

Crime: Concept, Causes and Militating Factors

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Abstract

Nature sets out its orderliness for mankind to abide by. This orderliness follows the course of, and can therefore be termed, natural law. Acts in conformity with the orderliness are deemed good deeds, while those that run counter are bad. Unlike in the state of nature, where the order of the day was the survival of the fittest; the evolution of civilization resulted in every society becoming conscious of nature's orderliness, though the mode of expressing them differed from place to place. Man has the tendency to congregate, survive and also prosper in the society. The degree of structure and order based on the society's cultural heritage is expressed in its values and aspirations, and prohibitions charged on acts likely to endanger the health and safety of its citizens, as well as those that infringe on their enjoyment and possession of property – be they personal or communal. Murder, Armed Robbery, Rape, Stealing and manslaughter are examples of prohibited acts that endanger people's lives and well-being. They had thrived due to industrialization, globalization and complex changes taking place in countries the world over. This paper dwells on the nature of crime, why crime is prohibited, why they thrive and factors that militate against it.

Introduction

"No man is an island", is a common saying. This means that societies comprise the aggregations of individuals. The instinct to congregate, survive and prosper in societies is, therefore, human. Prior to the evolution of civil societies, state of nature existed, but was anarchical, hence it was not a crime that man was wolf to man. It was not until the Greek period that serious attention began to be paid to Law, Justice, Politics and economics – the spontaneous development of the law – which ushered in respect for the dignity of man as human.

For an individual living alone, what is required is habit. But, when humans congregate, for societies to function fairly and effectively, they create and maintain norms (which with time metamorphose into customs) and values according to their beliefs and aspirations. As societies become more complex and industrialized, the necessity of creating prohibitions on acts likely to mar the well-being, health, safety and interests of individual members of the society, and the need to protect the values and aspirations of the society itself becomes very paramount.

What normally shape the law against prohibited acts are traditions, or the religious belief system and the political ideology of a people. On what is an ideology, Azikiwe (1979) answered: "... Firstly, it is a systematic body of concepts about human life or culture. Secondly, it is a manner or content of thinking characteristic of an individual or a group". However, the word 'Crime' refers to prohibited acts, and the law against crime is Criminal Law which according to Morlan (2001) is a litany of prohibitions and duties, behaviours that the State considers to be unacceptable or actions that the State demands. Prohibited acts also harm societal collective interests, hence states make laws to check them. Examples of crimes are: Murder, Stealing, Manslaughter, Rape, Conspiracy, Assault, Procurement, Burglary, Armed Robbery and Conversion. When any of these or other crimes is committed, the offender is normally apprehended, charged and prosecuted. The aim of trial is to

dispense justice through the instrumentality of the law, by balancing the interest of the offender, the offended and that of the State as the major stake holder. Babatunde (2003) opines, the interest of the accused must be balanced with the interest of the victim as well as the interest of the State, as the keeper of public good.

Definition of Terms

Crime: The Merriam Webster Dictionary defines 'crime' as a serious offense against the public law. The Black Law Dictionary sees 'crime' as an act that law makes punishable; the breach of a legal duty treated as the subject matter of a criminal proceeding. A crime is an act prohibited by the State; it is a wrongdoing for which the offender must pay, hence the State stipulates, executes and punishes the doer with canning (in case of minors), fine or a term of imprisonment or both – in the event of conviction.

Concept: This means the idea of something; an understanding of what something means.

Cause: A cause is that which bring about something – an event or a result; something that compels something to happen.

Militate: This means prevent, check or hinder the existence of something.

Factor: A factor is the circumstance or situation that produces a result or is responsible for the existence of something.

The Nature of Crime

The principle of '*actus non facit reum, nisi mens sit rea*' is a cardinal principle of natural law. It means that *an act does not make a man guilty unless his mind or intention is guilty*. It therefore means that when a crime is said to have been committed, it cannot be swallowed line, hook and sinker to be a crime. To call an act a crime, two elements must come into play. They are the 'actus reus' and the 'mens rea'. Without these factors manifestly seen to be coincidentally present in the commission of an act, it is no crime, and non can be said to have occurred. In general terms the conduct of the accused and his state of mind at the time of the conduct both determine whether he has committed a crime or not. To test what is unlawful and dangerous, Babatunde (2003) has this to say, the test as to what is unlawful and dangerous does not depend on the knowledge or thinking of the accused. It is based on the objective test, that is, what a reasonable person would describe as unlawful and dangerous.

