

Why Punish?

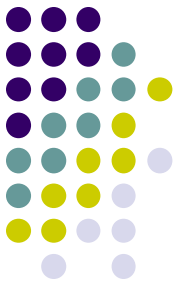


- (1) **Incapacitation** - preventing that person from committing another crime
 - A person is much less likely to commit a crime if he's sitting in prison
 - Most relevant for violent criminals

- (2) **Rehabilitation**- preparing the criminal to re-enter society as a productive citizen
 - Today, in the U.S., this is somewhat out of favor

- (3) **Deterrence**- (the main factor as far as economists are concerned)
 - General deterrence - prevents other people from committing crimes because of the fear of punishment
 - Special Deterrence - prevents the offender from committing the same crime again

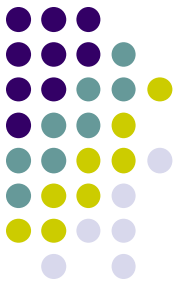
Why Punish? (cont.)



- (1) **Retribution**- “Vindicate” society’s need to exact vengeance on the person who breached society’s rules.
 - This is more of a factor that you might think;Punishment is often based on the results of the criminal act, rather than the intent of the criminal when committing the act

Food for thought: Which of these does the death penalty address?

General Notes about Types of Crimes



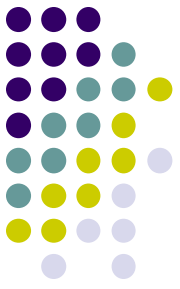
- Criminal law is designed to enforce the general societal notion that all people should behave in a civilized manner toward each other. There are two general categories of crime:
- ***Malum in se:***
 - These acts (crimes) are inherently evil (e.g., murder, robbery, rape);
 - Thus ignorance of the law for these crimes is never a defense!
- ***Malum Prohibitum:***
 - These acts are crimes only because the state or other governing body has criminalized the act illegal through statutes (i.e., tax law, securities regulation, traffic regulation)
 - Ignorance of the law is sometimes an excuse in these cases

Is a crime ever justified (not defended against- justified!)?

Regina v. Dudley and Stephens, (1884) 14 QBD 273 DC

This is an old English case which established a precedent in common law.

Sources of Criminal Law



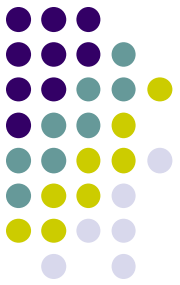
- Generally left to state criminal codes
- Under our federalist system, the administration and enforcement of criminal laws were left to the states; but
- There is a large (and ever widening) body of federal criminal law; mostly having to do with crimes that affect interstate commerce or the civil rights of American citizens.
- Unlike civil cases, criminal cases involving federal crimes are tried in federal court; while those involving state crimes are tried in state court.

Model Penal Code

Written by a groups of criminal law experts in the hope of standardizing criminal law around the country

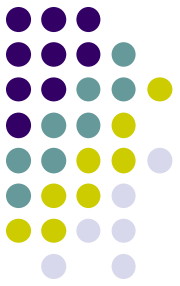
Results:

- Many states have ignored it
- Some states have allowed it to influence their criminal codes
- Some states have adopted parts of the MPC
- No state has adopted the MPC in full



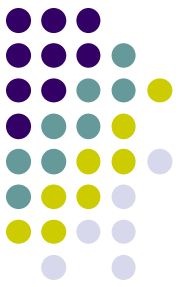
QUIZ TIME

Criminal Law – Safeguards to Protect the Innocent



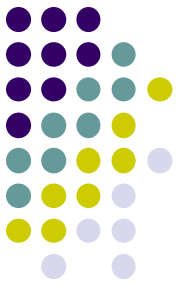
- Standard of proof: Every element of a crime must be proven “beyond a reasonable doubt”
- The accused is presumed innocent until proven guilty
- Trial by Jury
 - Jurors are triers of facts, not triers of law; but jurors can “nullify” a criminal law, by finding a defendant “not guilty” even if they believe he is guilty
 - Jury verdicts for criminal cases must consist of at least 6 members and must be unanimous in order to convict a defendant

Criminal Law – Safeguards to Protect the Innocent (cont.)



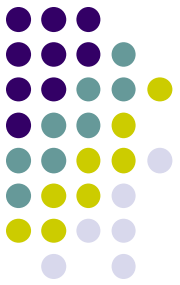
- Impartial judge and jury
- No “double jeopardy” and no appealing acquittals by the government
- Right to be represented by counsel (appointed for indigent defendants)
- Right to appeal a conviction at least one level (and the right to an attorney for that appeal)
- No Ex Post Facto Criminal Laws
- No Bills of Attainder

Criminal Law – Safeguards to Protect Everybody- Even the Guilty



- No unreasonable searches and seizures
- No excessive bail;
 - bail is only supposed to assure the defendant's presence at trial; not designed to punish or to protect society; remember, the defendant is still presumed innocent
 - bail amounts can be based on:
 - flight risk
 - seriousness of the charge
 - ties to the community
- No cruel and unusual punishment; this includes:
 - excessive sentences
 - cruel punishments
 - punishments for actions a person could not control
 - punishing a protected group (gender, age, race, disabilities, etc.)

Statutory Interpretation



- Criminal Statutes are often broadly worded and require the courts to interpret them;
- Factors that can be involved in statutory interpretation:
 - General usage of the words involved
 - Changing public perceptions of morality and wrongfulness (?)
- McBoyle v. United States, 283 U.S. 25 (1931)
- Smith v. United States, 508 U.S. 223 (1993)
- The doctrine of *lenity*:
 - If a criminal law statute is ambiguous, it must then be interpreted in favor of the defendant
- **“Void for vagueness” doctrine**: If a criminal statute is unclear as to which acts constitute the crime proscribed by the statute, the law is void (often applicable to freedom of speech cases).