

Why is Criminal Law necessary?

I. Deterrence

- Aim of general deterrence
 - “Punishing wrongdoers helps to deter other, potential wrongdoers.” p. 136
- Special deterrence
 - “The fact of punishment, combined with the prospects of having to undergo it again, can create an incentive for a past wrongdoer to toe the line in the future.” p. 137

II. Revenge

- Orderly method of satisfying natural desires that persons feel when they, or those with whom they identify, are victimized by wrongful acts of others.

Criminal Law & the Rule of Law

I. Conflicting Objectives

- Altman considers each approach to somehow violate the rule of law.
 - The utilitarian approach, “entails the morally unacceptable notion that innocent persons should sometimes be deliberately punished by authorities.” p.137
 - In regards to the retributionist theory, “If moral blameworthiness is the justification for having a system of criminal punishment, then it is unclear why we should refrain from punishing persons who are sufficiently blameworthy, even if we know they have not violated any existing criminal law.” p.144
 - In regards to the therapeutic model, “The model would seriously damage the rule of law in that it would give virtually uncontrolled discretion to psychological experts over the liberty and lives of offenders” p.146

II. Hierarchy of importance

- Each of these criticisms should be easily accounted for by establishing that the rule of law is dominant above all other aspects of the law.

Problems with the Criticisms as outlined by Altman

I. The idea of deterrence is not exclusive to Utilitarianism.

- The utilitarian approach to criminal law does not escape the scope of the rule of law. Because using a utilitarian approach doesn’t actually usurp the rule of law with actual utilitarianism it cannot wrongfully punish innocent persons in an attempt to conform to the greatest happiness principle.

II. Moral blameworthiness is also not intended as a substitute for the rule of law. The retributionist theory may also be considered an explanation for criminal law *within* the context of the rule of law.

III. The control that psychological experts would hold over prisoners in the therapeutic model is no greater than that held by any other system of incarceration.