It is also necessary to point out here that a crime can be committed by a person without his actually doing the wrongful act. Thus, a person who procures another to commit an offence is said, in law, to have done the act himself, and, it is immaterial whether the offence committed is that counseled or procured or an entirely different one. In the event of conviction, the procurer suffers the same punishment as the procured.

Actus Reus:

The Black Law Dictionary defines the Latin phrase 'actus reus' as "guilty act"; the wrongful deed that comprises the physical component of a crime and that generally must be coupled with mens rea to establish criminal liability. However, by actus reus is meant the wrongful or offensive act; the bad deed. It is bad because it runs counter to natural orderliness; it is an erosion of societal value, therefore, the society frowns at it. It is prohibited by the State. Actus reus is the harmful act forming the basis of liability. This presupposes that no matter the degree of evil intention in a person's head, (even when it is confessed) if it is not put into action, a crime has not been committed, and none can be said to exist.

Thus, in the crime of 'Murder', for example, the accused must have *shot, stabbed or hit* the victim and caused his death. In 'Stealing', the accused must *have taken away* the money or other material(s) belonging to another. In 'Conspiracy', he must have *taken part in the plot to carry out* the harmful act. In 'Robbery', according to Sect. 9 of the Robbery and Firearms (Special Provisions) Act No. 47 of 1970, he *must be proved to have been armed with "firearms" or "offensive weapons"* at the time of committing the robbery. The actus reus of an act may also consist of elements entirely external to the physical actions of the accused. This, eventually, takes us to the types of actus reus.

Actus reus may be any of the following:

By conduct: This exists when the offence does not require proof of any result or consequence, what is required is only proof of the action. An example is the offence of dangerous driving, proof that the accused drove dangerously is enough to ground the action, without the prosecution going, extra miles, to prove injury caused or life lost by the act.

By result: This occurs when the crime requires the proof of a result arising in the act. A case in point is the crime of assault where injury suffered by the victim is part of the actus reus.

By circumstance: Actus reus is circumstantial when it consists of factors that are entirely external to the physical action of the accused. An example is an action done when drunk. What needs to be proved is the state of affairs that had to be found to exist with a little or no participation of the offender. It is however, submitted that the voluntary act occasioning liability can be found at an earlier stage of the accused – voluntarily becoming intoxicated, for example. In the circumstance, what the information must disclose is certainly not the guilt of the accused, but a prima facie case for him to answer.

Omission: An omission to act may also form the basis of criminal liability. An actus reus is, ordinarily, a positive act of the accused; one may then ask: "How then can failure to act (omission) become illegal or result in a liability?" The answer is that while there is no liability for failing to act, if at the time of failing to act, the accused was under a legal duty to take positive action, the failure attracts a liability. For an omission (to act) to be criminal, i.e. result in a criminal liability, recourse has to be taken of moral and legal duties. If the accused person has only the moral duty to act, but failed, such omission has no basis in law; but where he is under a legal duty, i.e. he owes the victim a duty of care, the omission forms the basis of criminal liability. An omission or failure to act may also result in criminal liability, if it constitutes an invitation to treat.

Involuntariness of action: This factor inquires whether the conduct or act of the accused, resulting in the prohibited consequence, is of his free-will or not. If the accused's prohibited act results from no fault of his own, it will occasion no criminal liability. This is because he was not in control of his action when causing or indulging in the action that produced the prohibited result. For involuntariness of action to avail an accused, either insanity or automatism must be found to be present. Thus, for the defence of involuntary act not to be negated, impaired consciousness must result.

Generally, for the defence of automatism to avail an accused, his act must be a reflex, spasm, or convulsion, or must have occurred while he is in a condition depriving him of effective control of his action; and the act or condition is not the result of anything done or omitted with the fault required for the offence or voluntary intoxication. And a person is not guilty of an offence (by virtue) of omission to act if he is physically incapable of acting in the way required, and his being so

incapable is not the result of anything done omitted with the fault required for the offence nor of voluntary intoxication. Therefore, for an act to be termed a crime, it must constitute *actus reus* and *mens rea*.

