

Contents

§ 1 Delimiting the Time Period and Methodology	1
I. Contemporary History	2
1. Subjective Approach: “Living History”	2
2. Objective Approach: “History of the Contemporary Epoch”	3
3. Emphasis and Implications	6
II. Contemporary Legal History	7
1. Methodology and Subject of Enquiry	7
2. The Legal-Historical Period	12
III. The Approach of Senn/Gschwend	16
IV. Current Legal Issues	17
V. Modern History of Criminal Law	18
§ 2 Criminal Law at the Beginning of the Legal-Historical Period	19
I. Criminal Law of the Enlightenment	19
1. Forerunners of Modern Criminal Law	19
2. Theory of Punishment in Natural Law and Enlightenment Thought	20
3. The Demands of Criminal Law Enlightenment	21
4. Enlightenment and Humanisation	26
II. Influence of the Enlightenment on Penal Legislation	29
III. Criminal Law at the End of the Eighteenth Century	32
1. Immanuel Kant (1724–1804)	32
2. Paul Johann Anselm Feuerbach (1775–1833)	37
3. Shared Traits	42
§ 3 Nineteenth Century Developments	47
I. Criminal Law Theory	47
1. Definition of Crime	47
2. Theories of Punishment	56
3. Doctrinal Issues	63
II. Penal Legislation	65
1. The Influence of French Legislation	65
2. German Territorial Criminal Law	68

3. The Reich Constitution of 1849	78
4. Reich Criminal Code	78
III. Criminal Procedure	82
1. General Comments	82
2. Procedural Model	83
3. Prosecution	85
4. Role of the Judge	87
5. Structure of the Trial	88
6. Role of the Accused; Defence	89
7. Open Justice	91
8. Oral Presentation of Evidence and Presentation Before the Deciding Judges	93
9. Jury Courts	94
10. Evaluation of Evidence and Reaching a Verdict	96
11. Reich Code of Criminal Procedure	97
IV. Sentences and the Prison System	99
1. Development of Penitentiaries	99
2. "Prison Reform"	102
3. Reich Criminal Code	105
V. Review	106
§ 4 The Shift from the Nineteenth to the Twentieth Century	109
I. Background	109
II. Changes in Criminal Law	112
III. Finality in Criminal Law	114
1. The "Marburger Programm"	114
2. The "Comprehensive Study of Criminal Law"	119
IV. Discovering the "Offender"	123
§ 5 The Twentieth Century	127
I. Preliminary Remarks	127
II. The Period Before the First World War	128
1. Theory of Criminal Law: The So-Called " <i>Schulenstreit</i> "	128
2. Criminal Law Doctrine	131
3. Penal Legislation	132
4. The Beginnings of Penal Reform	137
5. Criminal Procedure	141
III. First World War and Postwar Period	143
1. Penal Legislation	143
2. Penal Reform	144
IV. Weimar Republic	146
1. Criminal Law Theory	146
2. Penal Legislation	153
3. Continuation of Penal Reform	158
4. Criminal Procedure	165
5. Sentences and the Prison System	170

V. The National Socialist Period	172
1. Preliminary Remarks	172
2. Criminal Law Theory	173
3. Penal Legislation Before the Outbreak of the War	181
4. Continuation of Penal Reform	186
5. Penal Legislation After the Outbreak of the War	192
6. Criminal Justice	200
7. Sentences and the Prison System	203
8. Specific Pathology of the NS System	205
VI. The Period of Occupation; the Federal Republic of Germany	208
1. Transformation	208
2. Eradicating the Injustices of National Socialism	212
3. Prosecution of Crimes Committed During the National Socialist Period	213
4. Early Legislation	221
5. Continuation and (Preliminary) Completion of Penal Reform	223
6. Criminal Law Theory	229
7. Post-reform Legislation	237
8. Criminal Procedure	238
VII. The German Democratic Republic	240
1. Overview of the Development of Criminal Law	240
2. Prosecution of Crimes Committed During the GDR Period	246
§ 6 Current Events in Criminal Law	251
§ 7 Review and Outlook	259
I. Review	259
II. Continuities	261
III. Outlook	264
Important Primary and Secondary Sources	267
List of Translated Texts	285
Index of Persons	287
Subject Index	297