

An Examination of Crime and the Essence of Criminal Law in a Globalized Society

Paul Nwala

The West African Union University, Cotonou, Benin Republic

Abstract

Crime is inevitable in any given society and has become responsible for all forms of insecurity across the globalized world at large. Crime is not just a wrong committed against an individual, but a wrong committed against the society or public such as rape, theft or murder because it is an act that is capable of being followed by criminal proceedings. Crime holds different meanings and interpretations at different levels of execution and application and jurisdiction. This study examines the concept of crime and the elements that constitute a crime in an era of globalized society; causes of crimes and discusses the need for criminal law enactment that prohibits such acts and ensures that criminals are punished adequately in order to combat crimes and criminal elements. Although several laws exist within the State and in the International Community to curb crime both at municipal and international levels and serve other purposes including correctional, deterrent or rehabilitation, this paper recommends that proper jurisdiction and mode of application of justice should be set to effectively handle crime within a country.

Key Words: *Crime, Criminal Law, Globalized Society*

Introduction

In ordinary language, a crime is an unlawful act punishable by a state. The term 'crime' does not, in modern criminal law, have any simple and universally accepted definition (Farmer, 2008), though statutory definitions have been provided for certain purposes. The most popular view is that crime is a category created by law; in other words, something is a crime if declared as such by the relevant and applicable law. A crime or offence (or criminal offence) is an act harmful not only to some individual but also to a community, society, or the state ("a public wrong"). Such acts are forbidden and punishable by law (Martin, 2003). Criminal law seeks to protect life and

property which are cardinal to human existence. The notion that acts such as murder, rape, and theft are to be prohibited exists worldwide (Easton, 2010). Criminal offence is thus defined by the criminal law of each relevant jurisdiction. While many have a catalogue of crimes called the criminal code, in some common law nations no such comprehensive statute exists.

The state (government) has the power to severely restrict one's liberty for committing a crime due to the harmful effects such has in the society as it does not promote societal common good. Generally, there are procedures to which investigations and trials must adhere which are usually contained in criminal law. If found

guilty, an offender may be sentenced to a form of reparation such as a community sentence, or depending on the nature of their offence, to undergo imprisonment, life imprisonment or, even death. Offenders are also sentenced to programs to emphasize or provide for their rehabilitation or other times sentenced with the goal of punishing them or a mix of the aforementioned practices.

Usually, to be classified as a crime, the "act of doing something criminal" (*actus reus*) must with certain exceptions be accompanied by the "intention to do something criminal" (*mens rea*) (Attenborough, 1922). While every crime violates the law, not every violation of the law counts as a crime. Breaches of private law (torts and breaches of contract) are not automatically punished by the state, but can be enforced through civil procedure.

Sociologically, a normative definition views crime as deviant behaviour that violates prevailing norms and cultural standards prescribing how humans ought to behave normally. This approach considers the complex realities surrounding the concept of crime and seeks to understand how changing social, political, psychological, and economic conditions may affect changing definitions of crime and the form of the legal, law

enforcement, and penal responses made by society. These structural realities remain fluid and often contentious. For example, as cultures change and the political environment shifts, societies may criminalise or decriminalise certain behaviours, which directly affects the statistical crime rates, influence the allocation of resources for the enforcement of laws, and influence the general public opinion.

Theoretical Frameworks

The theoretical frameworks used in this study comprise both natural law and legal positivism. Justifying government use of force to coerce compliance with its laws has proven a consistent theoretical problem. One of the earliest justifications involved the theory of natural law. This posits that the nature of the world or of human beings underlies the standards of morality or constructs them. Thomas Aquinas wrote in the 13th century: "the rule and measure of human acts is the reason, which is the first principle of human acts". He regarded people as by nature rational beings, concluding that it becomes morally appropriate that they should behave in a way that conforms to their rational nature. Thus, to be valid, any law must conform to natural law and coercing people to conform to that law is morally acceptable.

