for the intoxication of their guests who are later involved in fatal accidents. The fact that neither the bartender nor the host had any intention to cause the intoxication or the subsequent accident is neither a required element of proof nor a valid defense. Penalties for strict liability violations typically involve fines rather than jail time.

Different degrees of criminal intent exist, and there are even some exceptions to the requirement that intent be present. In an attempt to create greater legal uniformity among the states, the American Law Institute wrote a Model Penal Code in 1962. It identifies levels of criminal responsibility, or culpability, reflecting differing degrees of intent to act: The person must have "acted (1) purposely, (2) knowingly, (3) recklessly, or (4) negligently, as the law may require, with respect to each material element of the offense."[9]

- *Purposely* means to act with conscious deliberation, planning, or anticipation to engage in some conduct that will result in specific harm.
- A person acts *knowingly* when he or she is aware that the conduct is prohibited or will produce a forbidden result.
- Acting *recklessly* involves conscious disregard of a known risk, although there is no conscious intent to cause the harm (such as speeding and unintentionally causing an automobile accident).
- *Negligent* conduct creates a risk of harm when an individual is unaware, but should have been aware. In other words, to be negligent, a person must engage in conduct

that a reasonable person would not engage in, or an individual must fail to act (an omission) in the manner in which a reasonable person would act under the same or similar circumstances.

Concurrence of *Actus Reus* and *Mens Rea*

For an act to be considered criminal, both the act (*actus reus*) prohibited by criminal law and the intent (*mens rea*) prohibited by the criminal law must be present before the crime is completed. It is not sufficient for an act to be defined as a crime if the person has only the guilty mind but commits no act. Nor is it sufficient for a person to have acted without criminal intent, with the exception noted earlier for strict liability offenses.

Concurrence may exist even if the act and the intent do not coincide as the offender intended. Suppose Jim aimed a gun at Brian and shot with the intent to kill him, but missed, hitting and killing John instead. Jim is still liable for murder under the doctrine of transferred intent. The intent to kill, in other words, is transferred from Jim to John. If the bullet missed both Brian and John but instead hit an electrical transformer and caused a fire, Jim would not be responsible for the crime of arson, because he did not intend to commit this specific act, though he may still be held responsible for reckless behavior.

Defenses and Responsibility

Society and criminal law have long recognized that certain actions may be justified or excused, such that the offender does not bear legal liability for the act. Sometimes these justifications and excuses, which are called defenses, are based on the mental state of the person at the time the act was committed. At other times, circumstances beyond the individual's control may come into play that may negate criminal liability. Both justifications and excuses are affirmative defenses; that is, the defendant must prove that his or her act was justified or excused.

John Hinckley, Jr.'s shooting of President Ronald Reagan in 1981 was seen by millions of people as they watched the television news, yet Hinckley's successful defense of "not guilty by reason of insanity" prevented him from being convicted for the crime. In this case, the defendant did not deny engaging in the action: Hinckley did shoot Reagan. Nevertheless, his defense of insanity successfully allowed him to avoid being held criminally responsible for the assault.

Justifications

Justifications are based on a defendant admitting responsibility but arguing that, under the circumstances, he or she did what was right.

Self-Defense

Defendants who raise the claim of **self-defense** as a justification for avoiding criminal responsibility argue that they acted in a lawful manner to defend themselves, others, or their property, or to prevent a crime. Most states permit a person to use as much force as is reasonably necessary for such protection. The individual must also have an honest and reasonable belief that he or she is in immediate danger from unlawful use of force by another person. The degree of force used in one's self-defense must be limited to a reasonable response to the threat: A person should meet force only with like force. Thus a person who is attacked by an unarmed assailant should not respond with a weapon.

According to the Model Penal Code, deadly force may be used only in response to a belief that there is imminent threat of death, serious bodily harm, kidnapping, or rape. It may *not* be used if the defendant provoked the offender to use force. Some jurisdictions also require that when a safe escape route from a house is available, a person must retreat

The majority of domestic violence victims are women, and this abuse may have varied and significant effects.

instead of using deadly force. Thus, if a person has an opportunity to retreat safely from the person posing the threat, deadly force would not be justified as self-defense. This retreat rule has several exceptions, such as cases of battered woman syndrome.

Necessity

Necessity, as a defense, represents the dilemma of choosing between two evils. A person may violate the law out of necessity when he or she believes that the act, which is a violation of law, is required to avoid a greater evil. According to the Model Penal Code, conduct that a person "believes to be necessary to avoid a harm or evil to himself or to another is justifiable, provided that the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged."[10] For example, breaking into a mountain cabin to secure shelter or food during a snowstorm or into a home to use the telephone to report an emergency may establish the defense of necessity and thereby negate the crime of breaking and entering. In either case, the individual must intend to avoid a greater harm than the crime charged to justify the act.

Kobe Bryant and his accuser had starkly different assessments of their sexual relationship, which resulted in a civil settlement.

Consent

The defense of consent arises when a defendant claims the victim consented to the act. Certain common law offenses, such as theft and rape, require a clear demonstration that the victim did not give consent. For example, if the owner of an automobile voluntarily consented to a neighbor taking her car, then the neighbor has not committed motor vehicle theft.

