

CHAPTER ONE: THE NATURE, PURPOSE AND FUNCTION OF CRIMINAL LAW

INTRODUCTION

This chapter will provide a brief overview of the history of the penal law in New York and its court system. It will also discuss the current New York State Unified Court System, including the courts that comprise this system, as well as a brief introduction to the New York State Penal Law.

New York State has a rich social history due, in part, to its harbors along its eastern coastline which made the territory very accessible by sea. Native Americans originally inhabited the territory, which Europeans later settled in the early 17th century. The Dutch went to the Hudson Valley area, the English to the Long Island area, and the French to the northern part of the territory. In the early 19th century, other European groups migrated to New York and ended up settling in New York City.

More recently, immigrants from the Caribbean, Asia, the Middle East, Central and South America, and Africa have come to the United States through New York City, and many have stayed in the state. The influx of immigrants continues to impact the population. In 2008, New York State had a population of about 19,490,000 and was ranked the third most populated state (behind California and Texas respectively). New York City alone has over eight million residents and is the most populated city in the country. Further, New York has 62 counties with varied economic needs, demographic populations, average educational levels, etc. The complexities associated with a population of diverging interests and values poses challenges to a comprehensive and coherent body of laws.

The evolution of both the New York State penal law and court system were influenced by changing economic conditions, resulting from the transformation of mainly agrarian rural areas to largely-populated commercially-dominated ones. Since the Industrial Revolution in the early 19th century, New York has had to reconsider its legal priorities to accommodate shifting economic conditions.

High Profile Cases

Perhaps because the courts in New York have encountered their fair share of famous and infamous personalities, the impact of the courts has had far-reaching implications. Some of the better-known offenders in recent history are the “Son of Sam” David Berkowitz, John Lennon’s murderer Mark David Chapman, the Long Island Railroad shooter Colin Ferguson, Joel Steinberg, Amy Fisher, Bernie Goetz, Jean Harris, and Robert Chambers. Then there are famous victims such as the Central Park jogger, Amadou Diallo, Meier Kahane, the Happy Land Social Club attendees, Gavin Cato, Abner Louima, and Yusef Hawkins. Recently, two infamous New York residents have made national headlines. Although he was charged in federal rather than state court, Wall Street financier Bernard Madoff, who was engaged in the largest Ponzi scheme in American history, plead guilty in 2009 to defrauding his clients out of \$50 billion. He is serving 150 years in prison. Another infamous New Yorker, former Attorney General Eliot Spitzer, was accused in 2008 of patronizing high-priced prostitutes. Spitzer was not charged in either state or federal court, but he was forced to resign his post as Attorney General.

The Penal Law

New York’s codification of the common law into a written statutory scheme occurred in 1881 with the adoption of the Penal Code. The new penal code put in writing the common laws that were followed by judges through tradition rather than formal legislation. The new codes also defined degrees of punishment to match the relative degrees of criminal conduct and filled-in the gaps where

deficiencies in the common law existed.²

The Penal Code remained essentially unchanged for 83 years, except in 1909 when it was reorganized and renamed the “Penal Law.” In 1961, the New York State Legislature, prompted by a frustration with the existing codes and an innovation in the revised codes of neighboring states influenced by the new Model Penal Code, created the State Commission on Revision of the Penal Law and Criminal Code which drafted a simplified and more relevant body of substantive and procedural law.

The Commission proposed changes in both organization and content of the Penal Law. All offenses under the former Penal Law were alphabetically arranged, and many were declared unconstitutional. The revised Penal Law grouped offenses according to similar categories and transferred regulatory crimes to other parts of the law. Some provisions, like adultery, were removed because they were believed to be concerns of private morality, and others, like driving animals on sidewalks, were removed because they were no longer relevant. Judges were also given wider discretion in sentencing matters.