Since society considers so many rights as natural (hence the term right) rather than man-made, what constitutes a crime also counts as natural, in contrast to laws (seen as man-made). Adam Smith illustrates this view, saying that a smuggler would be an excellent citizen, "...had not the laws of his country made that a crime which nature never meant to be so." Natural-law theory therefore distinguishes between "criminality" (which derives from human nature) and "illegality" (which originates with the interests of those in power). Lawyers sometimes express the two concepts with the phrases *malum in se* and *malum prohibitum* respectively. They regard a "*crime malum in se*" as inherently criminal; whereas a "*crime malum prohibitum*" (the argument goes) counts as criminal only because the law has decreed it so (Hart, 1972).

Some religious communities regard sin as a crime; some may even highlight the crime of sin very early in legendary or mythological accounts of origins, note the tale of Adam and Eve and the theory of original sin. What one group considers a crime may cause or ignite war or conflict. However, the earliest known civilizations had codes of law, containing both civil and penal rules mixed together, though not always in recorded form.

Causes and Classes of Crime

Many different causes and correlates of crime have been proposed with varying degree of empirical support. They include socioeconomic, psychological, biological, and behavioural factors. Controversial topics include media violence research and effects of gun politics.

Emotional state (both chronic and current) has a tremendous impact on individual thought processes and, as a result, can be linked to criminal activities. The positive psychology concept of Broaden and Build posits that cognitive functioning expands when an individual is in a good-feeling emotional state and contracts as emotional state declines. In positive emotional state, an individual is able to consider more possible solutions to problems, but in lower emotional state, fewer solutions can be ascertained. The narrowed thought-action repertoires can result in the only paths perceptible to an individual being ones they would never use if they saw an alternative, but if they can't conceive of the alternatives that carry less risk they will choose one that they can see. Criminals who commit even the most horrendous of crimes, such as mass murders, did not see another solution.

Different religious traditions may promote distinct norms of behaviour, and these in turn may either clash or harmonise with the perceived interests of a state. Socially accepted or imposed religious morality has influenced secular jurisdictions on issues that may otherwise concern only an individual's conscience. Activities sometimes criminalized on religious grounds include (for example) alcohol consumption (prohibition), abortion and stem-cell research. In various historical and present-day societies, institutionalized religions have established systems of earthly justice that punish crimes against the divine will and against specific devotional, organizational and other rules under specific codes, such as Roman Catholic Canon Law and Islamic Sharia Law (Maine, 1861).

- a. Offences can be classified into various categories namely: by type, penalty, common law, mode of trial, and origin.

The following classes of offences are used, or have been used, as legal terms to classify offences by type: offence against the person, violent offence, sexual offence, and offence against property. Mac Donald (1933) and Barkan (2012) have classified crimes into the following categories, in addition to those above: forgery, personation and cheating; firearms and offensive weapons; offences against the state/offences against the Crown

and Government or political offences; harmful or dangerous drugs; offences against religion and public worship, and offences against public justice or offences against the administration of public justice. Others are: public order offence; commerce, financial markets and insolvency; offences against public morals and public policy; motor vehicle offences; conspiracy, incitement and attempt to commit crime; inchoate offence; juvenile delinquency; and victimless crime

The Essentials of Criminal Law

Criminal law is the body of law that relates to crime. It prescribes conduct perceived as threatening, harmful, or otherwise endangering to the property, health, safety, and moral welfare of people inclusive of one's self. Most criminal laws are established by statute, which is to say that the laws are enacted by a legislature. Criminal law includes the punishment and rehabilitation of people who violate such laws.

Criminal law varies according to jurisdiction, and differs from civil law, where emphasis is more on dispute resolution and victim compensation, rather than on punishment or rehabilitation. Criminal procedure is a formalized official activity that authenticates the fact of commission of a crime and

authorizes punitive or rehabilitative treatment of the offender (Craies, 1911).

