

LESSON 1

DEFINITION OF CRIMINAL LAW

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Criminal Law I AR

DEFINITION OF CRIMINAL LAW

Abbreviations used

CrimC – Criminal Code

SConst/Const- Spanish Constitution 1978

ConstC- Constitutional Court

ECtHR- European Court of Human Rights

ECHR- European Convention on Human Rights

TFEU- Treaty on the Functioning of the European Union

DEFINITION OF CRIMINAL LAW

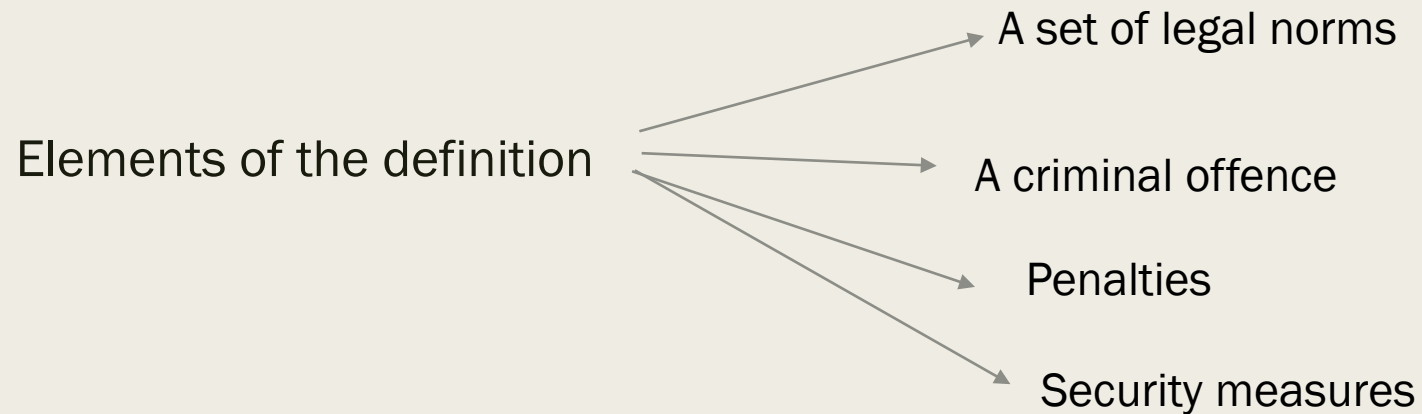
SUMMARY

1. DEFINITION OF CRIMINAL LAW
2. THE CONCEPT AND STRUCTURE OF A CRIMINAL NORM
3. THE ROLE OF CRIMINAL LAW: THEORIES JUSTIFYING PUNISHMENT AND THEIR IMPLEMENTATION IN SPANISH CRIMINAL LAW.
4. CRIMINAL LAW IN FORCE IN SPAIN

DEFINITION OF CRIMINAL LAW

1) Definition of Criminal Law

- Criminal Law: a set of legal norms in a legal system that defines some human acts as crimes (or criminal offences) and attaches legal consequences to them consisting of penalties and security measures.



DEFINITION OF CRIMINAL LAW

1) Definition of Criminal Law

- **Criminal Offence:** A crime or criminal offence is a human act defined in a statute as a Criminal Wrongdoing that harms or endangers a legally protected interest with intention (*dolo*), or at least negligence (*imprudencia*) and is not justified, excused or excluded from punishment by the Law.

DEFINITION OF CRIMINAL LAW

1) Definition of Criminal Law

- A **Criminal Sanction** is a punishment that is administered to an offender in accordance with the law and that deprives the convicted person of civil rights or liberties and economic assets and is imposed as the legal consequence of a crime.

DEFINITION OF CRIMINAL LAW

1) Definition of Criminal Law

- **A Security Measure** is a measure imposed as a legal consequence of acts showing criminal dangerousness that, by endangering or harming a protected interest in a way that constitutes a wrongdoing defined by the Law, is performed by an offender who is not criminally accountable. This legal consequence is not intended as a punishment but as a means for preventing the criminally dangerous person from creating danger to a legally protected interest.