Further, for those offenses indicated by degree, the revised Penal Law defined these crimes by lowest degree first and then proceeded in ascending order. The reason is that while the old law considered the various degrees to be mutually exclusive, under the new Penal Law, the lower degree crimes could be charged as lesser included offenses of the higher degree crimes. This scheme was considered a more accurate statement of the law and would help in the plea bargaining process.³

In 1965, the revised New York Penal Law was sent to the Legislature for consideration. In 1967, the final version of the Penal Law took effect. Since 1967, new offenses have been subsequently added, and current offenses modified, or, when declared unconstitutional, deleted. The New York Legislature often considers bills to change the substantive language of the Penal Law. The Penal Law is also amended through the courts, which, as will be shown, are tasked with its interpretation.

The Court System

This section was drawn from a lecture, entitled [A short history of the New York State court system](#), by Marc Bloustein, Deputy Counsel to the New York State Office of Court Administration. New York’s current court system emerged from the Constitutional Convention in 1846 which convened at Albany. Prior to this time, the New York judiciary was relatively unchanged since the adoption of the state constitution in 1777 when judges rode from court to court (i.e., the circuit), had no fixed terms of office, and were given great authority in the absence of an appellate structure.

The Constitutional Convention of 1846 made several changes to the New York State court system. The Convention mandated that the Supreme Court become a statewide court of original jurisdiction, created a two-tiered appellate system, established the Court of Appeals to be the state’s highest court of appellate review, mandated that trial judges be popularly elected for fixed length terms, and adopted a new state Constitution. The 1894 Constitutional Convention divided New York State into four judicial departments which defined the geographical authority of each branch of the Appellate Division.

In 1962, the new Judiciary article of the State Constitution (Article VI) mandated an extensive reorganization of the structure of the New York courts by creating the New York State Unified Court System. Courts could now be considered as part of a system.⁴

The intent of the restructuring of the New York State Unified Court System was to meet two goals: 1. to promote the rule of law with consistency across the state; and 2. to promote the fair and timely processing of cases that come before the court.

Currently, New York State is made up of 12 judicial districts which are divided for administrative purposes. Each district contains from one (First, Eleventh, and Twelfth Judicial Districts of New York, Bronx, and Queens Counties respectively) to 11 counties (Fourth Judicial District). A [profile of each district](#) provides information on crimes reported, demographics, populations, and other socioeconomic indicators collected by the U.S. Census Bureau. New York State is divided into four judicial departments, which consist of several judicial districts. A [list of the](#)

[judicial departments](#) is found on the New York State Unified Court System website and includes the districts comprising each department. The 1st and 2nd departments consist of the New York City and lower New York State judicial districts. The 3rd and 4th departments include the upstate districts.

The reorganization and authority of the New York state courts is outlined in [Article VI](#) of the state constitution. The New York State Office of Court Administration, under the authority of the Chief Judge of the State of New York (who is also the Chief Judge of the Court of Appeals), oversees the administration of the New York State Unified Court System.

THE NEW YORK STATE UNIFIED COURT SYSTEM

This section will discuss the [structure of the New York State criminal court system](#). Although New York State courts handle cases other than criminal (i.e., civil, family, surrogate), for this discussion, the relationships among the criminal courts will only be considered. The [New York State Unified Court System](#) website provides a fuller description of the courts in New York. New York's criminal court structure is divided by trial courts and appellate courts.

The court system is also composed of, among others, judges, attorneys and jurors. District attorneys prosecute cases in the criminal courts in New York. A brief description of judges' tenure in their respective courts is described in the next section. Also, there are 62 district attorneys, or state prosecutors, one heading each county office. District attorneys are elected. They also direct the assistant district attorneys who handle the prosecution of cases encountered within their offices. The [list of district attorneys](#) is found on the New York State District Attorneys Association website. Defense attorneys include both private practitioners and public defenders. Many are members of the [New York State Association of Criminal Defense Lawyers](#). Jurors are randomly selected for trials from registered voter, driver's license, taxpayer, public assistance recipient, and state unemployment recipient lists. Jurors who pass *voir dire* will serve on only one trial. Criminal trials last on average from five to 10 days.

