

Evolution of Spanish criminal Law.

From 1848 Penal Code to 1995 Penal Code, and later reforms.

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KNOWLEDGE SHARING ON THE MODERNIZATION OF CRIMINAL LAW (*Seminar-Workshop*)

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Precedents.

- 1787 Draft proposal of a Criminal Code.
 - Lardizábal and Spanish Enlightenment.
 - Compilation of Ancient regime criminal legislation.

- 1822 Penal Code.
 - Political context.
 - Sources.
 - Contents.
 - Brief enforcement.
 - Reestablishing of Ancient Regime rules.



1848 Penal Code.

- Sources.
- Contents.
 - Ideological approach.
 - General principles.
 - System of liability.
 - System of sanctions.
 - Crimes.

- 1850 reformed Code penal.
 - Ideological approach.
 - Contents.



1870 reformed Penal Code.

- Political context.
- Contents.
 - Ideological approach.
 - System of liability.
 - System of sanctions.
 - Crimes.
- Long enforcement.
- Partial reforms (1870-1928).
 - On sanctions.
 - On crimes.



1928 Penal Code.

- Political context.
- Contents.
 - Ideological approach.
 - Scope of criminal law.
 - System of liability.
 - System of sanctions.
 - Double way of sanctions.
 - Numerous changes.
 - Crimes.
- Reestablishment of 1870 reformed Penal Code (1931-1932)



1932 reformed Penal Code.

- Sources.
 - 1870 version of 1848 Penal Code.
 - Some novelties originated in 1928 Penal Code.
 - Ideological approach.
- Contents.
 - System of liability.
 - System on sanctions.
 - Death penalty and life imprisonment, abolished.
 - Specific law (1933) for safety measures.
 - A new method of keeping double way of sanctions.
 - Crimes.
- Despite decisive political changes, it is in force till 1945.
 - Notwithstanding early specific criminal legislation of the new regime –see next-



1944 reformed Penal Code.

- **Political context.**
 - Civil war (1936-1939) and Franco's dictatorship.
 - Early specific criminal legislation on:
 - Political dissent, war subsistence economy, morals and family issues.
 - Restoration of death penalty for common crimes.
 - Ideological approach of 1944 reformed penal code.
- **Contents.**
 - System of liability.
 - System on sanctions.
 - More severity across the board.
 - A generous good time credit system is established to manage high prison population.
 - Republican law (1933) for safety measures keeps its force till 1970 new Dangerousness law.
 - It is enhanced with new dangerous conditions.
 - Crimes.
- **Later partial reforms under Franco's dictatorship.**
 - 1963 and 1971 outstanding reforms.
 - 1973 consolidated text of Penal Code.



Transition to a democratic criminal law.

- **Political transition to democracy.**
 - Starts after Franco's death (1975) and finishes with 1978 constitution.
- **But 1944 version of 1848 Penal Code keeps its force from 1975 to 1995.**
 - Under the 1973 consolidated text of Penal Code.
 - But in the meantime, numerous reforms of existing penal code are passed.
 - While a succession of drafts of a new penal code are discussed (1980, 1983, 1990, 1992, 1994).
- **Partial reforms ruling a center party, UCD (1976-1982).**
 - Political reconciliation, preservation of democratic system, decriminalization of morals offences, moderation of criminal punishment.
- **Partial reforms ruling a socialist party, PSOE (1982-1995).**
 - Adjustment to constitutional values and guarantees, enhanced safeguard of individual liberties, protection of socio-economic assets.
 - Restraints to moderation of punishment, surge of two emergency legislations.



1995 new Penal Code.1.

- **An event of paramount importance.**
 - First brand new Penal Code since 1848.
 - The core of 1848 Penal Code, in force for almost a century and a half.
 - Notwithstanding numerous reforms,
 - and the 2 years brief enforcement of 1928 Penal Code.
- **Sources.**
 - Many criminal law reforms during 20 years of democracy, constituent parts.
 - An intense criminal policy pondering through 5 major drafts.
 - A resolute decision of putting Spanish criminal law into line with international trends.
- **Main systematic features.**
 - A Preliminary Title rules criminal guarantees and scope of application of criminal law.
 - Crime provisions start with crimes against persons and finish with crimes against international community.
 - Practically all criminal legislation included in 1995 Penal Code.
 - Specific criminal laws only for abortion, electoral crimes, contraband and exchange control crimes.
 - Additionally, juvenile justice law and military criminal code.