DEFINITION OF CRIMINAL LAW

1) Definition of Criminal Law

Differences between Criminal Law and other branches of law:

- Other branches of Law allow citizens to use the Law to achieve their own goals (e.g. Civil or Commercial Law).
- Criminal Law **prohibits or orders citizens to act by directing their behaviour** by threatening them with punishment, punishing them when they engage in unlawful behaviour, or imposing security measures that neutralise those who are not held accountable.

DEFINITION OF CRIMINAL LAW

1) DEFINITION OF CRIMINAL LAW

Criminal Law is a highly formalised source of social control (compared to other sources of social control):

- it is the only source of social control that exclusively applies punishments (and the heaviest punishments are imposed for the most harmful actions).
- it is controlled entirely by the State in accordance with standardised procedures.

DEFINITION OF CRIMINAL LAW

1) Definition of Criminal Law

The ultimate functions of Criminal Law as a source of social control are to:

- protect citizens from serious aggressions by other members of society (Hobbes, *Leviathan*) by regulating and limiting social violence (inhibiting informal responses), and
- **restrain violence from the State itself** (this is the only feature that distinguishes modern Criminal Law from other sources of social control) while providing a proportionate response to criminal offences, e.g., the progressive abolishment of capital punishment.

DEFINITION OF CRIMINAL LAW

1) Definition of Criminal Law

Distinctions between Criminal Law and:

- **Administrative sanctions:** administrative sanctions are intended to punish actions that are considered socially harmful; they differ from criminal law sanctions in the seriousness of their penalties (according to art. 25.3 of the Spanish Constitution, the government cannot impose custodial sentences for these offences), though sometimes it is difficult to distinguish between the two.

- **Civil Law and, in particular, the Law of Torts:** Criminal Law in Spain also covers civil liability but this is only an incidental and historical question arising from the process of codification in Spain (when the 1848 Spanish Criminal Code was enacted there was neither a Civil Code nor a Civil Procedure Act, and civil liability was included therein):

DEFINITION OF CRIMINAL LAW

1) Definition of Criminal Law

We need to distinguish between:

- **Criminal Law in an objective sense:** *corpus legis*, i.e., a set of norms or a branch of the Law.
- **Criminal Law in a subjective sense:** *Ius Puniendi*, i.e. the Power of the State to impose penalties, which is limited by fundamental principles inherent to Modern Criminal Law.

DEFINITION OF CRIMINAL LAW

2) The Concept and Structure of a Criminal Norm.

- Common understanding identifies the norm with the linguistic provision of any legal text (e.g., an organic act, act, decree, legal order, etc.).
- Instead, texts approved by the legislature and governments in their regulatory power are a set of “linguistic expressions” (e.g., the Spanish Criminal Code, approved by Organic Act 10/1995, and its successive reforms): the "raw material" from which our norms are construed.
- **Norms** are the meaning of the linguistic expressions construed through legal reasoning based on the exact wording of the statutes in a process known as interpretation. **Norms are what we apply, not the linguistic expressions of statutes.**

DEFINITION OF CRIMINAL LAW

2) The Concept and Structure of a Criminal Norm.

Example of linguistic expressions: Art. 138 CrimC.

“1. El que matare a otro será castigado, como reo de homicidio, con la pena de prisión de diez a quince años”.

“1. Whoever kills another shall be convicted of homicide, punishable with a prison sentence of ten to fifteen years”.

Example of norms (a.k.a. meaning propositions) extracted from Art. 138 CrimC:

Meaning 1: “Whoever kills another human being shall be convicted of homicide”.

Meaning 2: “Whoever kills another human being or great ape shall be convicted of homicide”.

Meaning 3: “Whoever kills another human being (not including some groups of people as human beings) shall be convicted of homicide”.

DEFINITION OF CRIMINAL LAW

2) The Concept and Structure of a Criminal Norm.

Basic criteria in the process of interpretation:

(1) semantic or lexical meaning alternatives,

(2) legally possible alternatives, and

(3) contextually possible meanings.

DEFINITION OF CRIMINAL LAW

2) The Concept and Structure of a Criminal Norm.

(1) **semantic or lexical meaning alternatives** are those construed from the possible meaning attached to the wording of the linguistic expression that it is conditioned by its social use and valuation.