Several jurisdictions maintain [problem-solving courts](#) at the district, city, county, or supreme level. These courts include mental health courts (21 statewide), domestic violence courts (37), youthful offender domestic violence courts that handle domestic violence charges of offenders between 16 and 19 years old (3), drug treatment courts (175), community courts (7), and sex offense courts (7).

The following discussion is a brief introduction to the criminal courts in New York State. The [New York State courts: An introductory guide](#) offers an extended description of the Unified Court System, including the criminal courts.

Trial Courts of Limited Jurisdiction

The basic court unit is the local criminal court. These are courts of limited jurisdiction which means that they are limited to the types of cases that they hear. Trial Courts of Limited Jurisdiction are also known as "Local Criminal Courts" according to [Section 10.10](#) of the Criminal Procedure Law. Local criminal courts include: district courts, New York City Criminal Court, city courts outside of New York City, village courts, and town courts. These are the courts where the majority of cases begin and end.

[The Criminal Court of the City of New York](#)

Criminal courts, also sometimes known as County Courts, are located in each of the five boroughs of New York City and have jurisdiction over misdemeanors and violations. These courts also handle arraignments and preliminary hearings of felony cases, but felony cases are tried in Superior Court. Drug treatment courts are also found in the Criminal Court system. There are six drug treatment courts in this jurisdiction whose mission is to place non-violent drug offenders into treatment. Additionally, both the Midtown Community Court and Red Hook Justice Center were created to address local community crimes. The Midtown Community Court hears cases originating in Times Square.

New York City criminal court judges are appointed by the mayor of New York City to a 10-year term.

District Courts

Like the Criminal Courts of the City of New York, district courts, located in Nassau and Suffolk Counties in Long Island, handle misdemeanors and violations but may also arraign felony cases. District court judges are elected to six-year terms.

City Courts

City courts, according to §10.10(4) are “any court for a city, other than New York City, having trial jurisdiction of offenses of less than felony grade... committed within such city.” City court judges are either elected or appointed, depending upon the city. Full-time city court judges serve 10-year terms. Part-time judges serve six-year terms.

Town and Village Courts (Justice Courts)

Town and village courts also handle misdemeanors and violations, such as traffic offenses, as well as arraign felony cases. There are about 1300 such courts in New York, although none are located in New York City. Town and village justices are not required to hold law degrees, but rather receive certification to hear cases. They are elected to four-year terms.

Trial Courts of Superior Jurisdiction

Trial courts of superior jurisdiction have trial jurisdiction over all offenses, according to §10.20(1) of the Criminal Procedure Law, but they primarily hear felony trials.

Supreme Courts

Supreme Courts, located in each New York City borough, are trial courts of general original jurisdiction, but often hear cases outside of the courts of limited jurisdiction, as well as felonies. Outside of the New York City, criminal trials are heard in the county courts. Supreme Court judges are elected to 14-year terms.

County Courts

County courts, located in each county outside of New York City, have jurisdiction over felonies and misdemeanors, although most misdemeanors are handled by the lower courts. County courts also have appellate jurisdiction over cases originating in city, town, and village courts in the 3rd and 4th Judicial Departments. County court judges are elected to 10-year terms.

Intermediate Appellate Courts

Intermediate appellate courts hear appeals from lower trial courts and have certain jurisdiction to hear certain original proceedings. Appeals of intermediate appellate court decisions are made to the New York Court of Appeals.

Supreme Court, Appellate Terms, 1st and 2nd Departments

These courts hear appeals from cases originating in New York City criminal courts. In the 2nd Judicial Department, the Appellate Terms also hear appeals from cases originating in city, town, and village courts. Justices of the Appellate Terms are selected from the Supreme Court by the Chief Administrative Judge.

Appellate Divisions of the Supreme Court

There are four Appellate Divisions of the Supreme Court, one in each judicial department. These courts hear appeals of decisions of criminal cases originating in the Criminal Courts in New

York City. Judges, called associate judges, are appointed by the governor from among the elected Justices of the Supreme Court. Associate Judges serve until the expiration of their terms and the Presiding Justice serves for the remaining length of his or her term.

