

# Introduction to the Ohio State Journal of Criminal Law

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Welcome to the inaugural issue of the *Ohio State Journal of Criminal Law*.

## I. WHY

Is there *really* a need for another journal? Because we are not, either in creation or execution, just another journal, we find it easy to justify our existence. First, the *Ohio State Journal of Criminal Law* is a peer-evaluated scholarly journal, developed by academics for academics. We believe there are too few such entities in the field of law. Second, as discussed below, the structure of our journal, if not unique, is non-traditional in many respects, and we consciously constructed this journal to make it an exciting scholarly forum for readers and authors alike. Third, we believe that there is a genuine renaissance in criminal justice scholarship: some of the finest scholarship being written in the law is occurring in the criminal field; there is more than enough good scholarship and important ideas to go around.

Finally, although perhaps all times are critical in matters of criminal justice—so much is inherently at stake—we think this is an especially important time to promote serious scholarship. We live in a country, post September 11, in which fear of terrorism and concern about loss of civil liberties compete for our attention; federal and state criminal codes are increasingly overburdened as legislatures enact new criminal statutes and regularly look to the criminal law as a salve when scandals erupt in corporate boardrooms or on city streets; the Model Penal Code is undergoing sentencing revision and there is new debate regarding whether an entirely new Code is required; the enactment of sexual predator laws, preventive detention statutes, and the like, have blurred the precarious but historic line drawn between criminal and civil law; the incarceration rate in the United States is historically high, with all of the criminological significance—not to mention economic and personal costs—that this implies; the United States death penalty is under new domestic attack; and, internationally, a new criminal court system vies for our attention. We plan for the *Ohio State Journal of Criminal Law* to be a forum for consideration of *all* of these areas of criminal justice concern (and others), and to take an interdisciplinary and

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non-partisan approach to the issues of criminal justice.<sup>1</sup>

## II. HOW

Our journal is not only peer-evaluated, and anxious to publish works by scholars from many disciplines and by criminal justice professionals, but also welcomes essays in many different forms. To explain: First, each issue will include a Symposium, organized by a Guest Editor who will solicit experts to write on the topic in question. As you can see, our first Symposium assembles “Reflections of the Criminal Justice System after September 11, 2001,” authored by a stellar group of contributors. We expect future symposia to cover a wide array of important topics from a wide array of perspectives. In the immediate future, we will be covering corporate criminality (Volume 1, Number 2), capital juries (Volume 2, Number 1), and issues of criminal responsibility (Volume 2, Number 2). For this first issue, our Guest Editors come from within Michael E. Moritz College of Law, but we intend over the years to invite persons from outside our law school, and indeed from other disciplines, to serve in the editorial role. As an example, philosopher Antony Duff, from the University of Stirling, will serve as a Guest Editor of Volume 2, Number 2 of the *Journal*.

Second, each issue will include a Commentary section. For this section, we will consider and publish unsolicited manuscripts. The only rule relating to the commentaries is that there are no rules. If you look at the Commentary section in this issue, you will see essays that run the gamut: we start with a special Commentary Symposium on the Model Penal Code, which includes essays of varying length and formality, followed by individual commentaries on a wide variety of topics, including what is wrong with criminal law scholarship (an essay that arguably calls into question what it is we are trying to do in this journal!),<sup>2</sup> a Supreme Court opinion handed down in the year 2022,<sup>3</sup> a critique of United States drug policy,<sup>4</sup> reflections on double jeopardy law,<sup>5</sup> calls for taping of police interrogations,<sup>6</sup> recognition of a new generic partial excuse defense,<sup>7</sup> and a legal philosopher’s reflections on the concept of

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<sup>1</sup> Indeed, one aspect of our interdisciplinary (and author-friendly) approach is that we do not demand that scholars from other disciplines conform to traditional law journal citation systems. Thus, for example, criminal justice scholar Stephen Brandl’s contribution to this issue’s September 11 symposium, *Back to the Future: The Implications of September 11, 2001 on Law Enforcement Practice and Policy*, 1 OHIO ST. J. CRIM. L. 133 (2003), follows social science citation form rather than the “Bluebook” form that is most familiar to legal readers and authors.

<sup>2</sup> Douglas Husak, *Is the Criminal Law Important?*, 1 OHIO ST. J. CRIM. L. 261 (2003).

<sup>3</sup> Carol S. Steiker & Jordan M. Steiker, *Abolition in Our Time*, 1 OHIO ST. J. CRIM. L. 323 (2003).

<sup>4</sup> James A. Inciardi, *The Irrational Politics of American Drug Policy: Implications for Criminal Law and the Management of Drug-Involved Offenders*, 1 OHIO ST. J. CRIM. L. 273 (2003).

<sup>5</sup> George C. Thomas III, *Islands in the Stream of History: An Institutional Archeology of Dual Sovereignty*, 1 OHIO ST. J. CRIM. L. 345 (2003).

<sup>6</sup> Christopher Slobogin, *Toward Taping*, 1 OHIO ST. J. CRIM. L. 309 (2003).

