



Civil v. Criminal Contempt:
What Process Is Due?

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Synopsis

Table listing sections from § 4.01 to § 4.09 with corresponding page numbers, including sub-sections like 'Introduction', 'Development of Civil/Criminal Distinction', etc.

1 The authors have extensive experience in the practice of labor relations in the coal industry. Smith, Heenan & Althen, and these authors have drawn upon their personal experience as advocates for the majority of the coal employers identified in this article in various labor disputes with the United Mine Workers of America.

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§ 4.01. Introduction.

Criminal law seeks to advance law and order in society by punishing those who violate established standards of conduct. Conviction of a crime can result in substantial fines, lengthy incarceration, and — in some states — capital punishment. Substantial procedural safeguards accompany any criminal prosecution: defendants are entitled to a presumption of innocence, have a right to jury trial, a right to call and cross-examine witnesses, have a privilege against self-incrimination, and must be proven guilty beyond a reasonable doubt.²

Civil law, on the other hand, provides for the orderly resolution of private disputes. Legislatures and courts have fashioned a broad array of causes of actions and remedies designed to resolve and remedy disputes between citizens.³ Plaintiffs may frame their complaints in a variety of

² Ercolino, Gino F., “*United Mine Workers v. Bagwell*: Further Clarification of Civil and Criminal Contempt,” 22 *New Eng. J. on Crim. & Civ. Confinement* 291 (Spring 1996) at 291-292.

³ Callas, Gretchen, “*United Mine Workers v. Bagwell*: New Restrictions on Severe Civil Contempt Fines,” 97 *W. Va. L. Rev.* 1079 (Summer 1995).

ways aimed at restoring property or compensating for injury. Civil remedies run the gamut of compensatory damages, specific performance, restitution, injunctive relief, abatement of nuisances, forfeitures, and other remedies.⁴

In light of the increasingly complex nature of society, it was probably inevitable that legislatures would seek to use certain civil remedies to effectuate public policy objectives. Increasingly, civil fines or monetary penalties are used as alternatives to criminal prosecution.⁵ Nevertheless, for the most part criminal and civil laws remain diverse areas of legal interest.⁶

§ 4.02. Development of Civil/Criminal Distinction.

While the use of civil remedies in connection with legislative objectives is a relatively modern phenomenon, tension has long existed with respect to the dichotomy between civil and criminal sanctions in the context of contempt proceedings.⁷ The contempt power of civil courts has often resulted in tension between the need for the courts to effectively administer justice and enforce their orders and decrees, and the rights of a party to criminal process prior to the imposition of a substantial criminal sanction.

Reviewing courts and jurisprudential scholars commonly raise three objections to a broad power of civil contempt: (1) the absence of constraint upon the powers of the trial courts; (2) the conflict of interest faced by a judge who wields governmental power to enforce his/her own rulings but who must also afford the contemnor procedural rights that may possibly delay or frustrate enforcement; and (3) the law is both substantively and

⁴ *Id.*

⁵ Federal and state governments have incorporated civil remedies into a host of criminal statutes, such as the forfeiture provisions found in some criminal statutes. Civil penalties are also used as an alternative to criminal sanctions. *See*, Racketeer Influenced Corporate Organizations Act, 19 U.S.C. §1962, *et al*; West Virginia Wage Payment and Collection Act., W. Va. Code § 21-5-15 and W. Va. Code 21-5-12.

⁶ 22 *New Eng. J. on Crim. & Civ. Confinement* at 291.

⁷ Freeman, Sondra L., "The Supreme Court Test for Distinguishing Civil and Criminal Contempt: A Distinction Without a Difference? *Bagwell v. International Union, UMWA*," 13 *St. Louis U. Pub. L. Rev.* 529, 530 (1993).