

Chapter One: The Nature, Purpose, and Function of Criminal Law

Chapter Overview:

Chapter one of Matthew Lippman's criminal law text provides a background and foundation for understanding the criminal law. Lippman thoroughly examines the nature and sources of criminal law as well as the purpose that it serves in society. This guide is intended to serve as a supplement to the entirety of the Lippman text, specifically addressing the issues therein as they relate to Virginia statutes and case law. This chapter of the supplement addresses the Constitution of Virginia as the fundamental basis of Virginia law. It also presents a brief overview of Virginia statutory law with respect to both common law influences and modern criminal statutes. Finally, this chapter provides a brief examination of the Virginia court system that serves as the forum in which the laws examined throughout this supplement are addressed.

I. The Virginia Constitution

The Constitution of Virginia can be loosely tied to the first Charter of the Virginia Company of London from 1606. While it was largely a document establishing commercial trades and practices, it "had in it the seeds of later libertarian stirrings on the American shore..." [Howard, Commentaries on the Constitution of Virginia, 1974]. The charters that followed continued to develop the foundation of Virginia government, though the colonists at this time were more focused on survival and less on rights and freedoms.

The first Constitution was written in 1776, though it has been revised five times – in 1830, 1851, 1870, 1902, and 1970. The modern Constitution was overwhelmingly approved in November 1970. In order to amend the Constitution, the General Assembly must first approve the amendment. After it has been approved by two separately elected General Assemblies, it is put to a vote by the citizens of the state. Since it took effect on July 1, 1971, it has undergone several amendments, including, most recently in November 2006, when the people approved three amendments, including, a controversial amendment to Article I which defines marriage as between a man and a woman.

Protecting Against Tyranny, The Separation of Powers

Fundamentally, a constitution divides power in various fashions and by numerous means, which best serve the constitutional function of protecting against a tyranny. In the Virginia Constitution, as in the United States Constitution, the power of government is divided among three branches: the legislative, the executive, and the judiciary. As is sometimes discovered in the developing stages of a state constitutional government, the division of power on paper means nothing if the principles are not applied and maintained in practice.

The Virginia Constitution contains an explicit separation of powers, which is clearly asserted in the relevant articles. [See Va. Const., art II, sec. 5] The purpose of this provision is to limit the extent to which any branch of the state government may perform functions assigned to another branch by the constitution.

The Bill of Rights

A DECLARATION OF RIGHTS made by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

Section 1. Equality and rights of men. That all men are by nature equally free and independent and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety.

Section 2. People the source of power. That all power is vested in, and consequently derived from, the people, that magistrates are their trustees and servants, and at all times amenable to them.

Section 3. Government instituted for common benefit. That government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community; of all the various modes and forms of government, that is best which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of maladministration; and, whenever any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal.

Section 4. No exclusive emoluments or privileges; offices not to be hereditary. That no man, or set of men, is entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services; which not being descendible, neither ought the offices of magistrate, legislator, or judge to be hereditary.

Section 5. Separation of legislative, executive, and judicial departments; periodical elections. That the legislative, executive, and judicial departments of the Commonwealth should be separate and distinct; and that the members thereof may be restrained from oppression, by feeling and participating the burthens of the people, they should, at fixed periods, be reduced to a private station, return into that body from which they were originally taken, and the vacancies be supplied by regular elections, in which all or any part of the former members shall be again eligible, or ineligible, as the laws may direct.

Section 6. Free elections; consent of governed. That all elections ought to be free; and that all men, having sufficient evidence of permanent common interest with, and attachment to, the community, have the right of suffrage, and cannot be taxed, or deprived of, or damaged in, their property for public uses, without their own consent, or

that of their representatives duly elected, or bound by any law to which they have not, in like manner, assented for the public good.

Section 7. Laws should not be suspended. That all power of suspending laws, or the execution of laws, by any authority, without consent of the representatives of the people, is injurious to their rights, and ought not to be exercised.