Mens Rea

The Black's Law Dictionary defines 'Mens rea' as "guilty mind"; a state of mind that the prosecution, to secure a conviction, must prove that an accused had when committing a crime, criminal intention or recklessness. However, *mens rea* is the evil intention or bad state of mind of the accused when committing a prohibited act. The *mens rea* in stealing or theft is the intention to deprive the owner of the property. According to Morgan (2001) with the notable exception of strict liability, the criminal law does not punish a man for his actions alone. The prohibited actions must be accompanied by a culpable state of mind.

However, *mens rea* are varied; and the apportioning of a type to an offence is a matter of judicial and or legislative framework. In simple terms, deliberately committing a prohibited act attracts more severe punishment than recklessly or carelessly committing same. Most criminal offences require proof of intention or recklessness. Such recklessness is sufficient to ground an action. An act is labeled recklessness because it involves unjustifiable risk, being very unnecessary, could have been avoided as a reasonable man would have realized the obvious risk involved in such act.

An accused person may raise the defence of Mistake, i.e. as not having the requisite *mens rea*. Such mistake may be mistake of fact or mistake of law. An accused person raising the defence of mistake must make sure that the offence is one requiring some degree of fact on his part. It is for the state to establish beyond reasonable doubt that the accused was not mistaken, so did have the requisite *mens rea* for the offence he is charged with. In the case of *IBEH v. STATE* (1997) 1 NWLR (PT. 484) 632 at 65 S.C, the Supreme Court held that the proper role of the court in a criminal trial is to evaluate all the evidence before it and be sure that the case of the prosecution has been proved beyond reasonable doubt, but if there is doubt, whether based on material contradiction, or lack of sufficient evidence, the benefit of that doubt must be given to the accused person. He cannot plead a mistake of law, for ignorance of law is no excuse.

Offences impliedly or expressly requiring proof of fault will apply to the defence of mistake, denying *mens rea*. In *DPP v. MORGAN* (1976) A C 182, the accused persons were convicted of rape, but they appealed against the judgement contending that they had believed that the complainant consented to sexual intercourse. The judgement held that the accused defence of mistake would have availed them only if it was honest and reasonable. The appeal was therefore dismissed. But the House of Lords upheld the appeal, holding that a defendant is to be judged by the facts as he honestly believed them to be. In the circumstance, recourse need to be had on the particular state of mind of the accused – all the evidence, and the presence or absence of reasonable grounds for possessing that state of mind.

Compulsion: An accused person raising the defence of compulsion is seeking to establish that he performed the act for which he is charged involuntarily as a result of another person's action. The offender must have been persuaded to commit the act under a necessity, that is to say, by compulsion or inconvenience. Compulsion may be through duress, mental coercion, necessity or obedience to orders.

Irrebuttable Presumption against mens rea: Children are considered not fully responsible for their actions. This is because they cannot exercise self-control like adults. They are *doli incapax* (incapable of wrong or incapable of committing a crime). They know not the meaning and

consequences of their actions. The presence of actus reus, but absence of mens rea raises the presumption of innocence in favour of the minor, exculpating him from the criminal responsibility of his actions. Thus, the presumption is irrebutable. However, if the accused commits a prohibited act against Z in the mistake of A, he will not be able to escape liability for the wrong because the actus reus and mens rea are both present, irrespective of who he wanted to offend.

Generally, the nature of prohibited acts is that the two factors of wrong act and criminal mind must simultaneously come together in the commission of an act. Where only one is involved, the act is not criminal, and cannot ground an action in a criminal charge.

Why Crimes are Prohibited

Man's inclination towards nature: Man is endowed with reason by creation. Creation is also a manifestation of perfection of order. Acts in deviation of the order are prohibitive. According to Okpara (2005)

Law of nature is law of reason. It imposes obligations and prohibitions and confers natural rights (human rights). As it agrees with the rule of reason, it is in harmony with human nature. Man is endowed with reason by his creator to obey natural law of the universe. Natural laws are objective moral principles which depend upon the nature of the universe; by nature, they are imprescriptible, inalienable and above all, universal.