During the summer of 2003, professional basketball star Kobe Bryant was charged with raping a 19-year-old female hotel employee while he was staying at a Colorado resort. Bryant admitted he had sex with the woman but claimed that she had consented. Shortly after the charges were filed, Bryant stated, "Nothing that happened June 30 was against the will of the woman who now falsely accuses me." The rape charge was eventually dismissed. Afterward, Bryant stated, "Although I truly believe this encounter between us was consensual, I recognize that she did not and does not view this incident the same way I did. After months of reviewing [evidence submitted at] discovery, listening to her attorney, and even her testimony in person, I now understand how she feels that she did not consent to this encounter." The woman then filed a civil law suit against Bryant; the

Headline Crime

Carrying Guns on Campus

More than 11,000 students have joined the Facebook group Students for Concealed Carry on Campus to call attention to the need for greater personal safety on campus after the Virginia Tech shootings in 2007. According to one student, "The only way to stop a person with a gun is with another gun." A student at Washington State University said, "School is the only place I'm not allowed to carry my weapon."

Utah is the only state that allows permit holders to carry guns on campus. However, 12 states are currently considering legislation that would make it legal for people to carry guns, if they have concealed-weapons permits, at public universities. State legislatures in Alabama, Arizona, Georgia, Indiana, Kentucky, Michigan, Ohio, South Carolina, South Dakota, Tennessee, Virginia, and Washington are at some point in the process of changing state laws to enable students, faculty, and staff to carry a concealed weapon while on campus.

Source: Marisol Bello, "12 States Debate Guns on Campus," *USA Today,* February 15, 2008, p. 3A.

FOCUS ON CRIMINAL JUSTICE

The Battered Woman Syndrome and Deadly Force

Nancy Seaman, a 52-year-old elementary school teacher, may have suffered from *battered woman syndrome* after enduring years of alleged physical abuse by her husband, Robert. At her trial, Nancy admitted to killing her husband with a hatchet, but claimed it was an act of self-defense initiated during one of his attacks soon after she asked him for a divorce. She testified that when she told Robert she wanted a divorce, he became furious, cut her with a knife, chased her into the garage, forced her to the ground, and repeatedly kicked her. According to Nancy, she grabbed the closest object she could find—a hatchet—and drove it into her husband's skull. She then stabbed and beat him to ensure he was dead.

Prosecutors told another story. They claimed the act was premeditated and that Nancy purchased the ax and took great care to conceal the crime scene. Surveillance video from a hardware store showed Nancy stealing a hatchet identical to the one used in the murder. Two days later, she returned it using the receipt from the purchase of the hatchet used in the murder, perhaps in an attempt to erase the purchase from her credit card record. Prosecutors said that Nancy slammed the hatchet into Robert's skull more than a dozen times, dragged his body into the garage, and then stabbed him 21 times, severing his jugular vein and voice box. The next morning, she stopped to purchase a tarp, bottles of bleach, and latex gloves to clean up the mess.

Other testimony also appeared to contradict Nancy's account. When police first arrived at the couple's home, Nancy claimed Robert's death was an accident. A co-worker said he had overheard Nancy talking with another teacher at school about poisoning her husband. After five hours of deliberation, the jury found Nancy guilty of first-degree murder, rejecting her claim of self-defense. She was subsequently sentenced to life in prison.

According to criminologist Cynthia Gillespie, laws regulating deadly force have been created by men based on a code of "manly" behavior that expects a person to be fearless and confront an attacker directly. Such laws do not consider the woman's assessment that she cannot escape further injury as long as the abuser is alive.

Victims of battered woman syndrome are often unable to leave their abusers, even when circumstances appear to permit their escape. Over time, a battered woman may lose all hope of controlling her husband's or boyfriend's violence. Many such women succumb to learned helplessness: They become emotionally dependent on their abusive partners and learn to be passive as a result of beatings when they tried to assert themselves. In addition, some women do not leave because no safe refuge exists where an enraged partner cannot find them or their children. Abusive husbands often threaten to harm or take custody of the children if the woman leaves. Even with the increase in numbers of shelters for abused women, shelters must turn away more women than they serve.

Sources: Mike Martindale, "Seaman Gets Life in Prison," available at http://www.detnews.com/2005/metro/0501/25/B01-68930.htm, accessed June 28, 2008; "Teacher Claims Self-Defense in Husband's Ax-Murder," *Courttv*, March 30, 2005, available at http://www.courttv.com/trials/seaman/background_ctv.html, accessed June 28, 2008; Cynthia Gillespie, *Justifiable Homicide: Battered Women, Self-Defense, and the Law* (Columbus, OH: Ohio State University Press, 1989).

suit was settled out of court, and terms of the settlement were not released.[11] Such lawsuits are based on **civil law**, which is a body of private law that settles disputes between two or more parties to a dispute.

Excuses

Excuses are based on a defendant admitting that what he or she did was wrong but arguing that, under the circumstances, he or she was not responsible for the criminal act.

Insanity

Probably no other legal defense has resulted in more public scrutiny and debate than the insanity defense. In reality, insanity pleas are very rare. The insanity defense is raised in less than 1 percent of all criminal cases, and only in 25 percent of those cases is the person found not guilty because of insanity.[12] Even so, many people are concerned when a clearly dangerous person avoids incarceration and punishment after being found legally

insane at the time the crime was committed. It is important to recognize that people who are released from criminal charges owing to insanity do not go free, but instead are sent to mental hospitals until they are considered sane. Only then are they released back into the community.

