The Principles of Criminal Law — the Ingredients of Crime

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Session Overview

• **Introduction**

  In May 1996, as reported by Adler Mueller and Laufer (1998) three burglar were arraigned before court in Richmond, California. They had been arrested by the police after they had entered a neighbour's home and absconded with a tricycle. During the burglary, the ringleader attacked the only witness to the crime, beating and kicking him, cracking his skull and leaving him for dead. The three were charged with the crime. The ring leader was charged also with attempted murder.

• This sounds like a typical or normal everyday crime. What is unusual about this case however, is that the leader of the thieves was only six years old and his accomplices were two year old twins. The ‘witness’ was a one-month old baby! This ringleader was obviously a bad kid.. He had unlawfully entered the neighbour's house before and had held a grudge against the family..
• When the three were charged with burglary and the ringleader further charged with attempted murder, the press, neighbors and some other officials were all agitated, wondering why children that young were charged with attempted murder and burglary!

• The Judicial system, commented the Times of New York had a few guidelines for dealing with such youthful offenders. Indeed, are there too few guidelines? This is where the concept of crime becomes relevant. Can it be said that crimes were committed by the three children? What is that makes an activity criminal? Which crimes were committed?
• In attempting to answer this question, we must begin by looking at the criminal code of the country or state in which the crime was committed.

• But this will not answer the question, because, for the most part, criminal codes do not contain theoretical propositions, but definitions of specific crimes.

• It has taken scholars to work out, over time, the basics of the concept of crime as these apply to the different types of crime defined in the criminal codes of different countries or states. The principles involved are actually the ones used by legal practitioners as well as judges in arriving at a decision whether a crime has been committed or not.

• What are these principles and what has been the rationale behind their emergence?
Session Outline

• The main topics to be covered in this session are as follows:

• Topic One: The Rationale behind the principles
• Topic Two: The seven principles
• Topic Three: The legal approach to defense based on the principles
Objectives/Expected outcomes for the session

After studying this Unit, you should be able to

• Explain the rationale behind the principles of criminal law,
• Identify and explain the seven principles,
• Describe the legal approaches to defence based on the seven principles and other options.
Topic One
Rationale behind the Legal principles

• Introduction

• The notion of what constitutes crime varies from time to time and from one place to the other according to the views of particular societies or the ideologies of particular political regimes.

• Consequently, what constitutes crime can only be defined with reference to existing legislation.

• Thus penal codes have defined throughout the ages thousands of different crimes. Invariably, these crimes are all human actions carried out by actors who acted with a criminal intent to cause a specific harm. To what extent do these crimes have certain elements in common?
Definition of crime

• Definition of Crime

• Notwithstanding the fact, as suggested by Howard Becker (1963) that every society makes rules and attempts to enforce these rules, the concept of rule breaking – that is social deviance – and by extension, crime and delinquency varies from one society to the other.

• Sociologists strongly argue that a normless society is a contradiction in terms. This means that, there could, conceptually speaking, be no society without norms. Norms are but rules which regulate behaviour to ensure conformity to the expectations required for the attainment of a specific need.
Norms vary from society to society

- All societies, and groups within a society as Howard Becker (1963) emphasizes, make rules and attempt, at sometimes and under some circumstances, to enforce them.

- These rules **identify specific situations and prescribe the kinds of behavior appropriate to those situations**, specifying some actions as ‘right’ and forbidding others as wrong.

- The specific situations identified by rules may vary from one culture to the other, similarly the kinds of behaviour considered appropriate to those situations may similarly vary.

- Recall, for example, the example we gave earlier of the East Indians in Mauritius, among whom it is considered a delinquent behavior if a girl speaks to strangers. Thus when a a girl meets a stranger (the situation) she must not speak to him/her (the prescribed behaviour). In other cultures, it is permissible when a girl encounters a stranger, to answer his or her questions.
Cultural interpretations influence definition

• Actions which break any societal rule are labelled as deviant acts and the actors as deviants.

• But the concept of social deviance and by extension that of crime and delinquency defies universal definition because of differences in cultural perspectives throughout ethnicities, races and other groups which constitute societies.

