



Criminal Law LAW1110  
Semester 1 2021-22

## NATURE AND FUNCTIONS OF THE CRIMINAL LAW

The criminal law in its basic sense is based upon:

- a) a body of rules;
- b) identification of the ingredients within;
- c) specification of the punishment as a result of a breach of those rules.

Its function can be shown in three distinct areas which make up their respective areas of criminological theory.

1. to define and identify the sorts of conduct which should be criminalised;
2. to reduce crime by enforcement and punishment;
3. to identify who should/should not be punished and what level of punishment should be applied

### To define and identify the sorts of conduct which should be criminalised;

The definition of what criminal activity is tough. On the surface, to ask "what is a crime?" seems to warrant a straightforward answer in that one can simply suggest that "crime is something that is against the law." However this does not aid our understanding to any significant amount. We need to assess the purpose of the criminal law. Padfield outlines the following ideas:

- to enforce moral values;
- to punish those who deserve punishment;
- to protect the public from harm;
- to reform the offender;
- to deter offenders and potential offenders;
- to educate people about appropriate conduct and behavior;
- to preserve order;
- to protect those who are vulnerable from exploitation and corruption;

The British parliament however went further and incorporated in statute:

Criminal Justice Act 2003:

- (1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing:
  - a. The punishment of offenders,
  - b. The reduction of crime (including by deterrence),
  - c. The reform and rehabilitation of offenders,
  - d. The protection of the public, and
  - e. The making of reparation by offenders to persons affected by their offences.

In order therefore to apply the purposes of criminal law, the concept of criminalisation needs to be reviewed.

# Nature Of Criminal Law

**E Durkheim**



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