The insanity defense is based on a legal concept, rather than a medical or psychiatric definition of insanity. Legally, "insanity" refers to a person's state of mind at the time he or she committed the crime charged, though actual legal definitions of insanity have been—and continue to be—rather vague. In the past, concepts such as madness, irresistible impulse, states of unsound mind or weak-mindedness, and mental illness, disease, defect, or disorder have all been used to inform the law.[13]

The M'Naghten Rule

The **M'Naghten rule**, which is also known as the "right from wrong" test, is based on an English case that was decided in 1843. Until recently, it was the most widely accepted standard of insanity in the United States. Daniel M'Naghten, a Scottish woodcutter, believed that the English Prime Minister, Sir Robert Peel II, was persecuting him. In an attempt to assassinate Peel, M'Naghten mistakenly shot and killed Peel's assistant. At the trial, the court instructed the jury that

> [To] establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason from disease of the mind as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong.[14]

M'Naghten was tried and found not guilty by reason of insanity.

Under the M'Naghten rule, the defendant is presumed to be sane and must prove that he or she suffered from a "disease of the mind" and, therefore, lacked a sufficient degree of reason to distinguish between right and wrong. This test of insanity has been criticized on several grounds:

- "Disease of the mind" is not clearly defined.
- Too much stress is placed on the requirement of knowing.
- It is unclear how a person must know that an act is wrong.
- Some people may be insane but still able to distinguish right from wrong.

Subsequent rules have sought to overcome these weaknesses in the M'Naghten rule.

Irresistible Impulse Test

In 1897, the U.S. federal courts and a number of the states added the **irresistible impulse test** to supplement the M'Naghten rule. According to this test, defendants may be found not guilty by reason of insanity if they can prove that a mental disease caused loss of self-control over their conduct. This test arose from an 1886 Alabama Supreme Court decision in *Parsons v. State*, which held that it may be possible for a person to know that the action was wrong but nevertheless to be so overcome by emotion that he or she temporarily lost self-control or the ability to reason to a degree sufficient to prevent the act.[15] In revising the M'Naghten rule, the irresistible impulse test allowed defendants to raise the insanity defense and plead that, although they knew that what they were doing was wrong, they were unable to control their behavior.

Durham Rule

The **Durham rule**, which states that "an accused [person] is not criminally responsible if his unlawful act was the product of mental disease or mental defect," was formulated in *Durham v. United States* in 1954.[16] According to the Durham rule, a mental condition may be either a disease (a condition capable of improving or deteriorating) or a defect (a

condition not considered capable of improving or deteriorating). Further, the Durham rule states that a defect could be congenital, the result of injury, or the residual effect of either physical or mental disease. Under the Durham test, the prosecutor must prove beyond a reasonable doubt that the defendant was not acting as a result of mental illness, but the jury determines whether the act was a *product* of such disease or defect.

The Substantial Capacity Test

The Durham rule, like its predecessors, was soon criticized. Specifically, critics argued that it provided no useful definition of "mental disease or defect." In 1962, the American Law Institute offered a new test for insanity in its Model Penal Code. Known as the **substantial capacity test** or Model Penal Code Test, it includes the following provisions:

1. A person is not responsible for criminal conduct if, due to mental disease or defect, he or she lacks the substantial capacity to appreciate the criminality (wrongfulness) of his or her conduct or to conform to the requirements of law.
2. The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or antisocial conduct.[17]

The substantial capacity test is broader than the M'Naghten rule because it substitutes the notion of "appreciate" for "know," thereby eliminating the M'Naghten requirement that a person be able to fully distinguish right from wrong. In other words, a defendant may know the difference between right and wrong yet not be able to appreciate the significance of that difference. The substantial capacity test absolves from criminal responsibility a person who knows what he or she is doing, but is driven to act by delusions, fears, or compulsions.[18] Like the Durham rule, the substantial capacity test places the burden of proof beyond a reasonable doubt on the prosecutor.

In 1972, in *United States v. Brawner*, the federal courts rejected the Durham rule and adopted a modified version of the substantial capacity test.[19] By 1982, it was being used in 24 states, the District of Columbia, and the federal courts.

Insanity Defense Reform Act of 1984

Until 1981, the substantial capacity test dominated federal and state practice. Matters changed after March 30, 1981, when John Hinckley, Jr., shot and wounded President Reagan. At his trial, experts testified that Hinckley was psychotic and had been suffering from delusions. A little more than a year after the shooting, the jury returned a verdict of "not guilty by reason of insanity" for Hinckley.

As a result of widespread criticism over Hinckley's acquittal, Congress restricted the use of the insanity defense in federal cases, and a number of states quickly followed suit. The Insanity Defense Reform Act of 1984, passed as part of the larger Comprehensive Crime Control Act of 1984, states:

> It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality of the wrongfulness of his [or her] acts . . . The defendant has the burden of proving the defense of insanity by clear and convincing evidence.[20]

A significant part of the Insanity Defense Reform Act is the shifting of the burden of proof from the prosecution to the defense and the limitations placed on the role of experts. The defense now has the burden to prove, through the presentation of clear and convincing evidence, that the defendant lacked capacity. Furthermore, expert witnesses who testify about the mental state or condition of a defendant are prohibited from giving an opinion or drawing an inference as to whether the mental state of the defendant constituted an element of the crime. Rather, such conclusions are to be drawn solely by the judge or the jury.