Court of Appeals

The [Court of Appeals](#) (the Court) was established to consider statewide principles of law. As such, it focuses on issues that have a broad ranging impact on case law, rather than individual factual disputes. The court is New York's highest and is known as the court of last resort. It hears appeals from the intermediate appellate courts. Decisions made by the Court of Appeals cannot be appealed further in New York State. Appeals may, however, be made to the federal courts. The Court of Appeals is composed of a Chief Judge and six Associate Judges. Jonathan Lippman is the court's current Chief Judge. The associate judges are appointed by the governor and confirmed by the state senate to a 14-year term.

With 150 years of widely divergent experience, the Court of Appeals, the highest court in New York State, has been considered to have more impact on more areas of law than any other court in the United States. "No other state court has generated leading case after leading case in every decade...[N]o federal court has exerted influence comparable to that of the Court of Appeals over the wide range of problems that confront most Americans in their everyday lives: contracts, torts, property, trusts, wills, divorce law (to name a few)."¹ The far-reaching impact of the Court of Appeals continues today.

THE PENAL LAW OF NEW YORK

The [New York Penal Law](#) can be conceived as a living document that covers substantive criminal law. Statutes are often amended, removed when deemed unconstitutional, and added when the Legislature wants to curb the proliferation of behaviors from turning into larger social problems, such as theft of computer data. Statutes are also organized according to the common elements of an offense within the respective part, title, and article. The Penal Law in New York is [organized into four parts](#). This supplement will focus on Parts 1-General Provisions, 2-Sentences, and 3-Specific Offenses. The Penal Law is further divided into criminal offense Titles, Articles, Sections, and Subsections. A section in the Penal Law is designated by the symbol, §, which will be used interchangeably with text in this supplement. A subsection is denoted by ().

The general purposes of the Penal Law, described in §1.05, are to:

1. proscribe conduct that unjustifiably or inexcusably threatens harm;
2. give notice of the acts that are proscribed and their consequent punishments;
3. define acts or omissions and the accompanying mental states that constitute each offense;
4. differentiate between serious and minor offenses;
5. provide for an appropriate public response to particular offenses, including the consequences to the victim and community; and
6. insure the public's safety through deterrence, rehabilitation, and confinement.

[Another website](#) of the Penal Law in New York, as well as the Model Penal Code, and New York case decisions, is maintained by the Buffalo Criminal Law Center at the State University of New York, School of Law.

As discussed in Chapter 3, the Penal Law grades offenses. An offense is defined by Penal Law §10.00(1) as:

conduct for which a sentence to a term of imprisonment or to a fine is provided by any law of this state or by any law, local law or ordinance of a political subdivision of this state, or by any order, rule or regulation of any governmental instrumentality authorized by law to adopt the same.

According to §10.00(6), offenses include traffic infractions, violations, misdemeanors, and felonies. The discussions in the textbook and this supplement will focus on misdemeanors and felonies.

Misdemeanors in New York State are those crimes in which punishment does not exceed one year. Felonies are crimes in which sentence terms in excess of one year may be imposed.

The basic elements of offenses considered by the New York Penal Law are: the *actus reus*, *mens rea*, circumstances, and result. The *actus reus* and *mens rea* will be discussed in much greater detail in Chapters Four and Five respectively. Essentially, the *actus reus* refers to the conduct that the Penal Law defines as criminal, either an act or omission to act. The *mens rea* means the mental culpability of the actor at the time of the act and concerns the extent to which the actor intended to commit the act. For example, accidents or involuntary acts are not crimes since the actor had no criminal intent. The circumstances concern the time and location of the offense, and the nature of the offender and victim. The result includes the consequent individual and/or social harm that was caused by the act.

The Penal Law also defines defenses to criminal charges. Justifications and excuses are defenses to criminal conduct and are discussed in more detail in Chapters 8 and 9. Criminally culpable behaviors will be discussed in Chapters 7 and 10 through 16, which focus on substantive crimes such as homicide, terrorism, and larceny.

