

## **Criminal Law and Individual Liberty**

### **1. Which is more important individual liberty or protecting society?**

- Mill's Harm Principle says that the only legitimate reason for society to restrict the liberty of one of its members is to prevent him from harming the interests of others.
- the harm principle implies that society may not legitimately use criminal law to restrict activities that do not directly harm others.
- Then what about marijuana? Is it right for the government to tell someone they can't smoke a joint in the confines of their home? Sex? Abortion?

### **2. Paternalism vs. Moralism**

- Paternalism is the practice of restricting an individual's liberty for his or her own good. The state becomes a guardian for a person. This also gets at the question of can government control an individual's life? Should the state take custody of Terry Schiavo?
- Moralism is the practice of punishing individuals for their immoral conduct regardless of whether the conduct harm or victimizes any other specific person. Should the government be in the bedroom? What does a society based on moralism have to say about Griswold?
- Individuals are best equipped to make the personal choices that affect their daily lives. A society that accepts moralism or paternalism would violate a person's individual liberty. In a non paternalistic society then individuals will be free to make their own choice through the development of their higher intellectual and emotional faculties.

### **3. Criticisms of Mill**

- Mill doesn't define harm.
- people don't know enough about some aspects of life to pursue their own good so therefore, paternalism is justified.
- Society's restriction on the purchase of medication. Does it justify paternalism?

### **4. Hart vs. Devlin Debate on Moralism**

- every society has its own moral code and the preservation of that code is essential to the well being of society. Nothing is off limits to criminal law.
- society has a moral code but change to that moral code is not bad.
- Devlin's view promotes intolerance and punishes morality.
- federal vs. state government and the role of legislating morality?