Guilty, but Mentally Ill

At least 10 states have adopted statutes permitting a defense of **guilty, but mentally ill (GBMI)**, or "guilty, but insane" (GBI—a variation on GBMI). This verdict, which is a supplement to the traditional defense of insanity, allows a jury to find the accused guilty and impose a punishment of subsequent incarceration. It also requires prison authorities to provide psychiatric treatment to the convicted offender during the specified period of confinement (see TABLE 2–2).

Supporters of GBMI and GBI statutes argue that these laws will reduce the number of determinations of not guilty by reason of insanity and, consequently, hold more people criminally responsible for their actions. In addition, they claim that such statutes will increase protection for the public by ensuring that offenders are subject to both incarceration and treatment.[21]

Headline Crime

Guilty, but Mentally Ill

Guilty, but mentally ill (GBMI) convictions are probably more common than acquittals based on successful insanity defenses. The following recent cases illustrate the variety of situations in which GBMI convictions are obtained.

- On June 26, 2006, Nader Ali was found guilty, but mentally ill of first-degree murder in the beating death of 25-year-old Lea Sullivan and was sentenced to life in prison. Both parties were Harvard graduates and classmates at Jefferson Medical College. Witnesses testified that Ali waited for Sullivan to exit a grocery store and then attacked her with a baseball bat. Ali was diagnosed with severe bipolar disorder, psychosis, and schizophrenia.
- Billy Paul Cobb was found guilty, but mentally ill on March 7, 2007. Cobb pleaded guilty to child molestation, aggravated child molestation, three counts of enticing a child for indecent purposes, and three counts of interference with custody. In late December 2005, Cobb was arrested for taking three girls, ages 11, 12, and 13, across state lines, where he performed an act of sodomy on one of the girls. A psychologist testifying on Cobb's behalf stated that Cobb showed signs of paranoid schizophrenia, heard voices, and suffered from dementia because of previous closed head injuries. As a result of the plea agreement, Cobb was sentenced to 12 years in prison and three years of probation.
- A judge found Cynthia Lord, age 45, guilty, but mentally ill in the murder of her three sons, ages 16, 18, and 19, whom she feared had become evil clones or robots. Each boy died from a single gunshot wound to the head. According to the judge, Lord suffered from a severe, disabling mental illness. The three first-degree murder convictions mean that Lord could spend as many as 99 years in a psychiatric institution. If at some point she is found mentally stable, she will be transferred to a correctional institution.
- On October 26, 2007, Jeanette Sliwinski, age 25, was found guilty, but mentally ill on three charges of reckless homicide. Sliwinski claimed that she had been trying to commit suicide when she intentionally crashed her Mustang into a Honda Civic at a speed of 87 miles per hour. Three Chicago musicians—Michael Dahquist, 39; John Glick, 35; and Douglas Meis, 29—were stopped at a light when Sliwinski's car crashed into them and were killed. Sliwinski's attorney claimed that she had been suffering from depression and was driven into madness when her psychiatrists failed her. She faces a maximum of 10 years in prison, where she will receive treatment while serving her sentence.

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TABLE 2–2 **Insanity Rules for the 50 States and District of Columbia**

State	Insanity Defense Rule	Location of Burden of Proof	Allows GBMI and GBI Verdicts
Alabama	M'Naghten rule	Defendant	No
Alaska	M'Naghten rule	Defendant	Yes
Arizona	M'Naghten rule	Defendant	Yes
Arkansas	Model Penal Code	Defendant	No
California	M'Naghten rule	Defendant	No
Colorado	M'Naghten rule; irresistible impulse test	State	No
Connecticut	Model Penal Code	Defendant	No
Delaware	Model Penal Code	Defendant	No
District of Columbia	Model Penal Code	Defendant	No
Florida	M'Naghten rule	State	No
Georgia	M'Naghten rule	Defendant	Yes
Hawaii	Model Penal Code	State	No
Idaho	Insanity defense abolished		Yes
Illinois	Model Penal Code	Defendant	No
Indiana	Model Penal Code	State	Yes
Iowa	M'Naghten rule	Defendant	No
Kansas	M'Naghten rule	State	No
Kentucky	Model Penal Code	Defendant	No
Louisiana	M'Naghten rule	Defendant	No
Maine	Model Penal Code	Defendant	No
Maryland	Model Penal Code	Defendant	No
Massachusetts	Model Penal Code	State	No
Michigan	Model Penal Code	Defendant	No
Minnesota	M'Naghten rule	Defendant	No
Mississippi	M'Naghten rule	State	No
Missouri	M'Naghten rule	Defendant	No
Montana	Insanity defense abolished		Yes
Nebraska	M'Naghten rule	Defendant	No
Nevada	M'Naghten rule		Yes
New Hampshire	Durham rule	Defendant	No
New Jersey	M'Naghten rule	Defendant	No
New Mexico	M'Naghten rule; irresistible impulse test	State	
New York	Model Penal Code	Defendant	No
North Carolina	M'Naghten rule	Defendant	No
North Dakota	Model Penal Code	State	No
Ohio	M'Naghten rule	Defendant	No
Oklahoma	M'Naghten rule	State	No
Oregon	Model Penal Code	Defendant	Yes
Pennsylvania	M'Naghten rule	State	Yes
Rhode Island	Model Penal Code	Defendant	No
South Carolina	M'Naghten rule	Defendant	No
South Dakota	M'Naghten rule	Defendant	No
Tennessee	Model Penal Code	State	No
Texas	M'Naghten rule; irresistible impulse test	Defendant	No
Utah	Insanity defense abolished		Yes
Vermont	Model Penal Code	State	No
Virginia	M'Naghten rule; irresistible impulse test	Defendant	No
Washington	M'Naghten rule	Defendant	No
West Virginia	Model Penal Code	State	No
Wisconsin	Model Penal Code	Defendant	No
Wyoming	Model Penal Code	Defendant	No

Source: The Defense of Insanity: Standards and Procedures, State Court Organization, 2004 (Washington, DC: U.S. Department of Justice Statistics, 2006), Table 35.