Example: if the linguistic expression refers to “human being”, “human being” cannot denote the physical object “chair” because there is no semantic connexion with it nor any social use that makes this meaning compatible with the linguistic expression.

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2) The Concept and Structure of a Criminal Norm.

(2) **legally possible alternatives:** the proposed meanings, in addition to being construed from the wording of the linguistic expression, should be legally compatible with the statute and the entire legal system.

Examples:

- *If Art. 138 CrimC is construed to exclude a minority from the concept of "human being", this proposed meaning would not be legally possible since it contradicts Art. 14 of the Spanish Constitution.*
- *Some criminal legal definitions, even if they are formulated as positive actions (e.g. Art. 138 CrimC) can also be committed by omission because Art. 11 CrimC states the duty to prevent harm to legally protected interests in certain cases.*
- *Some criminal legal definitions should necessarily be created by joint interpretation with legislation outside criminal law. This is the case, for example, with "blank criminal statutes" when there is a reference to legislation outside the criminal branch, e.g., Art. 325 CrimC or Art. 305 CrimC.*

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2) The Concept and Structure of a Criminal Norm.

- (3) **contextually possible meanings:** sometimes more than one meaning proposition or norm can be deduced or extracted from the (semantically and legally valid) linguistic expression and the judge or a legal operator should decide which is to be applied. In such cases, the soundness of the legal reasoning supporting a particular interpretation is the only rationale for choosing one over the others.

Example: Until 2007, the Spanish Supreme Court construed article 74.2 CrimC (offences against property committed at the same time or with the same criminal intent (*delito continuado en delitos contra la propiedad*) in such a way that it was only necessary to add up the economic amount of the different offences committed and then punish the offender according to the whole economic amount. Sometimes, as a result of this addition, a heavier penalty was awarded: for example, when the addition of the fraud (*estafa*) was over 50,000 €, it was punished as aggravated fraud (*estafa agravada*).

Since 2007 the Spanish Supreme Court has deemed this solution incorrect. The reasoning behind this change was that it implied punishing a single offence with a greater financial damage in the same way as many offences for the same or lesser amounts. With the previous solution, the disvalue arising from the result was evaluated but little consideration was given to the disvalue from acts that, in this case, were more important as there were multiple offences. In accordance with the new interpretation, since 2007 (also in crimes against property) if the addition of the economic damage does not involve an aggravated offence, it is necessary to apply not only art. 74.2, but also art. 74.1 CrimC.

Since both the first and the second solution are semantically and legally possible, the Court can choose either of them.

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2) The Concept and Structure of a Criminal Norm.

Corollary: Since norms are the result of interpretation, **they can also be changed by interpretation without any change in the linguistic expression**, i.e., without any change in the statutes. **This also means that case law can change the law**, which has consequences for the principle of legality and, in particular, for prohibition of the retroactive application of criminal norms.

ECtHR Judgments: THE CASE OF DEL RIO PRADA v. SPAIN 10 July 2012 (Third Section) and THE CASE OF DEL RIO PRADA v. SPAIN (Grand Chamber) 21 October 2013.

DEFINITION OF CRIMINAL LAW

2) The Concept and Structure of a Criminal Norm.

Types of criminal norms: legal norms can be divided into subgroups depending on their deontic qualifications, as follows:

1. prescriptions, including commands, prohibitions and permissions,
2. norms of competence, and
3. legal definitions.

DEFINITION OF CRIMINAL LAW

2) The Concept and Structure of a Criminal Norm.

Our Criminal Code contains, at least, prescriptions and legal definitions.

1. Prescriptions:

Art. 138 CrimC

“1. Whoever kills another shall be convicted of homicide, punishable with a prison sentence of ten to fifteen years.

3. Legal definitions:

Art. 24 CrimC

“1. For criminal purposes, status of authority shall be deemed to be held by persons who, alone, or as a member of any corporation, board or collegiate body, have a commanding post or exercise jurisdiction pertaining thereto. In all cases, members of the Congress of Deputies, of the Senate, of the Legislative Assemblies of the Autonomous Communities and the European Parliament shall be deemed authorities. The officers of the Public Prosecutor’s Office shall also be deemed authorities.