Criminal law is distinctive for the uniquely serious, potential consequences or sanctions for failure to abide by its rules. Every crime is composed of criminal elements. Capital punishment may be imposed in some jurisdictions for the most serious crimes. Physical or corporal punishment may be imposed such as whipping or caning, although these punishments are prohibited in much of the world. Individuals may be incarcerated in prison or jailed in a variety of conditions depending on the jurisdiction. Confinement may be solitary. Length of incarceration may vary from a day to life. Government supervision may be imposed, including house arrest, and convicts may be required to conform to particularized guidelines as part of a parole or probation regime. Fines also may be imposed, seizing money or property from a person convicted of a crime.

Five objectives are widely accepted for enforcement of the criminal law by punishments: retribution, deterrence, incapacitation, rehabilitation and restoration. The value placed on each of these forms of punishment differs per jurisdiction.

In retribution, criminals ought to *be punished* in some way. This is the most widely seen goal. Criminals have taken improper advantage, or inflicted unfair detriment, upon others and consequently, the criminal law will put criminals at some unpleasant disadvantage to "balance the scales." People submit to the law to receive the right not to be murdered and if people contravene these laws, they surrender the rights granted to them by the law. Thus, one who murders may be executed himself. A related theory includes the idea of "righting the balance."

Individual deterrence is aimed toward the specific offender. The aim is to impose a sufficient penalty to discourage the offender from criminal behaviour. General deterrence aims at society at large. By imposing a penalty on those who commit offenses, other individuals are discouraged from committing those offenses.

Incapacitation is designed simply to keep criminals away from society so that the public is protected from their misconduct. This is often achieved through prison sentences. The death penalty or banishment have served the same purpose.

Rehabilitation on the other hand aims at transforming an offender into a valuable

member of society. Its primary goal is to prevent further offense by convincing the offender that their conduct was wrong. This is different from restoration which is a victim-oriented theory of punishment. The goal is to repair, through state authority, any injury inflicted upon the victim by the offender. For example, one who embezzles will be required to repay the amount improperly acquired. Restoration is commonly combined with other main goals of criminal justice and is closely related to concepts in the civil law, i.e., returning the victim to his or her original position before the injury

Elements of Criminal Law

The criminal law generally prohibits undesirable acts. Thus, proof of a crime requires proof of some act. This is labelled as the requirement of an *actus reus* or guilty act. Some crimes, particularly modern regulatory offenses require no more, and they are known as strict liability offenses. Nevertheless, because of the potentially severe consequences of criminal conviction, judges at common law also sought proof of an intent to do some bad thing, the *mens rea* or guilty mind. As to crimes of which both *actus reus* and *mens rea* are requirements, judges have concluded that the elements must be present at precisely the

same moment and it is not enough that they occurred sequentially at different times.

Actus reus is Latin for "guilty act" and is the physical element of committing a crime. It may be accomplished by an action, by threat of action, or exceptionally, by an omission to act, which is a legal duty to act. For example, the act of A striking B might suffice, or a parent's failure to give food to a young child also may provide the *actus reus* for a crime. Where the *actus reus* is a failure to act, there must be a duty of care. A duty can arise through contract, a voluntary undertaking, a blood relation with whom one lives, and occasionally through one's official position. Duty also can arise from one's own creation of a dangerous situation.

An *actus reus* may be nullified by an absence of causation. For example, a crime involves harm to a person, the person's action must be the cause and proximate cause of the harm. If more than one cause exists (e.g. harm comes at the hands of more than one culprit) the act must have "more than a slight or trifling link" to the harm.

Mens rea is another Latin phrase, meaning "guilty mind". This is the mental element of the crime. A guilty mind means an intention to commit some wrongful act. Intention under

criminal law is separate from a person's motive (although motive does not exist in Scots law).

