



UNDERSTANDING THE CONCEPT OF CRIME FROM A PERSPECTIVE VIEWPOINTS

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Abstract

Crime is not a new concept. It has been around since the beginning of civilization, and the theories of why people commit. Crime is an essentially contested idea. There is no one definition of a crime that is accepted by everyone everywhere. Yet, the easiest way to think about crime is to look at it in terms of a legalistic perspective; from this point of view, a crime is an act which is forbidden. This way of thinking about crime is the most straightforward way to think about crime. It is a violation of the law. More specifically, it is a violation of the law that governs criminal behavior. In doing so, the act will have particular components to it; specifically, it will have a facet of criminal blame as well as a facet of criminal harm. The paper explored on what is crime and the different definitions given by various schools.

Keywords: Crime, Legal View, Sociological stands, Conflict

Introduction

It is difficult to present a universal definition of crime. The reasons are obvious, but foremost is the fact that acts defined as criminal vary with time and space. An act may be a crime in one society but not in another. Likewise, an act defined as a crime at one time may not be at another. In some cases even if same or similar acts are defined as crimes in different societies, the gravity or seriousness to which each society views the acts may be different (Weston and Wells, 1978). In addition, there are conflicting views on the definition of crime among jurists and social scientists, mostly bordering on ethical and ideological orientation. On the definition of crime,

a United Nations Research Institute observed that crime, in the sense of a breach of a legal prohibition, is a universal concept, but what actually constitutes a crime and how seriously it should be regarded, varies enormously from one society to another. Perceptions of crime are not determined by any objective indicator of the degree of injury or damage but by cultural values and power relations (UN Research Institute for Social Development, 1995)

Legal Definition

In a strict legal definition, however, a crime is a violation of the criminal law, which is subsequently followed by legal punishment. In criminal law, a crime is an action of omission, which attracts sanctions, such as fine, imprisonment or even death. A crime in law consists of two basic elements, the *actus reus* and the *mens rea*. The *actus reus* is the physical element or the guilty act and it requires proof. Where there is no *actus reus*, there is no crime. It includes all the elements in the definition of the crime with the exception of the mental element (Smith and Horgan, 1988). The *actus reus* could be made up of conduct, its consequences and the circumstances in which the conduct takes place (Smith and Horgan, 1988).

The second element, *mens rea*, is the mental element or the guilty mind. It is basically the intention and a man is said to intend doing something if he foresaw and desired it. The desire for the consequences is the basic factor of intention. *Mens rea* is not required for all crimes. There is no singular definition of *mens rea* because every crime has its own *mens rea*. To demonstrate *mens rea*, it must be proven that an individual intentionally, knowingly, recklessly or negligently behaved in a given manner or caused a given result. Crime can be dichotomized into serious and minor; felony and misdemeanor, *mala in se* and *mala prohibita* crimes against persons and crimes against property, etc. Criminologists are very much concerned with all potentially criminal behaviour, but not only in the strict legal sense. The definition of crime among criminologists will therefore recognise factors such as value systems, norms and religious attitudes in a given culture.

While the classical school dealt with the legal definition of crime, the positivist school defined crime in the context of disease. Crime as a disease, according to the positivists, appeared non-randomly among the weak, more defective class of the human race. The positivist school, therefore, sought the definition of crime in the

criminal, not criminal law. Lombroso, a leading figure of the positivist school, developed the idea of a born criminal, fatally destined to commit crime because of his (her) bio-psychological constitution (Lombroso (1911) Positivists rejected the legal definition of crime because, according to them, the concept of crime cannot be accepted as a legal category, “since the factors which produce the legal definition are contingent and capricious” (Jeffrey, 1959).

Criticisms of the Classical School led by the Positivist school Cesare Lombroso (1935 – 1909)

Based his idea on biological evolution, rejected the classical idea that all crimes resulted from a choice that could potentially be made by anyone. It also rejected the legal definition of crime and in its place substituted with the concept of natural crime defined as an act which offends the moral sentiments of pity and probity in the community. It focused attention in the act as a psychological entity with emphasis on determinism, the idea that every act has a cause. Positivists saw behavior as determined by biological, psychological and social traits and they focused on a deterministic view of the world, on criminal behaviour instead of legal issues, and the prevention of crime through the treatment or reformation of offenders.

Although Lombroso’s theory on biological evolution has helped in the study of crime, but was criticized for his failure to examine non-criminals for the purpose of comparison and there was no evidence of primitive people’s supposed characteristics.

Sociological Definition

Durkheim (1933) defined crime within a social context. He saw crime as a social product, determined by social conditions, capable of being controlled only in social terms. Crime is therefore normal in all societies, according to him and that “a society exempt from crime would necessitate a standardization of moral concepts of all individuals which is neither possible nor desirable (Durkheim, 1933). In the final analysis, Durkheim defined crime as “an act which offends strong and defined state of collective conscience” (Durkheim, 1933). This is basically the functionalist or consensus view, which sees the society functioning as an integrated, stable structure because of agreement or consensus among its members on certain rules and values recognised and respect by all (Shepherd, 1981).