2. Civil servant status shall also be deemed to be held by all those who, by immediate provision of the Law, or by election or appointment by an authority with relevant powers, participate in the exercise of public duties”.

DEFINITION OF CRIMINAL LAW

2) The Concept and Structure of a Criminal Norm.

Structure of the Criminal Norm:

If we examine carefully, for example, Art. 138 CrimC, we see that in fact it is a prescription directed not at the citizen but at the Courts.

However, as we have already seen, more than one norm or meaning can be derived from a linguistic expression. By attaching a penalty to a human act, the legislator is in fact prohibiting the killing of another human being and at the same time instructing the courts to impose a penalty for the violation of this prohibition.

This is what we call a **primary norm** and a **secondary norm**: the **primary norm is directed at the citizen** and imposes an action, i.e., a command, prohibition or permission (in the case, for example, of justifications) under the threat of incurring a criminal sanction, while **the secondary norm is directed at the courts to impose a penalty when the prescription directed at the citizen is infringed**.

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2) The Concept and Structure of a Criminal Norm.

Structure of the Criminal Norm:

A criminal norm is, at the same time, **one that directs the behaviour** (*norma subjetiva de determinación*) and **one that assesses the behaviour** (*norma de valoración*) of the citizens while providing them with fair warning of the consequences of their actions and the reason why these consequences would be attached to them.

DEFINITION OF CRIMINAL LAW

3) The role of criminal law: theories justifying punishment and their implementation in Spanish criminal law.

A. What is criminal punishment?

There is no legal definition of criminal punishment even though there is a catalogue of penalties and their definitions (art. 33 *passim* CrimC) and some negative delimitation of what should not be considered criminal penalties in art. 34 CrimC.

There is therefore a problem with delineating what a criminal punishment should be because some penalties have the same content as sanctions from other branches of the law.

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3) The role of criminal law: theories justifying punishment and their implementation in Spanish criminal law.

A. What is criminal punishment?

Hart (H. L. A. Hart, *Punishment and Responsibility* 4–5 (1968)) proposed concurring criteria to distinguish between punishment and other sanctions:

[1] Punishment must involve pain or other consequences that are normally considered unpleasant.

[2] It must be for an offence against legal rules.

[3] It must be imposed on an actual or supposed offender for their offence.

[4] It must be intentionally administered by human beings other than the offender.

[5] It must be imposed and administered by an authority constituted by a legal system against which the offence is committed.

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3) The role of criminal law: theories justifying punishment and their implementation in Spanish criminal law.

A. What is criminal punishment?

These criteria are not enough to distinguish between criminal punishment and sanctions such as administrative penalties.

Because of what is stated in Art. 25.3 Spanish Constitution, the only clear distinction in Spain between criminal punishment and administrative sanctions is imprisonment:

"3. The Civil Administration may not impose penalties which directly or indirectly imply deprivation of freedom".

We should therefore be careful when applying administrative sanctions and punishments because we could be committing non bis in idem.

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3) The role of criminal law: theories justifying punishment and their implementation in Spanish criminal law.

B. The rationale behind punishment.

The diverse rationales of punishment fall into two groups that should be clearly distinguished:

a) Absolute or Retributive Theories: “quia peccatum est”, and

b) Consequentialist Theories or Theories of General Deterrence: “ne peccetur”.

A third category that is a mix of these two rationales also exists:

c) Union Theories

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3) The role of criminal law: theories justifying punishment and their implementation in Spanish criminal law.

B. The rationale for punishment.

a) Absolute or Retributive Theories: “quia peccatum est”

- Restoring justice is the rationale for these theories. Punishment is backward-looking and is justified by the offence committed as compensation for the harm caused by the wrongdoing.
- Common to ancient notions of justice, such as *lex talionis* (“an eye for an eye, a tooth for a tooth”), it entails paying the offender back for evil with evil in accordance with absolute theories.
- Retribution has an important connection with proportionality as there should be reasonable correspondence between the crime and the punishment and it puts the spotlight on desert.
 - Kant: Retribution is understood as *lex talionis*, conceives punishment as necessary for obtaining justice, and is an end in itself. The dignity of the human being prevents seeking different aims from mere justice (*Die Metaphysik der Sitten*).
 - Hegel understood that criminal punishment has the role of restoring concordance between the individual will of the offender and the general will that is embedded in the legal system and is infringed by the offence. Every criminal offence involves an individual that challenges the general will, and punishment should settle the situation. Man is not a dog who should be threatened with a stick (*Grundlinien der Philosophie des Rechts*).

