

# Critical thinking on criminal law

[Law](#), [Criminal Justice](#)



## **Module #3**

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According to Exum (2002), there is research evidence that will show that that alcohol causes an impairment on the ability of the drinker to understand the consequences of aggression. At the same time, some of the offenders who have been provoked can lead to anger that may increase the probability of aggressive response. In the study of the author of alcohol and aggression, it was shown that intoxication fosters violent behavior when participants were angered (Exum, 2002, p. 936). Towards the end of the study, it was revealed that alcohol and anger and enhances the violent decision making. The rational choice model is forceful throughout various states of mind that the explanatory power and its essential integrity had been sustained by all the participants in dissimilar trial circumstances. The rational choice theory is a combination of rational behavior and human capital resulting to a criminal activity. Based on this theory, it is perceived that offenders are engaged in a predictable behavior before crimes are committed. There is rationality as the offenders take into the cost-benefit analysis before they perform a particular crime by balancing the interests or the benefit that he is expected to achieve. Rational choice theory comprises of three elements: 1.) a reasoning criminal; 2.) a crime-specific emphasis; and 3.) analysis of crime and criminal events (Samaha, 2005). It has been said that this theory is beneficial for the offenders since the “ reasoning criminal element” can be used for the determination of their decisions are tainted with irrationality and pathology (Samaha, 2005). As a result, the rational choice theory will provide the offender the chance to establish particular objectives that will allow them

to evaluate the best alternative method that can lead them to reaching their goals.

Based on the study of Exum (2002), it was revealed that alcohol and anger interacted to increase the aggressiveness of the participants, but the perceived costs and benefits of violence remained unaffected. Thus, it can be concluded that intoxication impairs the ability of the doer of the action to understand the consequences of the aggression.

Pursuant to the rational choice theory, the decision-making element is present in the offender that shall give such individual the ample opportunity to decide the crime that will be committed. This will give the offender to make a decision on the kind of crime that is sought to be achieved, which can be illustrated by the simple crime of theft or a more severe crime such as robbery. It is during the decision-making process wherein criminal involvement and criminal events require three important decisions namely: The decision to commit a crime; the decision to continue the crime; and finally, the decision to disengage in the commission of the crime. It can be concluded that prudent preparation and consideration of factors which may be personal or situational in nature should be taken by the offender before he or she arrives at a decision. Siegel (2008) argues that personal consideration may consist of various factors including money, vengeance and the pleasure one will receive when a particular crime was carried out successfully. On the other hand, situational factors comprises of target availability, police outcome and other security measures (Siegel, 2008). Therefore, such ability to make an intelligent decision is absent to individuals who suffer from intoxication and alcoholism since they are incapable of

rational thinking during such moment.

In conclusion, it can be said that the rational choice theory is applicable to all crimes since the offenders are given the freedom to choose whether to commit the crime or abstain from getting involved in the commission of crimes. Therefore, rational choice theory entails the use of intelligent thinking process in order to balance the consequences of one's actions which may result punishment when a particular crime was successfully committed. However, when the offender is intoxicated, his thinking process is impaired which incapacitates the person's ability to understand the consequences of aggression.

## **Response to Student#1**

I agree with the argument that all theories of crime can be considered at the same time as theories of crime prevention. Such being the case, there are many factors and theories that can influence the of crime deterrence which also include legal punishment. Deterrence can only take place when a person abstains not only in the performance of a crime but such person worries about the severity of legal punishment of the court. Deterrence focuses on the onerousness of the punishment and covers two types: General and specific deterrence. Samaha (2011, p. 491) stated that general deterrence can be considered as a crime control policy which is dependent on the fear of criminal penalties of the offender. In this case, prolonged prison sentence for violent crimes are aimed to convince the potential law violator that the suffering and pain associated with the offense shall outweigh the benefits. The principle of specific deterrence is the concept of punishing the offenders will have an effect on themselves where in the

offenders will feel the pain of punishment and will have lesser probability of reoffending in the future. To illustrate, general deterrence is an outcome of the society's perception on traffic laws that are currently being enforced and that the offender faces the risk of punishment in the event that such person shall be apprehended after violating the traffic laws. On the other hand, specific deterrence may be derived from the tangible encounters such as detection, arrest, prosecution, and punishment of the criminals. It is presumed that the work of the police enforcement is geared towards general deterrence with the intention to increase the risk of apprehension among the offenders (Samaha, 2011, p. 491).

