

PREFACE

Modern American criminal law, including New York criminal law, is not a species of common law; it is statutory law. The general principles of criminal liability are set out in criminal codes, such as the New York Penal Law, which also contain definitions of criminal offenses that “cause or threaten substantial harm to individual or public interests.”¹

At the same time, a significant portion of American criminal law can be found outside the confines of criminal codes. Criminal provisions appear in a wide range of codes and statutes, including many that are ostensibly devoted to noncriminal subjects, such as the environment, public health, or agriculture. For instance, the New York Education Law included, by last count, over thirty misdemeanors and six felonies.²

What’s more, criminal provisions appear not only in codes, or for that matter in statutes, criminal or otherwise. Crimes also pop up in rules and regulations, as executive agencies long ago joined legislatures in the enterprise of criminal lawmaking. Consider, for instance, the detailed rules and regulations assembled by the New York Department of Motor Vehicles, all of which are backed by the threat of criminal sanction.³

Courts, once the primary producers of the “common law of crimes,” largely have been reduced to interpreters of legislative and executive norms, though—in New York at least—they continue to wield the considerable power of criminal contempt, if only because a statute says so.⁴

Although modern American criminal law remains, by and large, state law, criminal lawmaking by no means is limited to the branches of state government. There is, of course, federal criminal law, which continues to expand from its humble beginnings over two centuries ago. But criminal law also is made at lower levels of government within a given state, in county legislatures and city councils.⁵

This volume aims to present a more or less representative selection of primary materials on New York criminal law. New York’s criminal code—the Penal Law—is reproduced in full. Inspired by the American Law Institute’s Model Penal Code of 1962, the Penal Law is a comprehensive code, at least when it comes to the general principles of criminal liability (act requirement, mental states, defenses, and so on) that govern all criminal provisions, including those found outside the criminal code proper. (Model jury instructions are included on two issues the Penal Law does not address: causation and the agency defense in drug criminal law.)

The full text of the Penal Law is joined by excerpts from other statutes, including the Criminal Procedure Law, the Correction Law, the Judiciary Law, the Public Health Law, the Mental Hygiene Law, the Vehicle & Traffic Law, the Agriculture & Markets Law, the Alcoholic Beverage Control Law, the Banking Law, the Environmental Conservation Law, the Family Court Act, the General Business Law, the Tax Law, and the Executive Law.

Regulatory—i.e., executive or administrative, rather than legislative—criminal law is represented by excerpts from the New York Codes, Rules and Regulations (NYCRR) on prison management, as well as by “Risk Assessment Guidelines” drafted by the Board of Examiners of Sex Offenders under the Sex Offender Registration Act (SORA).

Federal criminal law appears in the form of mail fraud, RICO, and money laundering.

Local criminal law is represented by excerpts from the sprawling New York City Administrative Code.

Finally, the Model Penal Code is included as a crucial point of reference.

The primary materials reproduced in this volume are accompanied by Editor’s Comments, ranging from statutory cross-references (including to the Model Penal Code) and brief case annotations to more extensive commentary designed to put some meat on bare statutory bones. A schematic summary of the analysis of criminal liability in New York, keyed to relevant provisions in New York law, appears in an appendix.

This book is primarily intended for use in courses on American criminal law and New York criminal law to supplement a coursebook including cases, comments, and other materials.⁶

* * *

¹ N.Y. Penal Law § 1.05(1); cf. Model Penal Code § 1.02(1)(a).

² New York State Criminal Offenses, <http://wings.buffalo.edu/law/bclc/nycriminaloffenses.htm> (Buffalo Criminal Law Center, Oct. 5, 2000).

³ N.Y. Vehicle & Traffic Law § 1800.

⁴ N.Y. Judiciary Law art. 19.

⁵ See, e.g., Erie Co. Administrative Code § 9.06; Code of the City of Buffalo § 1.03.

⁶ See, e.g., Markus D. Dubber, *New York Criminal Law: Cases and Materials* (2008).

I am happy to acknowledge excellent research assistance from Robert Crawford, Jeffrey Davis, and Swarna Perinparajah. I'm also grateful to George Beseler, Paul Firebrook, Peter Nicolas, Kelly Weisberg, and Marcia Zubrow for much helpful advice and support along the way.