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment.

a) Absolute or Retributive Theories: “quia peccatum est”

CRITICISM

- As Filangieri clearly stated (*Scienza della Legislazione*), paying for a wrong with another wrong is useless by itself.
- Formulations of *lex talionis* (e.g., Kant) are contrary to the idea of restricting the violence of the State.

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment

b) Consequentialist Theories or Theories of General Deterrence: “*ne peccetur*”

- All these theories justify legal punishment as being beneficial for the prevention of crime. These theoretical approaches are forward-looking since justification for the punishment is built upon their expected future consequences.

1. General deterrence (*Prevención general*).

1.1. Negative general deterrence (*Prevención general negativa*)

1.2. Positive general deterrence (*Prevención general positiva*)

2. Special deterrence (*Prevención especial*)

2.1. Negative special deterrence

2.2. Rehabilitation or reform, which is also called positive special deterrence.

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment

1. General deterrence (*Prevención general*).

1.1. Negative general deterrence (*Prevención general negativa*)

- According to these theories, legal punishment seeks to deter the entire community or at least a significant part thereof (the potential offenders) from committing a crime via both the threat posed to the potential offender by the criminal norm and the execution of the punishment. This is based on the idea of a rational person who could act in accordance with prior warning of the criminal norm (e.g., Feuerbach's theory of "psychological coercion").
- Other scholars who sustained this theory with similar views about deterrence are Beccaria (*Dei Delitti e delle pene*), Filangieri (*Scienza della legislazione*) and Bentham (*An Introduction to the Principles of Morals and Legislation*).
- The aim of negative general deterrence is, in fact, to hinder the commission of offences in a way that is empirically verifiable.

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

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b) Consequentialist Theories or Theories of General Deterrence: “*ne peccetur*”

1.2. Positive general deterrence (*Prevención general positiva*)

- There are different approaches with different nuances but the idea common to all approaches is that punishment grants citizens trust in the Law since every time a crime is committed the offender is issued a penalty, thus confirming the force of the law and helping the citizen in the recognition and internalization of the law.
- This a normative theory (i.e., there is no need for empirical confirmation) that is in line with the idea of Criminal Law as an instance of social control. It is the most widely held view, which is why it has numerous formulations from *Positive Generalprävention* (Hassemer) to *Integrationsprävention* (Jakobs).
- An example in Spanish Criminal Law is Art. 89.1 CrimC.

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment.

b) Consequentialist Theories or Theories of General Deterrence: “*ne peccetur*”

2. Special deterrence (*Prevención especial*)

- Unlike general deterrence theories, potential offenders are not the focus of attention from this perspective. On the contrary, specific prevention theories concentrate on the individual who has already infringed the law. Punishment should be imposed to prevent the same person from committing future offences.

2.1. Negative special deterrence (*Prevención especial negativa*)

- The commission of an offence implies the possibility of re-offences. By committing an offence individuals show their criminal dangerousness, so action needs to be taken against them to prevent them from repeating the offence.
- These approaches boomed at the end of the 19th century as they were promoted by the sociological school led by von Liszt, the Italian Scuola Positiva of Ferri and Lombroso, and the Spanish Correctionalist School of Dorado Montero.
- Incapacitation/rendering innocuous (von Liszt, *Die Zweckgedanke im Strafrecht*): punishment should make inoffensive (innocuous) those who are neither correctable (uncorrectable offenders) nor prone to intimidation (habitual offenders). These kinds of delinquents are punished in order to physically prevent them from committing another offence while they are serving their sentences.