Intoxication

The defense of intoxication is based on the claim that the defender had diminished control over himself or herself owing to the influence of alcohol, narcotics, or drugs and, therefore, lacked criminal intent. According to the Model Penal Code, the defense of intoxication should not be used unless it negates an element in the crime, such as criminal intent.

The courts recognize a difference between involuntary intoxication and voluntary intoxication. Involuntary intoxication that results from mistake, deceit of others, or duress (for example, if a drug was unknowingly put in the person's drink, or if liquor was forcibly poured down the person's throat) will excuse the defendant from responsibility for criminal action that resulted from the intoxication.

Voluntary intoxication is generally not a defense, but it may be presented in an effort to mitigate the seriousness of the crime. A person charged with committing premeditated murder while voluntarily intoxicated, for example, may be able to have the charge reduced to the less serious charge of homicide. In 2005 in Lawrence, Kansas, Jason Dillon, who was charged with murdering his girlfriend's three-year-old daughter, cited "voluntary intoxication" as a factor in his crime. Dillon claimed that he had consumed 16 beers the night before he babysat the young girl and was incapable of acting intentionally. Dillon did not dispute that he struck the girl on the head more than a dozen times after she refused to help pick up laundry and told him she didn't want him to be her daddy anymore. As a result of a plea bargain, Dillon was convicted of second-degree murder rather than first-degree murder as initially charged; he was sentenced to a reduced term of 16½ years in prison.[22]

Entrapment

The defense of **entrapment** is an excuse for criminal actions based on the claim that the defendant was encouraged or enticed by agents of the state to engage in an act that he or she would not have committed otherwise. The courts have generally held that it is permissible for law enforcement agents to solicit information from informants, use undercover officers, and even place electronic monitoring devices on informants or officers to record conversations regarding criminal behavior. It is not, however, considered legitimate for police to encourage or coerce individuals to commit crimes when they had no previous predisposition to commit such acts. Government agents may not "originate a criminal design, implant in an innocent person's mind the disposition to commit a criminal act, and then induce commission of the crime so that the Government may prosecute."[23]

For an entrapment defense to be valid, two related elements must be present:

1. Government inducement of the crime
2. The defendant's lack of predisposition to engage in the criminal conduct[24]

Predisposition is generally considered to be the more important of these two elements. Thus entrapment may not have occurred if the government induces a person who is predisposed to commit such an act.

In recent years, many state and federal law enforcement agencies have conducted "sting" operations that are designed to trap people who are engaged in crime or predisposed to commit crimes. Such operations often involve law enforcement agents posing as prostitutes, drug buyers, buyers of stolen auto parts, and people attempting to bribe government officials. Do such activities create an illegal inducement to commit crime? In *Sherman v. United States*, the U.S. Supreme Court held that "to determine whether entrapment has been established, a line must be drawn between the unwary innocent and the trap for the unwary criminal."[25] Entrapment occurs when government activity in the criminal enterprise crosses this line.

The line suggested by the Supreme Court, however, is often ambiguous. The use of deceit by the police to create a circumstance in which a person then commits a crime does not necessarily constitute entrapment. In *United States v. Russell*, the Court held that

> [T]here are circumstances when the use of deceit is the only practicable law enforcement technique available. It is only when the government's deception actually implants the criminal design in the mind of the defendant that the defense of entrapment comes into play.[26]

Duress

The defense of duress presents the claim that the defendant is a victim, rather than a criminal. For example, if someone holds a gun to a person's head, threatening to shoot unless he or she steals money, the resulting theft would be considered an action under duress, and the thief should not be held criminally responsible for complying with the demand to steal. The Model Penal Code's provision on duress states that

> [It] is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist.[27]

This defense is *not* applicable to people who intentionally, recklessly, or negligently place themselves in situations in which it is probable that they will be subject to duress. For example, a person who, in the course of escaping from prison, commits a kidnapping to avoid being caught cannot claim duress as a defense against the charge of kidnapping.

Mistake

Everyone has probably heard the expression, "Ignorance of the law is no excuse." But what does it mean? Although we may be familiar with many laws, must we be aware of all the laws? Must we know exactly what they prohibit and under what circumstances?

Ignorance of what the law requires or prohibits generally does not excuse a person from committing a crime, but, under some circumstances, ignorance has been accepted as a defense. A federal court of appeals held in 1989 that "Under the proper circumstances . . . a good faith misunderstanding of the law may negate willfulness."[28] Mistake, as a criminal defense, takes two forms: mistake of law and mistake of fact.

