

# ATLANTA'S JOHN MARSHALL LAW

## AMERICAN CRIMINAL LAW

Professor Anthony V. Baker  
Fall Semester, 2012

Meeting: (T./Th.) 3:30pm-5:00pm; Room: 305  
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### INITIAL ASSIGNMENT

Welcome to *American Criminal Law*. Our goal in the first classes will be to lay down a solid, reliable foundation which will support our full exploration of some of the key intellectual pieces of this particular puzzle of the law. We will do this by consideration of the following materials (attached).

First, consider the enclosed statute N.C. GEN. STAT. §14-181(1838-9L on the books in North Carolina and in force until the early 1970's at least. Defined by the obscure term "Miscegenation...", it bans interracial marital relations. The question I would have you consider is whether it defines a *crime*?

Now, there are two ways to approach such a question, and there is a world of difference between the two. The first considers a statute's *legality*: whether an enactment has passed through a particularized process from originating concept to final enactment and publication; by this standard, the enclosed statute is *law*, particularly, *criminal law*, or, short-formed, a *crime*, and our concern with the question is over.

However, whether a legal enactment is *legitimate* is a far different- and a more nuanced and interesting- question. *Legality* has to do with *process*, while *legitimacy* is concerned with *fidelity*, or *justice*. Another way to put this is simple and straightforward: *legality* considers what a nation/state *can do*, given the power that it has, while *legitimacy* is concerned with what a nation/state *ought to do*, given what it believes itself to be. It is in this latter form that we will be approaching our topic of study throughout this semester.

Thus, in the broader *sense*, does the attached statute define a *crime*? You have two original sources which are designed to help you solve this puzzle. The first tool is an excerpt from the immense work of Adam Smith, short-formed THE WEALTH OF NATIONS (1776). Here the author focuses attention on the individual and labor as a value in a free society. The second tool is by legal and political philosopher John Locke, from his equally famous Two TREATIES OF GOVERNMENT (1688). Here, Locke talks about the origins of civil society, both defining 'crime' and defining its place in civil order. Taken together, these two classical late-Enlightenment

authors create a means of understanding crime in a democratic order, of particular value to our foundational consideration of the subject, for what I hope are obvious reasons. Read both quite carefully (do not let the arcane language intimidate you!) As the basic concepts provided by each will be referred to regularly in seeking full intellectual understanding of our subject of study.

If we come to a satisfactory conclusion that the attached statute reasonably defines a crime, we must then consider a reasonable *punishment* following. What is *punishment*? Why does it follow *crime*? What are the legitimate goals of a civil society in attaching *punishment* to *crime*? Please use the first pages of your text by Professor Arnold Loewy (CRIMINAL LAW: CASES AND MATERIALS 1-13 (3rd ed. 2009) to assist you with these questions.

Thus, please master the following materials in preparation for our first class:

- a. N.C. GEN. STAT. §14-181 (*Miscegenation*);
- b. ADAM SMITH, THE WEALTH OF NATIONS (1776) (excerpt attached);
- c. JOHN LOCKE, SECOND TREATISE OF GOVERNMENT (1688) (excerpts attached);
- d. ARNOLD LOEWY, CRIMINAL LAW: CASES AND MATERIALS (3rd ed. 2009) (pp. 1-13).

Give yourself plenty of time with the above (and read it multiple times as necessarily as it will direct our semester's consideration of our topic of study.

I look forward to meeting you at our first class on Tuesday, August 14, 2012.

Anthony Baker