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

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b) Consequentialist Theories or Theories of General Deterrence: “ne peccetur”

2.2. Rehabilitation or reform, also called positive special deterrence.

- Rehabilitation theories sustain that by treating convicted offenders during their incarceration, they will be cured of the impulse to engage in criminal activity.
- Imprisonment should go hand in hand with treatment in order to enable rehabilitation or reform.
- In the wording of the Spanish Minor Criminal Liability Act, rehabilitation through education is the sole rationale of Minor Criminal Law (*Derecho penal de menores*). However, the Spanish Constitutional Court has a different opinion that is expressed in Judgement ConstC n° 160/2012, 20 September 2012 (§§ 4 and 5).

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment.

b) Consequentialist Theories or Theories of General Deterrence: “*ne peccetur*”

COMMON CRITICISM OF GENERAL DETERRENCE

- If deterrence should be the rationale of criminal law, proportionality should not be an issue. If we know for certain that by applying capital punishment to all offences we will eliminate criminal behaviour, why not implement it not only for serious crime but for every offence?

COMMON CRITICISM OF NEGATIVE GENERAL DETERRENCE

- Although negative general deterrence is intended to be empirically verifiable, there is little evidence to support its efficacy.

- Citizens' knowledge of the criminal norm comes not from the criminal norm itself but from a less detailed account of it that forms the basis for attributing blame and excludes mistakes of law: criminal norm is not the immediate basis for deterrence but is communicated by mass media and social interaction.

- The ability of criminal law to deter the commission of offences is dubious in some cases, e.g., violent offences, which are mostly impulsive actions with no deliberation or calculation.

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment.

b) Consequentialist Theories or Theories of General Deterrence: “*ne peccetur*”

CRITICISM OF POSITIVE GENERAL DETERRENCE

- Its suitability as an autonomous theory able to provide a foundation for imposing a penalty on the offender is tenuous: confirmation of the validity and effectiveness of the infringed rule should just be seen as an additional effect caused by the punishment once it has been imposed.
- There is a confirmed familiar air (e.g., by German scholar Günther Jakobs) between this conception and that supported by Hegel, although Hegel dismissed the notion of the deterrent effect of punishment for being contrary to human dignity.

CRITICISM OF NEGATIVE SPECIAL PREVENTION

- Incapacitation is contrary to rehabilitation and reform and is therefore also incompatible with both the rehabilitation mandate of the Constitution (Art. 25.3 Spanish Constitution) and human dignity (as in the case of life imprisonment with no hope of release).
- Repeat offenders are likely to be in a socially or personally precarious situation that probably renders them not blameworthy, an issue that is not considered in traditional accounts of the theory.

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3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment.

b) Consequentialist Theories or Theories of General Deterrence: “*ne peccetur*”

CRITICISM OF POSITIVE SPECIAL DETERRENCE

- Problems with rehabilitation and reform arise since these address punishment as treatment. These problems are more insidious in cases where treatment is seen as something good *per se* and it is therefore not so important if the offence is committed or not, e.g., in cases where Minor Criminal Law has been incorrectly applied in Spain.
- The focus on danger can blur the limits for applying, for example, imprisonment: no intrinsic limits are provided with regard to extension of the penalty since the offender should be punished if reinsertion has not been achieved.
- Extremely serious offences go unpunished when the offenders present no risk of reiterating them.
- The State lacks legitimacy for imposing a treatment on the offender to make them fit the prevalent social pattern (art. 10.1 Spanish Constitution), which may be relevant in some offences, e.g., those related to freedom of speech.
- The failure of treatment to prevent convicted offenders (mainly those who have served long periods of incarceration) from re-engaging in the criminal conduct and facilitate their social reintegration delegitimises Criminal Justice.

DEFINITION OF CRIMINAL LAW

3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment

c) Union Theories:

- These theories attempt to overcome the disadvantages of absolute and preventive theories by combining their approaches – not by combining their elements since they are opposed to each other. On the contrary, contradictions between them must be unravelled by choosing the “right” approach to each specific issue.
- E.g., Roxin eclectic theory:
 - The “legislative threat of punishment” stage aims at general deterrence. For example, the ranking of penalties for rape in the CrimC.
 - Retribution and positive general prevention play a hugely important role at the stage of conviction, i.e., when the offender is before the judge. Specific prevention is not excluded, however, so the need for treatment aimed at preventing future offences is also taken into account to determine the duration of the imprisonment to be imposed. Utility, not retribution, is considered to provide punishment with a basis. Therefore, an unnecessary punishment should not be imposed even when it is fair or deserved. Nevertheless, the agent’s desert is seen as a limit of utility.
 - Rehabilitation and reform prevail at the execution and administration stage of punishment, e.g., when early release is applied in cases where treatment is successful.