OTHER SOURCES OF CRIMINAL LAW

As the textbook discusses, substantive law is complemented by procedural law that tells how the substantive law will be administered. New York State thus has a Criminal Procedural Law in addition to its Penal Law. The [Criminal Procedural Law](#) provides rules regarding juries, time allowances for processing criminal cases, punishment, police procedures, etc. Other state criminal codes are organized according to the agency that has jurisdiction. For example, environmental crime is regulated by the Environmental Conservation Law and overseen by the New York State Department of Environmental Conservation (see Chapter 14). A [list of laws of New York State](#) by topic is maintained by the New York State Assembly. Other sources of criminal law can be found at local government levels through municipal ordinances, laws, codes, and charters.

NEW YORK STATE REPORTERS

Appellate case decisions in New York, as with other states, are published in federal and regional reports. New York State also maintains published decisions in its state reports. A list of reports that publish New York case decisions is maintained on the Rutgers School of Law website.

New York state-specific reports include:

- N.Y. Reports (N.Y.) and N.Y.2d Reports (N.Y.2d) which are the official reports of decisions of the Court of Appeals
- Appellate Division Reports (A.D.) and Appellate Division 2d Reports (A.D.2d) which are the official opinions by the four New York Appellate Divisions.
- Miscellaneous Reports (Misc.) and Miscellaneous Reports 2d (Misc.2d) which are the official reports of select decisions of the Appellate Terms of the New York Supreme Court and lower New York trial-level courts.

- N.Y. Supplement (N.Y.S.) and New York Supplement 2d (N.Y.S.2d) which are unofficial reports of the opinions of the Court of Appeals, Appellate Division, Supreme Court, and lower courts.

The opinions analyzed in this supplement will be from the N.Y. and N.Y.2d Reports as well as the N.Y.S. and N.Y.S. 2d Reports.

The name of the reporter is located in a case's citation. Case citations provide the location where the legal researcher could find a specific case. A typical case citation looks like the following: *People v. Gallagher*, 69 N.Y. 2d 525 (1987). The case in this example is criminal, the plaintiff is the State of New York (*People*) and *Gallagher* is the defendant. The case is found in the New York 2d Reports and is thus a Court of Appeals decision. In the N.Y.2d Report, the researcher will find the case in volume 69 beginning on page 525. The Court of Appeals decided the case in 1987.

A [quick guide to legal citation](#) is maintained by the Boston College Law School.

REVIEW QUESTIONS

1. Sources of law in New York State include:

- A. the Penal Law.
- B. the Criminal Procedure Law.
- C. local ordinances.
- D. all of the above.

2. The Court of Appeals:

- A. is a court of last resort.
- B. hears appeals directly from the county courts.
- C. handles misdemeanors only.
- D. consists of four separate courts.

3. The Legislature will modify or add a new law:

- A. when it feels like it.
- B. when the courts ask for one.
- C. when it notices an increase in harmful behavior in society.
- D. every winter.

4. Issues impacting the New York Penal Law are:

- A. a homogeneous population.
- B. different cultural values.
- C. a history of torturing prisoners.
- D. nothing impacts the law.

5. In *People v. Jones*, 63 Misc.2d 677 (1922), 677 indicates:

- A. the volume of the report.
- B. the first page of the case.
- C. the last page of the case.
- D. the number of months in prison the defendant received.

REFERENCES

- ¹ ~~Sterk, S. (1998). Introduction: The New York Court of Appeals: 150 years of leading decisions. *Syracuse Law Review*, 48, 1391.~~
- ² Cohn, E. (2001). *Criminal justice in New York today*. Upper Saddle River, NJ: Prentice-Hall.
- ³ Schwartz, H. (1968). Drafting a new penal law for New York. *Buffalo Law Review*.
- ⁴ Bloustein, M. (December 1985). A short history of the New York State court system. Paper presented at a Seminar on the Unified Court System of New York. [Retrieved August 1, 2006].

ANSWERS

1. D; 2. A; 3. C; 4. B; 5. B.