The legal system is therefore a reflection of this consensus. A crime is therefore, a violation of the rules agreed to be respected by all members of the society and upon which the rest members of the society mete sanctions upon those guilty of the violation. It is the same reason that the legal system views crime as a public and moral wrong. It is a public wrong because crimes are wrongs which the judges have held or Parliament has from time to time laid down and are sufficiently injurious to the public to warrant the application of criminal procedure to deal with them (Smith and Hogan, 1988).

Likewise, it is a moral wrong because, according to Lord Devlin, there is a public morality which is an essential part of the bondage which keeps society together and that society may use the criminal law to preserve morality in the same way that it uses it to preserve anything else that is essential to its existence (Devlin, 1959).

Criminal law is therefore seen to be concerned with public wrongs or wrongs against society. Such wrongs involve acts of physical violence such as murder and rape, infringement of property rights, such as theft, fraud and burglary; and crimes against health, morals and public safety, such as prostitution, gambling, drug abuse, homosexuality and so on. Allen sums it up with the following observation that, crime is crime because it consists in wrongdoing which directly and in serious degree threatens the security or well-being of society and because it is not safe to leave it redressable only by compensation of the injured party (Allen, 1931).

Critique of the Consensus Views of the Position of the collective Conscience in determining the law

The legal system according to Durkheim is the basically reflection of functionalist or consensus view, which sees the society functioning as an integrated, stable structure because of agreement or consensus among the members on certain rules and values recognized and respected by all (Shepherd, 1981). And anyone that breaks the law is punish. But this consensus theory of law have been criticized by the conflict theorists on ground that criminal law is devise made by the ruling class to preserve the existing order, as a tool to control the lower classes, Chambliss (1969) argued that the history of criminal law is not a history of public opinion, or public interest, being reflected in the criminal legislation, but if the legislation and court which

reflects the interest of the economic elites who controls the production and distribution of the major resources of the society.

Conflict View of Crime

In contrast to the consensus view, conflict view sees crime being defined in the perspective of the ruling class. In this case therefore, crime is defined as any act or behaviour selectively identified by the few who governed in the society.. Such a definition naturally does not include acts within the ruling class behaviour. Property offences, for example, threaten property owners and are usually committed by the poor. And that is why according to the conflict view, the rich and powerful within the society focus so much attention on them. On the other hand, other acts which threaten the existence of the weak and poor in the society, such as tax evasion and environmental pollution, do not attract equal attention.

Society consists of competing interest groups, which are in conflict with each other. These groups are represented by the weak and poor, on the one hand, and the wealth and powerful, on the other, a result of inequality in the distribution of wealth and power within the society. The conflict view is mostly associated with the works of Marx and Engels and in recent times with those of Turk, Quinney, Chambliss and Seidman, Vold and Dahrendorf (Turk, 1969).

Conflict theorists view law as an instrument of control and there is a struggle among competing interest to control; it because it is a reflection of power in the society. The conflict gave birth to new criminology. The radical departure defines crime in accordance with the type of group or class within which a particular act is committed. For example, the poor commit theft, murder and burglary, the middle class commits typical “white-collar” crimes such as tax evasion and theft from employers; while the wealthy and powerful upper class indulge in activities such as exploitation, profiteering and environmental pollution and damage – acts which are not accorded the status of crime (Hollin, 2004)

There are however, criticism which accompanied this radical departure. The most prominent critic asks the questions “why is it that not everyone in the capitalist system commits crime?”. If the claim that the criminal law exists to protect the interests of the rich and powerful in the society, is it not also in the interest of the weak and poor

to be protected against crimes such as murder, rape and other violent crimes, recognised in criminal law.

Conclusion

After due analysis of what is crime the paper was able to conclude that crime is an unwanted phenomenon that exist in various society and change with time and which is followed by punishment by either the society, religion and criminal laws. So far, it is interesting to note that many people have cast doubt on this formal definition. To begin, this is due to the fact that it is always going to be partial and determined based on a very particular and limited set of criteria concerning what constitutes criminal behavior. If a particular action does not violate any laws, then we may consider it unethical, problematic, or detrimental; nonetheless, we cannot classify it as a criminal offense if it is not prohibited by those laws. A great number of criminologists have argued that it is essential to deconstruct the legal definition, and they have called into question the very conceptions of what constitutes criminal injury and what does not. Criminologists have also raised questions about preconceived conceptions of criminal blame, as well as the benefits and drawbacks of a strategy that is anchored in individual responsibility and looks backwards.

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