DEFINITION OF CRIMINAL LAW

3) The role of criminal law: theories justifying punishment and its implementation in Spanish criminal law.

B. The rationale of punishment in Spanish Criminal Law.

- Article 25.2 of the Spanish Constitution states that:

“Punishments entailing imprisonment and security measures shall be aimed at rehabilitation and social reintegration and may not consist of forced labour. The person sentenced to prison shall enjoy during the imprisonment the fundamental rights contained in this Chapter except those expressly limited by the terms of the sentence, the purpose of the punishment and the penal law. In any case, he shall be entitled to paid employment and to the appropriate Social Security benefits, as well as to access to cultural opportunities and the overall development of his or her personality”.

- This statement does not mean that special deterrence is the only Constitution-abiding goal of penalties and security measures:

- a) Art. 25.2 refers only to penalties entailing imprisonment.

- b) It relates exclusively to the serving period for these penalties.

- c) The Spanish Constitutional Court came to the same conclusion in several judgements, including: 19/1988, of 16 February; 150/1991, of 4 July; 119/1996, of 8 July; 91/2000, of 30 March; and 196/2006, of 3 July.

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B. The rationale of punishment in Spanish Criminal Law.

- Judgment 150/1991, of 4 July states:

“The Spanish Constitution does not set up specific prevention as the only purpose of criminal punishment; on the contrary, article 25.2 does not stand out against other purposes, such as general prevention, as also legitimate aims of the penalty ... Art. 25.2 Const does not make any final decision regarding the degree of suitability of the possible purposes of the penalty to the value system of the Constitution, but merely sets out a mandate for both the penitentiary legislator and the Administration created by him/her in order to guide the enforcement of imprisonment sentences (...), it does not proclaim that re-education and social reinsertion are the sole legitimate purposes of custodial penalties”.

DEFINITION OF CRIMINAL LAW

4) Criminal law in force in Spain

1. There is almost perfect correlation between Constitutions and Criminal Codes in our historic legislation and also between our turbulent 19th- and 20th-century legislation, liberal "small revolutions", and the enactment of Criminal Codes:

- 1812 Constitution 1822 Criminal Code
- 1837 Constitution
- 1845 Constitution 1848 Criminal Code (amended 1850)
- 1869 Constitution (I Republic) 1870 Criminal Code (this was intended to be provisional but in fact formed the basis for our Criminal Codes until the enactment of the 1995 CrimC)
- 1876 Constitution (Restoration)
- Primo de Rivera Dictatorship 1928 Criminal Code
- 1931 Constitution (II Republic) 1932 Criminal Code
- Franco Dictatorship 1944 Criminal Code
- " " 1973 Consolidated Criminal Code
- 1978 Constitution Law Reforms of 1983 and 1989, which amended the 1973 Criminal Code

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4) Criminal law in force in Spain

2. 1995 Spanish Criminal Code and its Law Reforms:

- The Spanish Civil Code was enacted in 1995 with the intention to be "the Criminal Code of Democracy".
- It involves a rearrangement of the order of the Criminal Code, creates a rank of legally protected interests, and thus begins with offences against life.
- Negligence can be punished only when specifically authorised by a legal definition.
- It contains a legal definition of commission by omission.
- Only post-criminal security measures are allowed.
- Extensive Law Reforms were introduced in 2003, 2010 and 2015. It is now also being extensively reformed in various aspects (e.g., the statutory limitation of sexual offences against minors (Infancy and Adolescence Integral Protection Act 2021; recidivism in minor offences of theft, 2022; sexual offences, 2022; the definition of less serious negligence, 2022; the derogation of sedition, the reform of the law on embezzlement of public funds, 2022; crimes against animals, 2023; sexual offences, 2023).

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