Wrongfulness of intent also may vary the seriousness of an offense and possibly reduce the punishment but this is not always the case. A killing committed with specific intent to kill or with conscious recognition that death or serious bodily harm will result, would be murder, whereas a killing effected by reckless acts lacking such a consciousness could be manslaughter. On the other hand, it matters not who is actually harmed through a defendant's actions. The doctrine of transferred malice means, for instance, that if a man intends to strike a person with his belt, but the belt bounces off and hits another, *mens rea* is transferred from the intended target to the person who actually was struck.

Strict Liability

Strict liability can be described as criminal or civil liability notwithstanding the lack of *mens rea* or intent by the defendant. Not all crimes require specific intent, and the threshold of culpability required may be reduced or demoted. For example, it might be sufficient to show that a defendant acted negligently, rather than intentionally or recklessly. In offenses of absolute liability, other than the prohibited act, it may not be necessary to show the act was

intentional. Generally, crimes must include an intentional act, and "intent" is an element that must be proved in order to find a crime occurred.

Fatal Offenses

A murder, defined broadly, is an unlawful killing. Unlawful killing is probably the act most frequently targeted by the criminal law. In many jurisdictions, the crime of murder is divided into various gradations of severity, e.g., murder in the first degree, based on intent. Malice is a required element of murder. Manslaughter or homicide is a lesser variety of killing committed in the absence of malice, brought about by reasonable provocation, or diminished capacity. Involuntary manslaughter, where it is recognized, is a killing that lacks all but the most attenuated guilty intent, recklessness. Settled insanity is a possible defence (Surendra and Sudeep, 2015).

Offences against the Person

Many criminal codes protect the physical integrity of the body. The crime of battery is traditionally understood as an unlawful touching, although this does not include everyday knocks and jolts to which people silently consent as the result of presence in a crowd. Creating a fear of imminent battery is an assault, and also may give rise to criminal

liability. Non-consensual intercourse, or rape, is a particularly egregious form of battery.

Mala in se v. mala prohibita

While crimes are typically broken into degrees or classes to punish appropriately, all offenses can be divided into '*mala in se*' and '*mala prohibita*' laws. Both are Latin legal terms, *mala in se* meaning crimes that are thought to be inherently evil or morally wrong, and thus will be widely regarded as crimes regardless of jurisdiction. *Mala in se* offenses are felonies, property crimes, immoral acts and corrupt acts by public officials. *Mala prohibita*, on the other hand, refers to offenses that do not have wrongfulness associated with them. Parking in a restricted area, driving the wrong way down a one-way street, jaywalking or unlicensed fishing are examples of acts that are prohibited by statute, but without which are not considered wrong. *Mala prohibita* statutes are usually imposed strictly, as there does not need to be *mens rea* component for punishment under those offenses, just the act itself. For this reason, it can be argued that offenses that are *mala prohibita* are not really crimes at all.

Purposes of Criminal Law

Criminal law serves several purposes and benefits society in the following ways highlighted below. (i) Maintaining order:

Criminal law provides predictability, letting people know what to expect from others. Without criminal law, there would be chaos and uncertainty. (ii) Resolving disputes: The law makes it possible to resolve conflicts and disputes between quarrelling citizens. It provides a peaceful, orderly way to handle grievances. (iii) Protecting individuals and property: Criminal law protects citizens from criminals who would inflict physical harm on others or take their worldly goods. Because of the importance of property in capitalist America, many criminal laws are intended to punish those who steal. (iv) Providing for smooth running of the government: Criminal law enables the government to collect taxes, control pollution, and accomplish other socially beneficial tasks. (v) Safeguarding civil liberties: Criminal law protects individual rights.

Legal Defences and Justifications for Crimes

For an act to be a crime, it must be not only intentional and in violation of a criminal law, but also without defence or justification. Defence refers to situations that can mitigate guilt in a criminal case. Two common defences are insanity and entrapment. Justification is any just cause for committing an act that

otherwise would be a crime. Self-defence is a prime example.