• This means that cultural interpretations influence every stage of the process by which the fact of social deviance or criminality is determined.
• Apart from the cultural differences which inhibit a universally acceptable definition, the notion of what constitutes crime is only relatively permanent in the sense that the definitions of crime are often subject to review from time to time based on the ideology of ruling governments which make these definitions compatible with or reflect current thinking.

• Thus the student of deviance is aware that different groups judge different things to be deviant. This alerts him to the possibility, as noted earlier that the person making the judgment of deviance, the process by which that judgment is arrived at, and the situation in which it is made may all be intimately involved in the phenomenon of deviance.
Crime varies in rime, place and under circumstances

• Further, the notion of criminality varies both in time, place and under certain circumstances.

• With reference to time, for example, what was considered deviant some year’s ago may not bear the same label in the contemporary time. In the past, it was considered deviant for a woman to smoke, drink or wear trousers in public; but these acts are considered fashionable today.

• With reference to place, what is normal in one society may be deviant in yet another; for example among the traditional Tswana in Botswana it was considered quite normal for a man’s eldest son to marry his step mother when the man died. But such an act would be considered a taboo in other African societies.
A person is deviant when so labelled

• Finally, with reference to circumstance, an act considered deviant under one circumstances may not be deviant under another. For example, if a man killed an enemy during war time, he would be applauded; but in peace time, the same act of killing would be considered as a murder.

• Consequently, a person is said to be deviant when he is so labelled. Thus Deviance is usually not the quality of the act itself. The act may be the same, but the label may change from place to place, time to time and under varying circumstances.

• Given these varied cultural interpretations of deviant behaviour, and given also the relativity of crime in time, place and under circumstances, it is obvious that the world is divided on what constitutes crime, what does not, and what should be done about it.
The need to rationalise the concept of crime

• This is the rationale behind the need to harmonize the concept of crime.

• In its generally accepted legal sense, crime refers to acts or omissions which violate the provisions of the criminal legislation, and are punishable. The criminal legislation comprises all the laws forbidding specific acts or commanding the performance of specific tasks and prescribing penalties for non-compliance.

• As defined by Haskell and Yablonsky (1978) crime is an intentional act, committed or omitted in violation of a law forbidding or commanding it, and to which is annexed either of the following punishments (a) the death penalty, (b) imprisonment, (c) the imposition of fines, (d) removal from office, and (e) disqualification to hold and enjoy any office of honor trust or profit in the society. Crime then is in a very real sense, created by the criminal law.
Criminal actions have certain common elements

• The criminal code or criminal laws are however made up of definitions of a series of specific crimes such as burglary, murder, rape homicide, or robbery.

• Significantly, all the actions which constitute these crimes have certain elements in common. They are actions perpetrated by persons with a criminal intent to cause a specified harm in violation of the law.

• Based on these common elements, legal scholars - specifically Jerome Hall have been able to abstract from the definitions of different crimes, certain general principles to form the basis for determining criminality.

• These are the principles that lawyers and judges actually use to determine whether or not, a crime has been committed. There are seven of these principles:
Topic Two
The seven principles

• **Introduction**

• What are the seven principles that incorporate the common legal ingredients or elements found in all crimes?

• With a few exceptions, if any one of these elements is not present in a criminal procedure to determine criminality, no crime can be assumed to have been committed.

• What are the specific principles?
External consequences or harms

1. Before a behaviour can be said to be criminal, **there must be certain external consequences or harms.**

   - A crime must have a harmful impact on personal or social interest. **The harms involved are of various definitions; some visible, such as murder or arson; others not so obvious, such as libel, loss of privilege or loss of prestige.**

   - If the specified harm has not been created by the defendant’s action, a crime cannot be attributed to him. Further if a person decided to commit a crime and then changed his mind before he does anything about it, he has committed no crime; the intention cannot be taken for the deed.
The harm must have been legally forbidden

2. The harm inflicted must has been legally forbidden. An inflicted harm must have been proscribed in penal law. An anti-social behavior is not criminal unless it is prohibited by law.

- The applicable Latin expression says ‘nullum crimen sine lege’ that is, there could be no crime without a law prohibiting it. The law is interested only in an evil act (actus reus).