Expatriating positive law, Okpara (2005) yet posits, it is understood that the great ancient and medieval philosophers believed that natural law commends things that are intrinsically good and prohibits things that are intrinsically evil.

Risk of harm and injury: Crimes are also prohibited because of their risk of harm and injury to the individual, as well as the collective, interests and well-being of the citizens of the society. No society exists in vacuum, but consists of a population of people. A society may be likened to a state or nation. A state is a geographical entity with population and government, while a nation, according to Ramsay Muir in Appadorai (1968), is a body of people who feel themselves to be naturally linked together by certain affinities which are so strong and real for them that they can live happily together, are dissatisfied when disunited and cannot tolerate subjection to people who do not share these ties.

Maintenance of law and order: Every people so linked together have common norms, desires, aspirations and values they cherish, duties and obligations they owe each other, prohibited acts and behaviours they frown at. The acts infringe on personal and collective interests of the members of the society, they constitute clogs in the wheel of progress, thus their end result is punishment. In the definition of Culpable Homicide punishable with death, Sect. 221(b) of the Penal Code, for example, it is stated that whether death was the probable or only likely consequence of an act or of any bodily injury, is a question of fact. Thus, if from the intentional act of injury committed, the probability of death resulting is high, the finding should be that the accused intended to cause death or injury sufficient in the ordinary course of nature to cause death, This was held in the case of GARBA vs. STATE (2000) 4 S.C, 157. In Sect. 31 of Penal Code, injury is defined as harm illegally caused. No people or nation flourishes in disorderliness, violence, and crime. As Lord Denning (1979) posits, in any case, whatever your role, I would as Master of the Roles, remind you that it is, in the long run, on the maintenance of law and order that civilized society depends.

Retardation of Development: Crimes are also prohibited because they breed loss, hinder, disrupt and frustrate economic activities. A crime-ridden nation records retrogression, or at best, arithmetical progression in all facets of its development. Nations, in particular and the world generally, have recorded unprecedented draw-backs in advancement, since the emergence of drug

and human trafficking, terrorists activities and other similar international crimes. Recently in Nigeria, people vacated their residence in the North for safety, following the horrors of Boko Haram in the country; and for foreign investors to respond to Nigeria's call to invest in the country, expatriates are apprehensive of coming to fish in the troubled water. The end result is that business and employment opportunities are stifled, while national development stagnates.

Security of lives and property: Crimes are also prohibited because not only do they cause injuries and harms to the victims, and the offenders as well, they also ruin their lives. Many had lost their lives in the process of stealing, even worthless things. A young man once stole louver glasses, he was caught and burnt alive by a mob before Police could intervene. Apart from such dangerous self-helps, a variety of punishments are attached to crimes by their enabling statutes. A case in point is the crime of stealing. Sect. 390 of the Criminal Code states:

Any person who steals anything capable of being stolen is guilty of a felony, and is liable, if no other punishment is provided, to imprisonment for three years.

- (1) If the thing stolen is a testamentary instrument, whether the testator is living or dead, the offender is liable to imprisonment for life.
- (2) If the thing stolen is a postal matter or any chattel, money, or valuable security, contained in any postal matter, the offender is liable to imprisonment for life.

Miserable state of affairs: Whether the punishment for a crime is death sentence, life imprisonment or less, in fact no matter how short the period of sentence, the victim's state of affairs remains incurably bad, because once a convict, always a convict. A convict is robbed of the essence of his life and dignity of his human person. He spends the rest of his life as a second class citizen, devoid of access to most of his fundamental rights – he can no longer vie for, hold, be appointed to or elected into any public office. Crimes are ruinous, hence they are outlawed.

Causes of crimes/why they thrive

Avariciousness: In spite of multiplicity of laws, decrees, promulgations, enactments, crimes have persisted. Man's inclination to amass wealth, to satisfy his insatiable wants, to boost his ego, lead people to indulge in crimes. Crimes also persist owing to people's intention to defraud others. In the case of *BABALOLA v. THE STATE* 103 (1989) 7 S.C. (PT.1) 94, stealing was defined to consist of an intention not only to take away the property, but also an intention to permanently deprive another of the use and ownership of such property.

