

Week 12 notes

Criminalisation- Normative theories: Tying it all together

pp. 61-76

2.2 Normative theories of criminalization

- developing a normative theory of criminalization → legal conditions that ought to apply before particular forms of behavior that should be criminalized
- Lord Williams of Mostyn: principles of criminalization: offence must be absolutely necessary; serious behavior; existing legislation/remedies inadequate; enforceable in practice, offence tightly drawn, legally sound; penalty commensurate w/ seriousness

A Ashworth, "Is the criminal law a lost cause?" (200) 116 LQR 116 at 225-6	<ul style="list-style-type: none"> • 39 new crimes created= inconsistent • mala prohibita offences; weren't particularly serious wrong doings, strict liability offences • omissions liability should be last resort • rhetoric vs reality? – judges vs parliament • lost cause from a point of view of principles;
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2.2.1 Ashworth on principles

A Ashworth, "Is the criminal law a lost cause?" (2000) 116 LQR 225 at 225-6	<ul style="list-style-type: none"> • Principled core of criminalization boundaries b/en criminal & regulatory and criminal & civil • 1) The criminal law is a lost cause- govt often takes the view that the creation of a new crime sends out a message that may "get them off the hook"- Lord Williams new offences criteria • 2) The core consists 4 principles- identifying principled core of criminal law: <ul style="list-style-type: none"> - <i>Principle that the crim law should only be used to censure persons for substantial wrongdoing: prevention of conduct is criminalizing it if serious wrongdoing;</i> - <i>Principle that crim laws should be enforced w/ respect for equal treatment and proportionality</i> - <i>Principle that persons accused of substantial wrongdoing ought to be afforded the protections appropriate to those charged with crim offences, ie at least the minimum protections declared by Articles 6.2 & 6.3 of the Eu Convention on Human Rights</i> - <i>Principle that maximum sentences and effective sentence levels should be proportionate to the seriousness of the wrongdoing</i> - Minor wrongs + strict liability offences
A Ashworth and J Horder, <i>Principles of</i>	<ul style="list-style-type: none"> • Crim law system may be justified as a mechanism for the preservation of social order; govts must be able to

<p><i>Criminal Law</i> (7th ed, 2013) 22-3, 31, 39-40</p>	<p>justify the punishments; right not to be punished; no objective benchmark of criminality</p> <ul style="list-style-type: none"> • Criminalisation- declaring public wrong; punishment for it for deterrence; censure those who nevertheless do it; • Minimalist approach: crim law and its relationship to the principles of autonomy and welfare & other forms of social control; 4 main components: <ul style="list-style-type: none"> - Principle of respect for human rights - Right not to be subjected to state punishment - Principle that crim law shouldn't be invoked unless other techniques are inappropriate - Principle that conduct shouldn't be criminalized if the effects of doing so would be as bad as, or worse than, not doing so
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