Mistake of law occurs when the defendant does not know a law exists; only in rare cases is it a legitimate defense. Such a case might exist when a new law is passed but not published so as to give the public adequate notice of it. Mistake of fact occurs when a person unknowingly violates the law because he or she believes some fact to be true when it is not. In other words, had the facts been as a defendant believed them to be, the defendant's action would not have been a crime. For example, a woman who is charged with the crime of bigamy may have believed that her divorce was final before she remarried when, in fact, it was not. Mistake of fact is often raised as a defense by people who are charged with selling alcohol to a minor or with committing statutory rape. In such cases, defendants may have been led to believe that the minor was older than he or she claimed because the claim appeared consistent with the minor's appearance.

Exemptions

In some situations, a defendant may raise the defense that he or she is legally exempt from criminal responsibility. Unlike the defenses discussed earlier, legal exemptions are not based on the question of the defendant's mental capacity or culpability for committing the crime. Rather, they are seen as concessions to the defendant for the greater good of the public welfare.[29]

Double Jeopardy

The Fifth Amendment to the Constitution states that "no person shall be subject for the same offense to be twice put in jeopardy of life or limb." This protection against **double jeopardy** is not intended to provide protection for guilty defendants, but rather is meant to prevent the state from repeatedly prosecuting a person for the same charge until a conviction is finally achieved.[30] Jeopardy in a bench trial (a case tried before a judge rather than a jury) attaches (i.e., becomes activated) when the first witness is sworn in. In jury trials, some jurisdictions consider a defendant to be in jeopardy once the jury is selected, though a few define it at the point of indictment, when criminal charges are filed.

Double jeopardy does not apply when a court proceeding is ruled a mistrial on the motion of the defense or when a jury is unable to agree on a verdict and the judge declares a mistrial. In both circumstances, the prosecutor may retry the case. Also, if upon conviction a defendant appeals to a higher court and has the conviction reversed, he or she may be retried on the original charge.

Statute of Limitations

Under common law, there was no limit to the amount of time that could pass between a criminal act and the state's prosecution of that crime. More recently, however, the states and the federal government have enacted **statutes of limitations** establishing the maximum time allowed between the act and its prosecution by the state for most crimes. Thus in some cases a defendant may raise the defense that the statute of limitations for the crime has expired, which requires a dismissal of the charges.

Statutes of limitations vary by jurisdiction and are generally longer for more serious offenses. For instance, murder has no statute of limitations, whereas in many states burglary carries a five-year limitation. Misdemeanors have a two-year limitation period in most jurisdictions. The statute of limitations may, however, be interrupted if the defendant leaves the state. For example, if a person who is charged with assault leaves the state for a period of two years, an additional two years would be added to the statutory limit of five years.

First-grader Kayla Rolland was shot and killed by her classmate, Dedrick Owens, after a playground dispute.

Age

On March 8, 2000, six-year-old Kayla Rolland was shot in the neck in her first-grade classroom with a .32-caliber pistol and died a half hour later. Her killer, Dedrick Owens, was also six years old. He had gotten into a quarrel with Kayla on the playground the day before. Dedrick had found the loaded pistol in his home and brought it to school tucked in his pants. After shooting Kayla, Dedrick ran into a nearby bathroom and tossed the gun into a trashcan. Because of his age, the court determined that Dedrick could not be held criminally responsible for Kayla's death.[31]

Although not considered either a justification or an excuse for a criminal act, a person's age may establish a defense against criminal prosecution. Under early English common law, children younger than age 7 were considered incapable of forming criminal intent and, therefore, could not be convicted of crimes. Children between the ages of 7 and 14 were considered to have limited criminal responsibility, and children older than age 14 were presumed to have the capacity to form criminal intent and could be criminally prosecuted. With the creation of the juvenile court system in the United States at the end of the nineteenth century, most youths between ages 7 and 17 who were charged with crimes were processed through the more informal proceedings of that court.

Due Process and the Rights of the Accused

Due process, which is established in procedural criminal law, ensures the constitutional guarantees of a fair application of the rules and procedures in criminal proceedings, beginning with the investigation of crimes and continuing through an individual's ar-

rest, prosecution, and punishment. Unfortunately, there is not always agreement over the concept of due process, its specific applications, or even who is eligible to claim the rights associated with the guarantees of due process.

When a person is arrested, the immediate concern typically focuses on whether he or she committed the crime. How does a court of law make this determination? The police might threaten or coerce the suspect to extract a confession, and some people might confess to crimes they did not commit to avoid further mistreatment. Evidence might also be presented to establish the individual's guilt even though that evidence was obtained by devious or unethical means (for example, searching a person's private property without a search warrant). The accused might be held in jail without bail and denied access to an attorney while the government builds a convincing case. Although convictions might be obtained in such instances, such procedures would offend the public's sense of fairness related to the criminal process.

The principles of procedural fairness in criminal cases are designed to reduce the likelihood of erroneous convictions. Criminal procedures that produce convictions of large numbers of innocent defendants would be patently unfair. The evolution of procedural safeguards against unfair prosecution is based on a relative assessment of the interests at stake in a criminal trial. According to law professor Thomas Grey, "While it is important as a matter of public policy (or even of abstract justice) to punish the guilty, it is a very great and concrete injustice to punish the innocent."[32] In U.S. criminal law, procedural safeguards have been established in the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments to the U.S. Constitution to prevent that problem from occurring.