1995 new Penal Code.2.

- Contents.
 - On crimes.
 - Systematization of crimes in accordance with protected legal assets.
 - Enhanced safeguard of personal legal interests.
 - Massive incorporation of community legal assets.
 - On liability.
 - Strong recognition of individual guarantees.
 - Legality, subjective attribution, blameworthiness, least possible intervention...
 - Relevant legislative decisions.
 - Extended legality principle, full interdiction of strict liability, expansion of blame worthiness excuses,
 - occasional punishment of negligent crimes, abrogation of impossible attempt, kinds of perpetration.
 - On sanctions.
 - Rehabilitation as main goal.
 - Apparent reduction of severity in prison penalties.
 - New configuration of penalties:
 - Discarding of short-term prison penalties, expansion of community penalties, introduction of day-fine system.
 - Safety measures constrained to post-crime dangerousness, and for accountable or close to unaccountable persons.



Criminal law reforms after enactment 1995 Penal Code. 1.

- An intense post-code criminal law making.
 - Since 1998 till nowadays, > 30 Code reforms, > 40 whole criminal legislation reforms.
 - Those reforms in 2003, 2010 and 2015, most ambitious.
- 2003 reforms.
 - Start towards a law-and-order model.
 - General deterrence comes to the fore.
 - On liability.
 - Extension of recidivism and habitual reoffending.
 - On sanctions.
 - 40 years, instead 30 years, harshest prison penalty for accumulation of offences.
 - 3 months, instead 6 months, lower limit for short-term prison penalties.
 - Difficult admission to open prison regime and conditional release, due to 'truth in sentencing' enforcement.
 - On crimes.
 - Many changes, characterized by either creation of new crimes and penalties or hardening of the existing ones.
 - Concentration on gender and sexual crimes, property and drug-trafficking crimes.



Criminal law reforms after enactment 1995 Penal Code. 2.

- 2010 reform.
 - It keeps going the expansive and punitive trend, with some nuances.
 - On liability.
 - Introduction of corporate criminal liability.
 - A full novelty by itself and by its big scope, in Spanish Criminal Law.
 - On sanctions.
 - Introduction of safety measures for accountable persons.
 - Blatantly against original 1995 criminal policy option.
 - On crimes.
 - Again, expansion and aggravation of sexual crimes, property and socioeconomic crimes, among others.
 - Specific attention to organized crime:
 - 2 autonomous offences just punishing membership to a criminal organization or group.
 - Enlargement of defined crimes and more severe penalties for terrorism and human trafficking.
 - Conversely, drug crimes lessen to some extent their punitiveness.



Criminal law reforms after enactment 1995 Penal Code. 3

- 2015 reform.
 - Most extensive reform since passing 1995 Penal Code.
 - 260 provisions of modification out of Penal Code containing 600 paragraphs.
 - On liability.
 - A far more permissive regulation of corporate criminal liability.
 - Only 5 years after the passing of first regulation.
 - On sanctions.
 - Life imprisonment with review is restored.
 - Being out of our legal system since 1928, practically since 1870.
 - While Spanish crime rates are lower than ever, and Spain has one of the lowest world crime rates.
 - Conditional release regime becomes tougher.
 - On crimes.
 - An ambiguous abrogation of all misdemeanors.
 - Because 60% of them are transformed into a new category of light crimes.
 - Expansion and aggravation of human life crimes, sexual crimes, property crimes.
 - Age for sexual consent up to 16 years old.
 - An additional 2015 reform enhances the scope of terrorist crimes.



Current state of affairs.

- Specific criminal law legislation remains rare.
 - 2 special criminal jurisdictions.
 - Juvenile Justice.
 - Fully renewed in 2000.
 - 2015 new military Penal Code.
 - Very few specific criminal laws.
 - Just on abortion, electoral crimes, exchange control and capital flows crimes, and contraband crimes.
- Criminal law making keeps steadily going.
 - Accommodation to UE demands on terrorism and financial crimes (2019).
 - More severity on road traffic crimes (2019).
 - Decriminalization of euthanasia –assisted suicide- (2021).
 - Overprotection of minors as victims (2021).
 - Expansion of minorities' discrimination crimes (2021).



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