

# CRIMINAL LAW OUTLINE

## BUILDING BLOCKS

### I. WHY WE PUNISH:

#### A. Punishment:

1. Restricts freedom of action and movement
2. Condemnation at the root of punishment

#### B. Greenwalt's Characteristics of Punishment:

1. Performed by and directed at, agents who are responsible in some sense.
  - a. People are subjects of punishment.
2. Involves "designedly" harmful or unpleasant consequences
3. Unpleasant consequences are usually preceded by condemnation and people is blamed for committing a wrong
4. It is imposed by someone who has the authority to punish
5. It is imposed as the result of one breaking an established rule of behavior
6. It is imposed on the "actual or supposed" violator of the rule of behavior.
  - a. If condemnation is at the core of punishment, publicly exonerating individual if they are later proven to be not-guilty is a form of restitution.

#### C. Civil Commitment v. Incarceration:

1. Civil commitment is not a form of punishment – you hold the key to your own jail cell – confining someone to get them to do something, but are not punishing them.
  - a. Ex: Confining sexual predators – may be released when they are no longer a threat to society or confining people who are drunk in public – may be released after they sober up.

#### D. Theories of Punishment:

##### 1. Retributivism:

- a. Backward looking: Looks to the past to determine whether person should be punished.
- b. Based on notion that people who commit crimes deserve to be punished
- c. Grounded in notion of moral desert
  - (i) Person is morally blameworthy
- d. Vengeance

##### 2. Utilitarianism:

- a. Forward looking: Concerned with broader benefits derived by society from imposition of punishment.
- b. Looks at what society as a whole gains when we punish people
  - (i) Punish people if punishment confers benefits on society
  - (ii) General Principle: Involves the greatest good for the greatest number of people
- c. Benefits society might derive from punishment:
  - (1) Deterrence:
    - i. General: Deter people generally from committing the crime resulting in punishment.
    - ii. Individual: Deter the specific individual from committing crime again
  - (2) Incapacitation:
    - i. If person is locked up, they cannot hurt society
  - (3) Reform/Rehabilitation:
    - i. If we reform individual, society will be safer because they will no longer commit such harms against society.

##### 3. Why are these theories important?

- a. Justification of punishment
- b. Figure out who we punish and to what extent do we punish them
  - (i) **Queen v. Dudley and Stephens:**
    - (a) Facts: Castaways kill and eat young boy for survival
    - (b) Holding: Castaways found guilty of murder and punished

# Criminal Law Emanuel Law Outline

**Hussin A.Rothana**



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