Insanity: This is a legal term, not a medical term. It refers to any unsoundness of mind, mental defect, or lack of reason that prevents people from distinguishing right from wrong and from understanding the consequences of their actions. Guilty defendants can be found “not guilty by reason of insanity” because of the belief that people should be punished for their crimes only if they could control their behaviour and knew what they were doing was wrong. Otherwise, it is improper to hold people morally accountable for criminal behaviour (Gupta, 1990).

Courts use several tests of insanity. Under the M’Naghten rule (1843), defendants are considered not guilty by reason of insanity if at the time of the crime they were unable to distinguish right from wrong. This test provides a broader, more encompassing definition of insanity than the M’Naghten rule. Defendants pleading insanity under the substantial capacity test have to show only that they are mostly unable to function mentally.

A common misperception about the insanity defense is that it allows many violent criminals to escape punishment for their acts. Studies show that the insanity plea is used in fewer

than one percent of serious criminal cases and is rarely successful. When it succeeds, offenders generally spend more time in mental institutions than they would have spent in prison if they had been convicted.

Entrapment: It is a legal defense that sets free the suspect who has been induced by law enforcement agents to commit a crime. The U.S. Supreme Court invented the entrapment doctrine to control outrageous, overreaching police activity that endangers civil liberties and violates fundamental fairness. The Court’s subjective test, which most state courts and all federal courts follow, holds that entrapment occurs when a law enforcement agent puts a criminal idea into the mind of an innocent person who otherwise would not have committed the offense. The focus is on the predisposition of the defendant: Did the idea to commit the crime originate with the defendant or law enforcement?

Self-defense: A person defending himself or herself can use only reasonable force in self-defense. How much force is reasonable depends on the circumstances of each situation. The force used to repel an attack should be proportionate to the amount of force used against the defendant. To use this defense, the danger must be imminent and the defendant must look for alternative ways of avoiding the

danger. The rules of self-defense also apply to defense of another and the defense of property. Defendants can support a self-defense argument with evidence that a victim had a history of violence, and the prosecution can produce evidence that the victim was not prone to violence. Some states also allow the prosecution to offer evidence of the defendant's history of violence.

The Limits of Criminal Law

Amidst the war on drugs of the 1980s in the United States for instance, Congress passed legislation authorizing federal prosecutors to go after drug dealers and drug kingpins. Next came carjackers, arsonists, deadbeat dads and moms who flee from their duty to pay child support, and bigots who commit hate crimes. The rationale for expanding federal criminal law into these areas is that local police forces have been ineffective in controlling certain kinds of crime. Chief Justice Rehnquist complained in 1999 that Congress is contributing to rising caseloads in federal courts by federalizing crimes already covered by state laws (Gorr, 1992).

According to Walker (1965), there are limits to what criminal law can do and proposes several rules that legislators can use when deciding

whether to criminalize certain behaviours as follows:

- a) Legislators should not use criminal law to penalize harmless behaviour. Most people may agree with Walker's idea that harmless behaviour should not be penalized, but many would disagree about what is harmful. Walker and many other liberals think that legislators should criminalize only behaviour that is harmful to others. By contrast, conservatives are generally in favour of passing laws that keep citizens from hurting themselves and others. For instance, the use of criminal law to penalize harmless behaviour such as choice of sex partner or sexual behaviour frequently results in violations of human rights right, particularly the right to be free from discrimination and the right to privacy, and undermine the autonomy of individuals to make decisions about their bodies and their lives.
- b) Legislators should not use criminal law if the penalty does more harm than the offense. On June 8, 1998, the New York Times published an open letter to the United Nations Secretary General as the General Assembly opened a special session on drugs. The letter

declared that the global war on drugs has cost society more than drug abuse itself. The letter stated that by focusing on punishing drug users, the United States for instance has created a worldwide criminal black market that is wrecking national economies and democratic governments. Despite the letter's assertion comparing the costs of drug criminalization versus drug abuse, the letter failed to provide any estimates of the costs of drug abuse.