Habits: Crimes have also persisted because of habits grown and nurtured over the years. When habits are formed, particularly bad habits, they persist, in spite of efforts to get rid of them. Gangsterism, peer group syndrome, cultism, idle and disorderly habits promote crimes in youths which affects the society negatively. Children from broken homes, who grew up in motor parks, under bridges, and in the streets are most likely to be chronic criminals.

Values a nation's educational system promotes can directly or indirectly make the ground fertile for crimes to flourish. In Nigeria, moral education has been stifled since the take over of school by the government from religious organizations. Inculcation of moral ethics and discipline of children in schools have been thrown to the winds. Worst still, at homes, parents have very little or no time to observe, monitor or attend to their children and wards – due to avarice. In majority of homes, children are left in the care of house-helps who do not only lack the requisite knowledge and ability to control, but also the skill to sow the good seeds of morality in children. Ingobro (2010) observed, the Nigerian Educational Research and Development Council (NERDC) has started the infusion of national values curriculum in the educational system in Nigeria, particularly the basic

education system to ensure that the youths of the nation are taught to imbibe the right attitude and moral values from their childhood. This effort should be applauded.

Complex changes erupting all over the world encourage crimes. Acculturation, distorted value orientation, confused belief systems aggravates crime. At homes, majority of parents do not live by examples again, they encourage indolence, sponsor examination malpractice; in schools, teachers' dedication to duty has depreciated to zero, students snob and insult teachers, and exhibit apathy in their studies. Churches which are also agents of socialization, have taken to mad rush after wealth, commercializing the gospel, rather than focus on evangelization like the early missionaries.

Industrialization is one of the factors breeding crimes. Industrialization is a development marker. The advanced nations of the world are all industrialized. It has an attendant evil of multiplicity of crimes – taking people hostage following oil exploration and exploitation, its contagious crimes of kidnapping, youth restiveness, armed robbery, drug and human trafficking and ritual killings are examples of these crimes.

Technological developments have also made crimes to flourish. Pornography in the internet is an example. Children and young persons these days lavish their precious time watching Western culture films, brandishing guns and destructive weapons; these have not only encouraged, but also increased crime wave the world over. The economy of all the nations of the world is monetized, hence too much priority is placed on money. In a world where money is accorded the highest priority over everything, and of course, supersedes every other consideration, crimes thrive.

Factors that militate against the growth of crime

- 1) **Strict adherence to the rule of law:** The rule of law simply means that the law rules. In the days of Buhari and Idiagbon regime in Nigeria, armed robbery was punishable with Public Execution. Worst still, the convicts were taken to the Primary Schools nearest to their houses in their villages and there fired to death in the open fields, after asking them to address their people for the last time, or proffer words of advice to the youths. Before this stage, their names were announced several times over the radio, and this attracted every dick and harry to the fields except their relatives who dared not show up. The practice drastically checked the offence of robbery. Strict adherence to the law is a veritable tool to curb crimes.
- 2) **Awareness and Sensitization:** Though ignorance of the law is no excuse, one may neither know, and still not know that one does not know that an act is prohibited nor know the gravity of the consequences of the act. Government should endeavour to create awareness of prohibited acts and also sensitize the public of the consequences. As Otabo (2010) disclosed, during a visit of the Independent Corrupt Practices and Other Related Offences Commission, the National Association of Nigerian Students (NANS) Senate expressed their readiness to partner with the ICPC through organizing Anti-Corruption workshops, seminars, rallies and campaigns to complement the efforts of the anti graft agency.
- 3) **Education:** Education, generally and legal education, in particular, in secondary schools and tertiary institutions, as general courses, is very vital to the curbing of crimes in our societies. If the rudiments of some law courses like: Criminal Law, Law of Tort, Law of Contract, Business Law and Constitutional Law are infused in the Schools' Curriculum and taught effectively, youths will be conscious of their acts and shun crimes. Studies in Human Rights Law, in addition, will infuse, in the scholars, the spirit of respect for human

dignity every person owes the other; and more still learn that one's right to swing his arms ends where the other's right to defend his nose begins.

