

## Criminal Law - Section 4

Weeks 1-2 (1/14,

- I. Preface: Criminal law is informed by culture. The community comes together (in the form of the "prosecutor," the "state," the "people.")
- II. Chapter 1
  - a. Dilemma of Discretion: Discretion leads to unequal outcomes in equal cases. (or not, maybe it is a good thing).
    - i. Police officer decides to arrest somebody. They also have discretion in who they decide to investigate, who they decide to pull over, and how closely they look for crimes (for example, pulling over minorities just to ask for their licenses).
    - ii. Prosecutor decides whether or not to press charges, what sort of charges to press. Prosecutor's probably have the most power in the criminal justice system as far as bringing people to trial on charges that they have the evidence to prove. (choose cases/level of charges that they are easily able to prove to boost their success level, especially elected attorney generals).
    - iii. Once someone is convicted, the appeals lawyer has a great amount of discretion in how it will be appealed.
    - iv. Judge has discretion all over the place. Sentencing, admission of evidence (or denial of evidence) granting motions, allowing trials to proceed.
    - v. Defendant has discretion: if they have means, hiring their own attorney. Whether or not to give a statement at any point, whether or not to present any evidence at all, what defenses they will attempt to prove against the charges brought by the prosecutor, whether to plea bargain, etc.
    - vi. Defense attorney: objecting to evidence, reserving issues for appeal, strategic defenses, whether to present evidence, call witnesses. Affirmative defense vs. failure of proof, lesser included offense, or lack of proof on a certain element.
  - b. Crim law, elements that apply to every single crime: mens reus (intent), actus reus, causation, and concurrence.
    - i. Actus reus - a prohibited act
    - ii. Mens rea - a prohibited mental state (intent, all different kinds)
    - iii. Causation - links actions with the social harm
    - iv. Concurrence - between actus reus and mens rea. You have to intend the bad act at the same time you do the bad act.
  - c. People v. Suitte (New York 1982)
    - i. Facts: Suitte was pulled over due to some sort of rental car misunderstanding (someone thought he stole a car that was not reported as being returned, although he did in fact return it). We don't know how they found him, exactly... alternatives between them actively looking for him, or he was speeding or something. When he was pulled over, he had a firearm that was registered in North Carolina (but not New York). He'd been living in NY for maybe 8 years or so, and just had not registered his gun. This is in violation of a NY statute whose stated goal was to get tough on gun crime, and imposed harsh sentences. Suitte did tell the police officers that he knew it had to be registered, that he had just never done it because it was registered in NC.

- ii. TC: Suite was initially charged with a class D felony of criminal possession of a weapon in the third degree. He was permitted to plead to the misdemeanor of possession in the fourth degree
    - 1. Misdemeanor is better than felony (you lose certain rights if you are a felon)
    - 2. But he still had a severe sentence: jail sentence of 30 days plus 3 years of probation (federal sentence was one year in jail). Appeals as to whether the judge abused his discretion to give him such a strict sentence.
  - iii. Did the court exercise discretion properly?
    - 1. Majority: given the purpose of this law (deterrence) and the mandatory minimum guidelines, the judge did not abuse his discretion in giving this non-violent offender who'd done no wrong action a 30 day jail sentence.
    - 2. Minority: given who this guy is, there is no applicable justification for his punishment. This is a waste of money and time. Not utilitarian.
  - iv. Mandatory sentencing: by statute, some crimes will not allow discretion in sentencing. There is a mandatory minimum usually (although judge might still exercise discretion by convicting of a lesser crime).
- d. Criminal law as a process:
- i. Operates by a series of directions or commands, telling people what they must or must not do, e.g. you must not murder.
  - ii. These commands are binding on everyone who "falls within their terms" even if the crime is not formulated in advance in words. This means even if you didn't know something was a crime, you can be punished for it.
  - iii. These rules are subject to sanction if broken. Fines, jail, probation, etc.
  - iv. Rules are enforced through punishment by the community—community condemnation is what separates criminal law from civil law, the "people" or the "state" come together to prosecute and punish the violator.
  - v. Justifications for punishment: 4 main objectives
    - 1. Deterrence (specific or general): discourage the offender from re-offending or discourage offense from the public at large
    - 2. Rehabilitation: prevent the person from re-offending by giving them the tools to overcome whatever it is that made them offend
    - 3. Retribution: to punish them for doing wrong, tit for tat
    - 4. Isolation: protect society by removing offenders.
- e. Discussion of the Lorton Reading:
- i. "The problem may lie in the categories themselves, used for centuries by legislatures, courts, philosophers, and law professors, with a most casual relationship to reality."
  - ii. "The reality of each criminal's punishment consists in the experiences of that punishment."
    - 1. What actually happens to prisoners is the only measure of whether traditional concepts have meaning, traditional goals are fulfilled, and the traditional definitions apply.
    - 2. But do we have a reasonable alternative to the prison system?

- iii. Part of this article is a little biased based on sampling. For example, they are interviewing people in prison. By definition they are missing out on people who have been deterred, or people had not been deterred but they also haven't been caught.
- iv. Laws have become more retributive lately—is it that the categories don't have meaning, or that we don't try to follow them anymore?
- v. Critique: you can't fix the inside without fixing the outside. What are we bringing in to prison? Most guards don't even look at the records of the people inside...the culture of prison has very little relation to the real world.
- vi. Hughes: the first sentence automatically establishes the criminals as the other. Critique: they wouldn't be criminals without the influence of our society. Bad to distance them, everyone is part of the same culture.

f. Statutory interpretation

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- 1. Defendant's statement of the issue: the unbound pictures do not fit the statute. "or other matter that contains visual depictions."
  - a. Plain language: Pictures are visual depictions, they do not contain visual depictions. To contain means to hold.
- 2. Plaintiff's statement of the issue: the unbound pictures are included in the statute
  - a. Plain language: Picture is matter containing a visual depiction. Contain means to consist of. The law seems to make a clear distinction between what the thing contains and the container itself.
- 3. Procedure:
  - a. Arrested with pictures
  - b. Appeared before a judge, bond review hearing, judge sent to grand jury
  - c. Grand jury indicted him under Section 2252(a)(4)(B)
  - d. Arraignment: not guilty plea
  - e. Pretrial motion to dismiss because, even with everything we stipulate as true, that he had these photos with these pictures, and knew of them and traveled interstate, this is nto a crime under the statute (see issues above).
  - f. Through special interrogatory (a question to the jury in addition to the verdict) was to specify which pictures were in violation of the statute, they identified 4 as pornographic.
- 4. Canons of construction: lists and related terms. Words are defined by association with the related terms. The other terms appear to describe containers that hold. This can be used to support both arguments
- 5. When general words follow a specific enumeration of persons or things, the general words should be limited to persons or things similar to those specifically enumerated: this can be applied to both arguments
- 6. Statutory amendment: congress reduced the limit to one or more (from three or more), which would be a superfluous argument if the gov'ts interpretation was correct.