

Lesson 3**You make the law****How do you deal with young offenders?**

Learning objective	To examine the question of whether young people who have broken the law should be punished at all, and if so, how.
Student tasks	To consider the different principles – retribution, deterrence, rehabilitation – that come into play when deciding what is a fair punishment for a crime committed by a young person.
Resources	A copy of the story and extra information for the teacher.
Method	Small group work and whole class discussion.

Conceptual learning: three basic principles on the purpose of punishment

While lesson 2 focused on civil law, this lesson will look at criminal law, focusing on the issue of whether or not to punish young offenders and if so, how to punish them. The basic question in the theory of punishment is, “why punish?”. This question has been answered in different ways throughout the course of history and changes in scientific and philosophical thinking. Three principles relating to the purpose of punishment have emerged.

1. **Retribution.** Punishment is related to guilt and responsibility. A criminal deserves to be punished, and society expresses its disapproval for the crime. This concept also provides a standard of proportion, thereby protecting the criminal from over-severe punishment. The objective is to restore justice.
2. **Deterrence.** The punishment sends a message to potential criminals in society, discouraging them from turning to crime, as the “pain” of punishment outweighs the benefit. The objective is to prevent crime by others.
3. **Rehabilitation.** A crime is perceived as a cry for help. The criminal needs treatment rather than punishment and the objective is to help him not to commit further crimes in the future by integrating him in society.

Penal systems around the world differ considerably in the way they balance these three principles, both for adults and young offenders. Generally speaking, many countries have given rehabilitation priority over the principles of retribution and deterrence. But not all countries are moving in this direction. Closely linked to the question of rehabilitation is the issue of where to draw the line between young and adult offenders. The Council of Europe has called for the age limit to be fixed at 18, and has referred to the Children’s Rights Convention of 1989 to justify this (see background information for teachers).

This lesson provides an introduction to the three key concepts of punishment outlined above. Once again, an inductive approach is applied. The students deal with a case study about a young offender and discover the different principles of punishment, their implications and the need for balance. The teacher may outline the concepts in a brief lecture during or after the discussion in class.

This lesson may open the door to a follow-up project that would require approximately two further lessons. The students could use the concepts they have learnt in this lesson to describe the balance that has been struck by the penal legislation for young offenders in their country.

The lesson

The teacher begins the lesson by dividing the students into groups of 4-6. The teacher explains that the rule of law includes the principle that judges should be bound by the law when imposing a penalty on a criminal or offender. In this lesson, the students will look at the way such laws should be designed when dealing with young offenders. They are going to hear a story about a crime and each group has to imagine that they are members of parliament who have to pass the law that lays down the punishment the criminal should receive.

The teacher tells the students the basic story and gives them an opportunity to decide as groups what they think would be a fair punishment for Tom. The groups present their ideas to the class as a whole.

Then the teacher gives the groups some extra pieces of information. After each piece of new information, the groups are given an opportunity to change their mind about the punishment they had originally planned.

At the end of the activity, the teacher asks each group to present their ideas to the class:

- What punishment do you think Y should have? Why?
- Did any of the extra information make you change your mind about your original decision? If so, how?

The teacher then brings all the students together in a plenary session and asks:

- What sort of factors should the law take into account when deciding on the punishment to be given to someone convicted of an offence?
- Do you think the law should treat young people differently from adults? Why or why not?

As a final exercise or for homework, the teacher asks students to think of a case they have heard about – on TV, in the papers or one that has happened locally – where a young person who has broken the law has been given a punishment that they think is either:

- a) too harsh; or
- b) too lenient.

Students should write a short piece about their chosen example and present it to their peers in the next lesson, outlining the factors in the case that led to their opinion about it. One example would be a case involving someone having a car accident under the influence of alcohol.

You make the law

“Leonard and Tom were both 15 and went to the same school. They had known each other for many years, but they had never really got on.

One day, Tom’s mobile phone went missing and he blamed Leonard for stealing it. Leonard said he hadn’t stolen it, but said that Tom was jealous of him because he had lots of friends and Tom didn’t have any.

After school that day, there was a fight. Tom drew a knife even though Leonard was unarmed. During the fight Tom cut Leonard’s face so badly that it left him with a scar for the rest of his life.”

Task

What do you think would be a fair punishment for Tom? Discuss this question in your group and then write down what punishment the law should provide for this kind of offence.

Extra information

1. Tom had been brought up very strictly, and had been repeatedly beaten by his father.

Does this affect your view about Tom's punishment? If so, how? Change your draft law if necessary.

2. Tom was isolated in his class and had nobody who would listen to his problems.

Does this affect your view about Tom's punishment? If so, how? Change your draft law if necessary.

3. Leonard really had stolen Tom's mobile phone and he had actually started the fight because Tom had reported the theft of the mobile phone to the police.

Does this affect your view about Tom's punishment? If so, how? Change your draft law if necessary.

4. Leonard was the leader of a gang who had been bullying Tom for months. The gang had beaten Tom up more than once, hitting him with sticks, chains and a metal bar. This gave Tom nightmares and he was even afraid to go to school.

Does this affect your view about Tom's punishment? If so, how? Change your draft law if necessary.

5. Tom's father had tormented Tom by repeatedly telling him that he was too soft and that he should stand up to bullies like Leonard.

Does this affect your view about Tom's punishment? If so, how? Change your draft law if necessary.

6. Tom only got out the knife to frighten away the bullies. He never meant to use it. Twenty other young people were standing around at the time, all encouraging the boys to fight.

Does this affect your view about Tom's punishment? If so, how? Change your draft law if necessary.

7. A teacher had seen Tom bring his knife to school two days before the fight, but he did not ask Tom about it.

Does this affect your view about Tom's punishment? If so, how? Change your draft law if necessary.

The students appoint spokespersons for their groups, who then present their draft laws to the class. It may be expected that they all will be aware of the dilemmas involving conflicting objectives and principles of justice such as the following.

- How do we show that society disapproves of such behaviour?
- How do we make sure that school is a place where violence is banned?
- How harshly must we punish someone like Tom to discourage others, such as Leonard's gang, from also using knives?
- Tom's behaviour is a cry for help and he could not choose the family in which he was raised. How can we help Tom so that he feels happier and has no need to fight with knives in future?

The teacher can sum up this discussion up by linking these questions to the three principles of retribution, deterrence and rehabilitation. By referring to the Children's Rights Convention, the teacher can propose that priority to be given to rehabilitation.

If time allows and the students are interested, this issue can be taken further. If they disagree on the question of how to balance the different principles of punishment, this debate should be continued. If they agree on the principle of rehabilitation, they can study how the law in their country takes the three principles of retribution, deterrence and rehabilitation into account.