- 4) **Probity and Accountability:** It is a maxim of equity that he who goes to equity must go with clean hands. People in the helm of affairs often embezzle public funds, loot public treasuries, and exhibit conducts so porous that the masses are provoked to take to the streets dragging, as a do or die affair, one public office or the other. Such conducts are contagious and breeds crimes. Offenders should be made to face the music. Nwozor (2010) revealed, the ICPC has arraigned a Professor and renowned Cardio Thoracic Surgeon at the UNTH Enugu before Hon. Justice L. A. Umezulike of the Enugu High Court, on a four count charge of using his office to confer corrupt advantage upon himself and for demanding gratification before performing official duty. The same Newsletter disclosed that ICPC also secured conviction of an Ex NDLEA Boss sentencing him to jail for corruption; while in another pending action, Court resumes hearing on Corruption charges against Ex-Minister. Prosecution of corrupt public office holders, without fear or favour, discourages robbery with the pen.
- 5) **Preservation of national interests:** Self-centeredness encourages crimes. The desire in people to live in paradise on earth, without regard to national values, sees them into committing all manner of crimes. There is a great need to infuse the spirit of nationalism in the entire citizenry so that all will develop special regard to hold the nation on high esteem. This will go a long way to check the growth of crimes.
- 6) **Home Training:** Good home training and moral upbringing hinders crime. It is from the home that bad attitudes and habits are either nipped in the bud or allowed to grow with children to full blown adult criminals. Parents' lukewarm attitude in monitoring the company their children keep, how they spend their times, especially their free periods, their general attitudes in order to nip the bad in the bud, breed crimes. They should not spare the rod and spoil the child! Parents who connive at their children bringing home material things (not theirs) for keeps, to use or wear, must not cry wolf when the children mature to full blown thieves and robbers – when they would be too late to control. Some men do not provide necessities for their households, they abandon their responsibilities, including their children's school needs, to their wives, hence such children join the bandwagon hawking – come rain, come sunshine – to help their mothers make ends meet. Such helpless children end up in the motor parks, streets, and often stray into brothels, and gambling houses where they take to juvenile delinquency and become nuisance to the society.

Conclusion

Crimes are evil wind that blows nobody good. They throw the society into insecurity, confusion, violence and panic; they cause injuries, pain, grief, losses and at times, death to individual victims, hence the state punishes it, regardless of whether the victims choose to pursue it or not. In Nigeria, since the break out of Boko Haram Sect that have been bombing media houses, tertiary institutions, public places and churches in particular, the law makers have not found a solution to the mayhem. The increase in crime wave and the mode of operation all over the world have encapsulated the inhabitants of the earth planet into a timid box. Boko haram in Nigeria, coups d'état, rebels and terrorists restiveness in countries, particularly the under-developed ones, ritual murder, drug and human trafficking the world over have subjected nations to a state of awe, apprehension and insecurity. On their part, governments of nations kept not their fingers crossed.

They, in response, resorted to radical decisions, promulgations and even peace-keeping forces to counter rebel actions and a lot of other stringent measures to pull the bull by the horns. In Nigeria, for example, the punishment for kidnapping was ten years imprisonment, but since the offence became selling like hot cake, some states in the country have stipulated life imprisonment, while others promulgated death sentence. Meanwhile, millions of offenders (youths) of different nationalities, have lost their lives in prisons abroad, and multitude are still languishing in similar detentions – due to their involvement in one crime or the other.

Recommendations

The war to rid our societies of crimes is a battle for all. Neither the state nor the individual citizen, can fight it all alone and win. The key to the victory is strict application of the law – without fear or favour, taking into consideration the fact that every criminal act involves a guilty intention to accept a substantial risk that ordinarily has a foreseeable consequence which a reasonable man would perceive and avoid. For individuals, good home training of children and youths, respect for national values and its preservation, observance and obedience to laws and constituted authorities, contributing one's quota to the peace and development of one's nation is recommended. Agents of socialization – teachers in schools and churches should live up to the tenets of their calls regarding the up-bringing of pupils, students and youths, at homes, parents should strictly concentrate on the discipline and moral upbringing of children and youths. Governments should, on their part, provide facilities for intellectual training of children and youths in schools, provide essential amenities for all, and most importantly, adopt strict application of the law, recognizing no sacred cow. These would ultimately check the growth of crime in our societies the world over.

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