<sup>7</sup> Stephen J. Morse, *Diminished Rationality, Diminished Responsibility*, 1 OHIO ST. J. CRIM. L. 289 (2003).

estoppel and other potential bars to bringing guilty persons to trial.<sup>8</sup>

Although there are no firm Commentary rules, we will have certain preferences in the selection process. We seek to publish here shorter essays (in the future, 5,000 words or less), which are lightly footnoted and less formally written than traditional law review articles, and which offer provocative, humorous or even off-beat reflections on some aspect of criminal justice. We hope that many of our readers will see this section as an invitation to submit a manuscript on a topic that may not require or merit the length or depth of a traditional scholarly article. We also hope some will choose to write on a criminal justice topic that might not fit ordinary “scholarly article” criteria: a personal tribute to an important individual in the criminal justice field; some underappreciated criminal justice case, event, or statistic—a hidden nugget, if you will—that you want others to discover; a tongue-in-cheek critique of some aspect of criminal justice;<sup>9</sup> or, well, you name it. We hope that some readers will be sufficiently agitated by what they read here that they will want to write a reply! The point of the Commentary section really is this: *all traditional scholarly rules can be thrown out*, if you want. Just keep the essays relatively short, and (of course) the ideas provocative and worth reading.

Third, we expect each issue of the *Ohio State Journal of Criminal Law* to include one or more Reviews. Here we will publish brief reviews (again, ideally, 5,000 words or less) of recently published books, important government and private criminal justice reports, and/or—and, here, again, we want to expand the scope of what we think of as a review in a scholarly journal—criminal justice topics found in popular culture (movies, television, the Internet, etc.). The Review of recent literature by rape survivors that runs in this issue provides a glimpse into our unique vision for this section of the *Journal*.<sup>10</sup>

Finally, on occasion we will publish high-quality essays written by students of The Ohio State University Moritz College of Law.

### III. WHO

Many people—too many to be thanked here—contributed to the creation and development of the *Ohio State Journal of Criminal Law*. Let us start externally: a number of fine scholars contributed more than just their names when they agreed to join the *Journal's* Board of Advisors, a diverse group of scholars whose names we will proudly publish in each issue. By agreeing to join the Board, these individuals have already been called upon frequently for assistance: not only by writing for us, but

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<sup>8</sup> R.A. Duff, “*I Might Be Guilty, But You Can't Try Me*”: *Estoppel and Other Bars to Trial*, 1 OHIO ST. J. CRIM. L. 245 (2003).

<sup>9</sup> For an example, you might look at Joshua Dressler, *Death Duty*, 2 Green Bag 345 (1999) (a poor man's Swiftian suggestion on how “to bring executions to the people”). Indeed, the *Green Bag* journal itself is one inspiration for our Commentary section.

<sup>10</sup> Samuel H. Pillsbury, *A Different Kind of Courage, A Different Kind of Peace*, 1 OHIO ST. J. CRIM. L. 357 (2003).

also by offering us valuable suggestions on symposium topics and individuals whom we might call upon to write for us. We know that this first issue—and the all-star cast of authors—would not have been possible without their help.

Second, of course, we thank all of the authors in this first issue. As you may imagine, it is not easy for a journal that does not yet exist to obtain commitments from busy scholars, and then to have those commitments met. This first issue, we believe, is an eloquent statement of support by the authors, not particularly for this journal perhaps, but for the mission of this peer-evaluated journal. There have been the inevitable glitches in getting the inaugural issue into print, and yet each author has been remarkably helpful and patient as we have navigated the problems and filled in the publishing potholes.

Third, we owe our gratitude to the faculty of Michael E. Moritz College of Law, which unanimously approved the creation of the *Journal*, and Dean Nancy H. Rogers, who spoke on our behalf and generously allocated all the money we needed to start the *Ohio State Journal of Criminal Law*. Also, special thanks are due to Associate Deans Bruce S. Johnson and Kathy S. Northern, who each spent considerable time on issues like physical space and administrative logistics to ensure we could effectively operate in harmony with the excellent student-run journals published at Michael E. Moritz College of Law (*Ohio State Law Journal* and *Journal on Dispute Resolution*). Of course, we must also thank the late Michael E. Moritz, whose generous contributions to the law school, both financial and visionary, made it so much easier for us to move in this direction.

Finally, special thanks goes to a number of incredibly hard-working, excellent and idealistic law students for their help, without whom we quite literally could not have published this first issue. The *Journal* itself is a faculty-student cooperative venture. One of the exciting features of this journal for us, as Faculty Managing Editors, and we hope for the students, is that it promotes a mentoring relationship between the criminal law faculty at Moritz (and Guest Editors, from wherever they come) and Moritz students who have an intellectual passion for, and potential professional interest in, the criminal justice field. Special thanks go to all of those students, only some of whose names are listed just a few pages before this Introduction, because these are the women and men who expended enormous amounts of their time taking us from an abstract idea to the physical embodiment in your hands right now.

Leading the student list, figuratively and literally, is Cheryl Collins, the Founding Editor-in-Chief. She began work for the *Journal* before its conception (along with Matthew Crall, who graduated before the *Journal* could reach fruition), and she expended seemingly endless energy spreading her excitement for the *Journal* among the Moritz student body, and then flawlessly led the student *Journal* staff throughout the transition to Nathaniel Orosz, the current Student Editor-in-Chief. There is simply no way anyone can thank her enough. This journal is as much her vision as it is ours.

## IV. THE FUTURE

This is, obviously, just the beginning of the *Ohio State Journal of Criminal Law*. We trust that everything great you find in this first issue will continue, and that you, the reader, will come back to read the *Journal* again. Indeed, we hope not only that many of you will choose to subscribe to the *Journal*, but also that many of you will contribute as authors to future issues. And, of course, we welcome your suggestions for ways to make the *Journal* more useful to you.