Section 8. Criminal prosecutions. That in criminal prosecutions a man hath a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, and to call for evidence in his favor, and he shall enjoy the right to a speedy and public trial, by an impartial jury of his vicinage, without whose unanimous consent he cannot be found guilty. He shall not be deprived of life or liberty, except by the law of the land or the judgment of his peers, nor be compelled in any criminal proceeding to give evidence against himself, nor be put twice in jeopardy for the same offense.

Laws may be enacted providing for the trial of offenses not felonious by a court not of record without a jury, preserving the right of the accused to an appeal to and a trial by jury in some court of record having original criminal jurisdiction. Laws may also provide for juries consisting of less than twelve, but not less than five, for the trial of offenses not felonious, and may classify such cases, and prescribe the number of jurors for each class. In criminal cases, the accused may plead guilty. If the accused plead not guilty, he may, with his consent and the concurrence of the Commonwealth's Attorney and of the court entered of record, be tried by a smaller number of jurors, or waive a jury. In case of such waiver or plea of guilty, the court shall try the case.

The provisions of this section shall be self-executing.

Section 8-A. Rights of victims of crime. That in criminal prosecutions, the victim shall be accorded fairness, dignity and respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts and, as the General Assembly may define and provide by law, may be accorded rights to reasonable and appropriate notice, information, restitution, protection, and access to a meaningful role in the criminal justice process. These rights may include, but not be limited to, the following:

1. The right to protection from further harm or reprisal through the imposition of appropriate bail and conditions of release;
2. The right to be treated with respect, dignity and fairness at all stages of the criminal justice system;
3. The right to address the circuit court at the time sentence is imposed;
4. The right to receive timely notification of judicial proceedings;
5. The right to restitution;
6. The right to be advised of release from custody or escape of the offender, whether before or after disposition; and
7. The right to confer with the prosecution.

This section does not confer upon any person a right to appeal or modify any decision in a criminal proceeding, does not abridge any other right guaranteed by the Constitution of the United States or this Constitution, and does not create any cause of action for compensation or damages against the Commonwealth or any of its political subdivisions, any officer, employee or agent of the Commonwealth or any of its political subdivisions, or any officer of the court.

The amendment ratified November 5, 1996 and effective January 1, 1997—Added a new section (8-A).

Section 9. Prohibition of excessive bail and fines, cruel and unusual punishment, suspension of habeas corpus, bills of attainder, and ex post facto laws. That excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted; that the privilege of the writ of habeas corpus shall not be suspended unless when, in cases of invasion or rebellion, the public safety may require; and that the General Assembly shall not pass any bill of attainder, or any ex post facto law.

Section 10. General warrants of search or seizure prohibited. That general warrants, whereby an officer or messenger may be commanded to search suspected places without evidence of a fact committed, or to seize any person or persons not named, or whose offense is not particularly described and supported by evidence, are grievous and oppressive, and ought not to be granted.

Section 11. Due process of law; obligation of contracts; taking of private property; prohibited discrimination; jury trial in civil cases. That no person shall be deprived of his life, liberty, or property without due process of law; that the General Assembly shall not pass any law impairing the obligation of contracts, nor any law whereby private property shall be taken or damaged for public uses, without just compensation, the term "public uses" to be defined by the General Assembly; and that the right to be free from any governmental discrimination upon the basis of religious conviction, race, color, sex, or national origin shall not be abridged, except that the mere separation of the sexes shall not be considered discrimination.

That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

Section 12. Freedom of speech and of the press; right peaceably to assemble, and to petition. That the freedoms of speech and of the press are among the great bulwarks of liberty, and can never be restrained except by despotic governments; that any citizen may freely speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right; that the General Assembly shall not pass any law abridging the freedom of speech or of the press, nor the right of the people peaceably to assemble, and to petition the government for the redress of grievances.