The Bill of Rights

The first 10 amendments, known as the **Bill of Rights**, were added to the Constitution on December 15, 1791—only three years after the Constitution had been ratified by the states. The framers of the Constitution had intended it to provide citizens with protections against a possible future dictatorship by establishing a clear separation of powers between the three branches of government (executive, legislative, and judicial). All too soon, they realized that the individual rights of citizens were not adequately protected against possible intrusions and violations by the newly formed federal government. To correct this deficiency, they added a series of amendments to the Constitution. Four of these amendments enumerate the rights of citizens in criminal proceedings (see Appendix A).

The Fourth Amendment

The Fourth Amendment protects citizens against unreasonable governmental invasion of their privacy. This amendment means that agents of the government may not arbitrarily or indiscriminately stop and search people on the street or in their vehicles, search their homes or other property, or confiscate materials without legal justification. Such justification must be based on sufficient probable cause to convince a judicial magistrate to issue a search warrant specifically describing who or what is to be searched and what is to be seized. Any evidence seized as a result of searches in violation of the Fourth Amendment cannot be used in a subsequent criminal prosecution.

The Fifth Amendment

The Fifth Amendment contains four separate procedural protections:

1. A person may not face criminal prosecution unless the government has first issued an indictment stating the charges against the person.
2. No person may be tried twice for the same offense (double jeopardy).
3. The government may not compel a defendant to testify against himself or herself (this provision includes protection against self-incrimination during questioning and the right to refuse to testify during a criminal trial).

4. No person may be deprived of due process, which means that people should be treated fairly by the government in criminal prosecutions.

The Sixth Amendment

The Sixth Amendment was designed to ensure a fair trial for defendants. Toward this end, it established six specific rights:

1. Speedy and public trial
2. Trial by an impartial jury (which has been interpreted by the courts to mean a jury of one's peers)
3. Notification of the nature and cause of the charges
4. Opportunity to confront witnesses called by the prosecution
5. Ability to present witnesses on the defendant's own behalf
6. Assistance of an attorney in presenting the defendant's defense

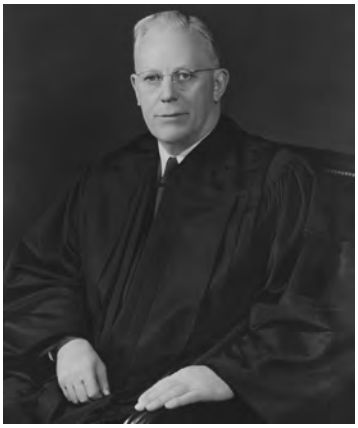
The Eighth Amendment

The Eighth Amendment simply states, "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." Although this amendment does not guarantee a defendant the constitutional right to be released on bail while awaiting trial, it does prohibit the imposition of excessive bail.

The Fourteenth Amendment

For nearly 80 years after the adoption of the Bill of Rights, the federal government and the various states interpreted the rights enumerated in these amendments to apply only to cases involving disputes between citizens and the federal government: The protections did not extend to citizens prosecuted by the states. (Actually, many state constitutions included these same rights, but if they were violated, the federal courts were not empowered to intervene.) On July 28, 1868, the Fourteenth Amendment to the Constitution was ratified. It was eventually interpreted to mean that the Bill of Rights did, indeed, apply to all citizens and that the states must ensure these rights.

Early court interpretations of the Fourteenth Amendment emphasized that its fundamental principle was "an impartial equality of rights"[33] and that its "plain and manifest intention was to make all the citizens of the United States equal before the law."[34] These initial decisions did not interpret the amendment to necessarily apply the Bill of Rights to the states. For example, in 1884, in ***Hurtado v. California***,[35] the Supreme Court held that the Fifth Amendment's guarantee of a grand jury indictment in criminal proceedings applied only to federal trials, not those conducted by the state.



During the 1960s, Chief Justice Earl Warren presided over a great expansion of due process rights for those accused of crimes.

It was not until the early decades of the twentieth century that the due process clause of the Fourteenth Amendment, which guaranteed that no state shall "deprive any person of life, liberty, or property, without due process of the law," began to specifically incorporate the Bill of Rights. This move ultimately made the rights described in these amendments applicable to the states.

Incorporation of the Bill of Rights

The process of incorporation of the Bill of Rights occurred only gradually and reflected a major split on the Supreme Court. In 1947, in *Adamson v. California*, Justice Hugo Black strongly called for total **incorporation**, arguing that the authors of the Fourteenth Amendment originally intended the Bill of Rights to place limits on state action.[36] At the time, Black's position was in the minority on the Court. The majority opinion, led by Justice Felix Frankfurter, held that, although the concept of due process incorporated fundamental values—one of which was fairness—it was left to judges to objectively and

dispassionately discover and apply these values to any petitioner's claim of injustice. Therefore, according to Frankfurter, the due process clause only *selectively* incorporated those provisions necessary to fundamental fairness. In a series of cases, the fundamental values protecting the First Amendment freedoms of speech, religion, and assembly were held to be binding on the states, but the Fifth Amendment's protection against double jeopardy was not.[37]

In 1953, when Earl Warren was appointed Chief Justice of the Supreme Court, a liberal majority was formed on the Court. It rapidly expanded the application of the due process clause to the states. Over the next two decades, the Warren Court handed down numerous decisions establishing individual and civil rights, and clearly moved the Court from its fundamental fairness position to one of absolute compliance.