It also bears stressing that the argument of Cullen & Agnew (2011) is meritorious in such a way that environmental criminology advocates the nature of criminal opportunities is controlled by the nature, extent and location of crime. I also agree that there are different elements which prevent the commission of crimes including social, spiritual, ecological and biological variables. This will affirm that rationale of opportunity theory which maintained that the prohibition of certain opportunities will carry a significant effect on the deterrence. It is views that one of the effective ways to prevent crime is the imposition of stricter penalties. The current wave of juvenile delinquents are engaged in property crimes will show that social factors affect the commission of crimes. The new juvenile justice system provides the sufficient care, protection and mental and physical development of juvenile delinquents and ensures their rehabilitation. In the event that the child's guilt shall be established, the penalty imposed will not be implemented in full force of the law after consideration of the minor's

inability to discern right from wrong. According to Corriero (2006), the level of accountability of youth offenders will be used as a defense for failure of the minors to fully comprehend the legal consequences of their actions. Thus, as part of the deterrence measure among juvenile delinquents, they must be enrolled in community corrections programs. The justification for the creation of these programs is to rehabilitate the youth and to prevent them from entering the adult criminal court and the court systems. The community-based programs can be considered as alternative measures with the intention to expose juvenile delinquents to an environment that is conducive for self-improvement.

## **Response to Student #2**

I agree with the statement on the rationale of deterrence theory wherein people are rational and pursue their own interests as they attempt to maximize their pleasure and minimize their pain (Cullen & Agnew, 2011). Hence, imposition of punishment is an efficient means to deter crimes. This is based on the principle of Classical Theory, wherein it is the duty of the people to make a rational choice and become aware of their accountability for their own actions. It was Jeremy Bentham who invented the “hedonic calculus” where total pain was measured together with the pleasure produced by the criminal act in order to compute the minimum deterrent to avoid a crime (Seiter, 2011). According to Siegal (2010), a severe, certain, and swift punishment will deter criminal behavior. In this theory, the purpose of punishment is regarded as deterrence for future crimes and that man is considered as a rational being with free will and capable of making his own decision. Hence, each person must be able to weigh the consequences an

unlawful action which is considered punishable under the law. The Classical Theory has influenced the American prison systems at present time. The second theory is the Positivist Theory which is focused on the scientific study of criminal authored by Cesare Lombroso in the 1800s. In this approach, the offender's criminal behavior is believed to have been caused by several factors such as his biological, psychological and social environment. In order to study the behavior of such person, scientific method should be applied to rehabilitate the offender and cure his pathologies. According to Lilly, Ball and Cullen (2011), the offender did not voluntarily choose to live a sinful soul by free choice, but rather was predetermined by his or her biological genetic make-up. The Positivist Theory guaranteed the rehabilitation of offenders in our present criminal justice system.

I believe in the statement that offenders can be prevented or deterred from committing crimes. These deterrable offenders are less likely to act on impulse and have the compassion and understanding of the suffering that they may endure if a crime has been committed. Thus, the purpose of the deterrence theory is for the community not to commit specific crimes because of they are afraid of the certainty, swiftness, and severity of formal legal punishment (Cullen and Agnew, 2011). Thus, the rational choice theory can be applied to all crimes since the offenders have the opportunity to choose whether to commit the crime or refrain in the commission of crimes to avoid punishment.

In conclusion, rational choice theory entails the use of intelligent thinking process in order to balance the consequences of ones actions which hold imposition of punishment when a particular crime was performed

successfully. Thus, any deviant or criminal behavior shall be the focus in analyzing the crime, which are traditionally perceived as relatively serious. It is believed that the best deterrence measure is to understand the criminal behavior of humans and by finding scientific treatment that will result in the rehabilitation and cure of the offender's pathologies.

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