Section 13. Militia; standing armies; military subordinate to civil power. That a well regulated militia, composed of the body of the people, trained to arms, is the proper, natural, and safe defense of a free state, therefore, the right of the people to keep and bear arms shall not be infringed; that standing armies, in time of peace, should be avoided as dangerous to liberty; and that in all cases the military should be under strict subordination to, and governed by, the civil power.

Section 14. Government should be uniform. That the people have a right to uniform government; and, therefore, that no government separate from, or independent of, the government of Virginia, ought to be erected or established within the limits thereof.

Section 15. Qualities necessary to preservation of free government. That no free government, nor the blessings of liberty, can be preserved to any people, but by a firm adherence to justice, moderation, temperance, frugality, and virtue; by frequent recurrence to fundamental principles; and by the recognition by all citizens that they have duties as well as rights, and that such rights cannot be enjoyed save in a society where law is respected and due process is observed.

That free government rests, as does all progress, upon the broadest possible diffusion of knowledge, and that the Commonwealth should avail itself of those talents which nature has sown so liberally among its people by assuring the opportunity for their fullest development by an effective system of education throughout the Commonwealth.

Section 15-A. Marriage. That only a union between one man and one woman may be a marriage valid in or recognized by this Commonwealth and its political subdivisions. This Commonwealth and its political subdivisions shall not create or recognize a legal status for relationships of unmarried individuals that intends to approximate the design, qualities, significance, or effects of marriage. Nor shall this Commonwealth or its political subdivisions create or recognize another union, partnership, or other legal status to which is assigned the rights, benefits, obligations, qualities, or effects of marriage.

The amendment ratified November 7, 2006, and effective January 1, 2007—Added a new section (15-A).

Section 16. Free exercise of religion; no establishment of religion. That religion or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this

Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

Section 17. Construction of the Bill of Rights. The rights enumerated in this Bill of Rights shall not be construed to limit other rights of the people not therein expressed.

II. State Statutes for Criminal Offenses

In the state of Virginia, there are clear definitions of the criminal law provided to the public. The legislature has provided a comprehensive and detailed enumeration of criminal laws and criminal procedure in the state of Virginia. To this end, although the same act may constitute both a crime and tort, a crime is an offense against the public and prosecuted by the state, while tort is a private injury for which an individual seeks redress against the offending party. Similar to the common law, in Virginia, crimes *mala in se* encompass acts immoral or wrong in and of themselves, such as acts of murder, rape, burglary, larceny, arson, and breaches of peace. Naturally, crimes *mala prohibita* constitute actions or omissions prohibited by statute that infringe on the rights of others or are deemed necessary for social order.

Like most statutory jurisdictions, Virginia requires that enumerated crimes have a clean legislative basis. In other words, it is necessary that a statute exist to declare an act or omission a criminal offense. The statutes that delineate and define crimes cannot be extended by an intentment, and no act, however wrongful, can be punished pursuant to a statute unless it is clearly defined within the statutory language. In effect, there can be no constructive offenses in Virginia; publication of the statutes has provided the appropriate notice. A complete set of Virginia statutes can be found in the Virginia Code (See Web Sources in Appendix).

III. Courts in Virginia

The judicial power of the Virginia jurisdiction is vested in a supreme court, appellate court, circuit courts and general district courts. Virginia basically has a three-tiered system of courts with trial courts (circuit and general district), middle appellate courts (Virginia Court of Appeals), and a state supreme court (Supreme Court of Virginia). For federal issues, the litigant has recourse in the federal courts, as a court of initial impression on diversity issues, and otherwise as appellate recourse once state remedies are exhausted. Contingent upon the granting of a writ of certiorari on a relevant federal issue or constitutional question, a petitioning party may have its issue addressed by the United States Supreme Court.

Essay Questions:

1. What are the components of criminal law, its guiding principles and sources?
2. What are the classification schemes of criminal law and the elements upon which the various levels of severity are based?

3. How does the Virginia Constitution differ from the United States Constitution pertaining to guiding principles and sources of criminal law?