WRAPPING IT UP

Chapter Highlights

- Laws are formalized rules that reflect a body of principles prescribing or limiting people's actions. The laws collectively known as criminal law are generally divided into the subcategories of substantive law and procedural law. Together, they provide the framework for the criminal justice system.
- Most criminal law in the United States has its origins in English common law. One of the most important contributions from common law was *stare decisis* (the doctrine of precedent).
- Crimes have generally been conceptually divided between those considered to be *mala in se* (inherently wrong or evil acts) and those considered to be *mala prohibita* (acts that are wrong because they are prohibited by a criminal statute). Criminal codes further distinguish crimes as felonies, misdemeanors, and infractions.
- For an act to be defined as a crime, a number of elements must be present: *actus reus* (criminal act), *mens rea* (criminal intent), and the concurrence of these two concepts.
- In certain circumstances, an individual might engage in an act defined as a crime, yet not be held criminally responsible for that action. These circumstances involve legal justifications and excuses, or defenses that negate a person's criminal responsibility.
- Although the insanity defense is successfully raised in less than 1 percent of all criminal cases, it remains very controversial. The federal government and many of the states have revised their insanity statutes in recent years, and several have developed "guilty, but mentally ill" statutes to supplement other insanity defenses.
- Procedural criminal law establishes protections for individuals against unfair prosecution. These safeguards are found in the Fourth, Fifth, Sixth, and Eighth Amendments contained in the Bill of Rights.
- The constitutional protections found in the Bill of Rights were initially interpreted to apply only in federal prosecutions. It was not until the ratification of the Fourteenth Amendment, which occurred nearly 80 years after the adoption of the Bill of Rights, that they began to be applied to the states as well.

Words to Know

actus reus Guilty act; a required material element of a crime.

Bill of Rights First 10 amendments to the U.S. Constitution.

case law Law that emerges when a court modifies how a law in a particular case is applied.

civil law A body of private law that settles disputes between two or more parties in a dispute.

common law Case decisions by judges in England that established a body of law common to the entire nation.

corpus The body of the crime; the material elements of the crime that must be established in a court of law.

crime An intentional act or omission to act, neither justified nor excused, that is in violation of criminal law and punished by the state.

double jeopardy Trying a person for the same crime more than once; it is prohibited by the Fifth Amendment.

Durham rule An insanity test that determines whether a defendant's act was a product of a mental disease or defect.

entrapment The claim that a defendant was encouraged or enticed by agents of the state to engage in a criminal act.

excuses Claims based on a defendant admitting that what he or she did was wrong but arguing that, under the circumstances, he or she was not responsible for the criminal act.

felony A serious crime, such as robbery or embezzlement, that is punishable by a prison term of more than one year or by death.

guilty, but mentally ill (GBMI) A substitute for traditional insanity defenses, which allows the jury to find the defendant guilty and requires that the prisoner receive psychiatric treatment during his or her confinement. Also called guilty but insane (GBI).

Hurtado v. California U.S. Supreme Court decision that the Fifth Amendment guarantee of a grand jury indictment applied only to federal—not state—trials, and that not all constitutional amendments were applicable to the states.

incorporation The legal interpretation by the U. S. Supreme Court in which the Fourteenth Amendment applied the Bill of Rights to the states.

infraction A violation of a city or county ordinance, such as cruising or noise violations.

irresistible impulse test An insanity test that determines whether a defendant, as a result of a mental disease, temporarily lost self-control or the ability to reason sufficiently to prevent the crime.

justification Defense wherein a defendant admits responsibility but argues that, under the circumstances, what he or she did was right.

laws Formalized rules that prescribe or limit actions.

mala in se Behaviors, such as murder or rape, that are considered inherently wrong or evil.

mala prohibita Behaviors, such as prostitution and gambling, that are considered wrong because they have been prohibited by criminal statutes, rather than because they are evil in themselves.

mens rea Guilty mind, or having criminal intent; a required material element of most crimes.

misdemeanor A crime that is less serious than a felony, such as petty theft or possession of a small amount of marijuana, and that is punishable by less than one year in prison.

M'Naghten rule Insanity defense claim that because of a defect of reason from a disease of the mind, the defendant was unable to distinguish right from wrong.

procedural criminal law A body of law that specifies how crimes are to be investigated and prosecuted.

self-defense Claim that a defendant acted in a lawful manner to defend himself or herself, others, or property, or to prevent a crime.

stare decisis Literally, "to stand by the decision"; a policy of the courts to interpret and apply law according to precedents set in earlier cases.

statute Legislation contained in written legal codes.

statute of limitations The maximum time period that can pass between a criminal act and its prosecution.

strict liability laws Laws that provide for criminal liability without requiring either general or specific intent.

substantial capacity test An insanity test that determines whether the defendant lacked sufficient capacity to appreciate the wrongfulness of his or her conduct.

substantive criminal law A body of law that identifies behaviors harmful to society and specifies their punishments.

Think and Discuss

1. Do you think that it is reasonable for a crime victim to be able to file a civil suit against an offender? Why or why not?
2. Why is *mens rea* (criminal intent) such an important element to establish in a criminal case? Should parents be held criminally liable for the gang-related activities of their children?
3. Should the insanity defense be allowed? Should all states adopt "guilty, but mentally ill" or "guilty, but insane" statutes? Why or why not?
4. Why should there be any statutes of limitation in the criminal law? Should persons who commit crimes always face eventual possible prosecution for their acts?
5. Are the guarantees of due process for people accused of crimes reasonable? Do they make it more difficult to deal with the crime problem? Why are they so important to protect?

Notes

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