- c) Legislators should not include in criminal law prohibitions that the public does not support. Walker suggests that legislators shouldn't outlaw something that lots of people want. Take, for example, government's criminalization of narcotic drugs while people may want such drugs for recreational and medicinal purposes. Or consider the failure of states that have attempted to ban physician-assisted suicide while Americans for instance believe that helping people into death is not abandonment, but rather compassionate care.
- d) Legislators should not use criminal law to condemn wicked acts. Walker takes issue with ultraconservative politicians and religious leaders who try to

legislate morality. To assert moral sentiments for a new criminal law, Walker says, invites an argument as to what is or is not wicked. In a society as diverse as that of the United States, it is easy to find areas of disagreement about good and evil (Gorr, 1992).

State Control of Criminalization

One can view criminalization as a procedure deployed by society as a pre-emptive harm-reduction device, using the threat of punishment as a deterrent to anyone proposing to engage in the behaviour causing harm. The state becomes involved because governing entities can become convinced that the costs of not criminalizing (through allowing the harms to continue unabated) outweigh the costs of criminalizing it (restricting individual liberty, for example, to minimize harm to others).

Even if victims recognize their own role as victims, they may not have the resources to investigate and seek legal redress for the injuries suffered: the enforcers formally appointed by the state often have better access to expertise and resources. The victims may only want compensation for the injuries suffered, while remaining indifferent to a possible desire for deterrence. Fear of retaliation may deter victims or witnesses of

crimes from taking any action. Even in policed societies, fear may inhibit from reporting incidents or from co-operating in a trial. Victims, on their own, may lack the economies of scale that could allow them to administer a penal system, let alone to collect any fines levied by a court.

Garoupa and Klerman (2002) warn that a rent-seeking government has as its primary motivation to maximize revenue and so, if offenders have sufficient wealth, a rent-seeking government will act more aggressively than a social-welfare-maximizing government in enforcing laws against minor crimes (usually with a fixed penalty such as parking and routine traffic violations), but more laxly in enforcing laws against major crimes. As a result of the crime, victims may die or become incapacitated.

Authorities employ various mechanisms to regulate (encouraging or discouraging) certain behaviours in general. Governing or administering agencies may for example codify rules into laws, police citizens and visitors to ensure that they comply with those laws, and implement other policies and practices that legislators or administrators have prescribed with the aim of discouraging or preventing crime. In addition, authorities provide remedies and sanctions, and

collectively these constitute a criminal justice system. Legal sanctions vary widely in their severity. Usually, a natural person perpetrates a crime, but legal persons may also commit crimes. Historically, several premodern societies believed that non-human animals were capable of committing crimes, and prosecuted and punished them accordingly.

Conclusion

Though the act of passing laws may not be the only viable solution to the crime problem in modern society and since issues of certain crimes especially organized crimes can be transnational, there is need for countries to promote effective collaboration mechanisms in combating crimes. The role of INTERPOL should be strengthened and widened in terms of effecting transnational arrests of suspected criminals and subjecting them to criminal justice irrespective of territorial jurisdiction which at times could pose challenges. We cannot talk about crime and essence of criminal law on a global perception without considering transnational crimes and problems of territorial jurisdiction in terms of arresting and trial of suspected criminals. At times, you see that certain criminal offenses, when committed by highly placed international figures or individuals, their national governments attempt to use diplomatic

channels to cover such acts. Some criminals may commit a crime in a particular country in order to escape from facing criminal justice. In dealing with crimes in an era of globalized

society, effective and coherent measures has to be taken in countries through collaborations, both in terms of legal prosecutions and information sharing.

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- **Paul Nwala** holds a Ph.D and he is of the Department of International Law and Diplomacy, The West African Union University, Cotonou, Benin Republic. He can be reached at: princepaulnwala@gmail.com.