- An act is said to be evil in the sense that it is prohibited. If there were no laws forbidding rape throughout the world one could seize any girl in the street, rape her there and then, and walk away free.
Ex post facto legislation

- Ex-post facto-retroactive law
  - In connection with the principle stated in (2) above, it is important to point out that criminal law should normally not have a retroactive effect.
  - There is a long standing tradition against the enactment of ex-post facto legislation. This means that a man who commits rape today cannot be charged with the offence, if a law were to be passed the following day forbidding (criminalizing) the act.
  - This means that a person cannot be tried under any law passed to prohibit an offence he has committed - after the offence was committed.
Wilful conduct

3. There must be a personal or wilful conduct. There must be an intentional or reckless action or inaction which brings the harmful consequences about.

• A relevant illustration is that a person who is forced to pull the trigger of a gun does not commit murder even if someone dies from the bullet.

• Alternatively, if a sleep walker were to hurl a stone which kills a bystander, there could have been no crime, because there was no pre-meditation or a conscious interaction between mind and body.

• A sleep walker is someone who has a mental abnormality under which he is able to leave his or her bed while fast asleep to carry out certain physical activities even though he or she is deeply asleep during the activities. In 2015 an American lady was reported to have walked over nine miles to her uncle’s house while deeply asleep.
Presence of mens rea

4. Mens rea’ or criminal intent must be present.

The legal meaning of ‘criminal intent’ is often misconstrued. Hall (1960) suggests that there is a distinction between intentionality as meaning ‘deliberate functioning to reach a goal’ on one hand, and ‘the reason or grounds for end-seeking’.

Mens rea is identified with the former, in other words, the correct interpretation of the term is the deliberate functioning to reach a goal and not ‘the reason or grounds for end-seeking’.

Thus for an offender to be convicted in a criminal trial, the prosecution must be able to prove that he deliberately acted to bring about the crime.
Mens rea cotd

• As an illustration, if a man decides to kill his starving children in order to relieve them of pain and suffering, his motive or grounds for end-seeking is good, but the intention that is, his deliberate functioning to reach the goal (of killing) is wrong – in the sense that the act of killing is legally prohibited.

• The mens rea in this illustration would refer to doing an act deliberately to attain an end which may be motivated by positive reasons but legally forbidden. In this example, the deliberate functioning would include, going for a gun, loading it, aiming the gun at the victim and pulling the trigger.

• The same deliberate action would be involved if a man gets rid of a rival in order take over a woman that they both love but cannot both have. Mens rea is thus explained by HOW and not why an illegal action came about. Under mens rea the end does not justify the means.
5. There must be a fusion or concurrence of mens rea and conduct. This means that the decision to do an act must be deliberate and out of the actor’s own volition. In other words, the action must have been pre-meditated and carried out willingly by the actor.

• This principle is illustrated by the following hypothetical situation. A policeman enters a house with a warrant to arrest a suspect. After the arrest, he escorts the suspect to a waiting police jeep and returns to the house to pick up a video camera which he had spotted upon entering the house earlier.

• Under the circumstance, if the policeman was charged with stealing the video camera his punishment could be mitigated by the fact that cannot be considered a trespasser from the beginning, since the criminal intent and the conduct do not fuse or concur.

• In other words, the policeman had no previous intention, that is, a premeditated resolve to steal in the house. He went to the house not to steal but to make an arrest.
Fusion of mens rea and conduct  cotd

• Consider yet another illustration:

• Supposing a worker on strike throws a piece of rock at the office window of the Managing Director with the intention of shattering the window as a sign of protest; but a broken piece of glass pierces the throat of the Managing Director’s secretary who bleeds to death! The stone thrower could not be found guilty of murder because the action (the harm) and the intention (mens rea) do not concur.

• In other words the worker did not go to the MD’s office to throw a stone with a pre-meditated intention to kill the secretary.
A causal relation between the harm and the misconduct

5. There must be a causal relation between the legally forbidden harm and the voluntary misconduct.

• As an illustration, if one shot a person and the victim suffocated and died while in hospital recovering from the wound, the relationship between the conduct and the harm is not clear cut.

• Alternatively, assuming that ‘A’ shoots and wounds ‘B’ and while ‘B’ is being conveyed in an ambulance to hospital the car is involved in an accident killing ‘B’. Under this circumstance, ‘A’ could not be charged with murder, even though the person he shot is killed. He would only be guilty of an attempted murder, because the casual relationship requires that the actor’s conduct must cause the harm without interference by anyone else.
7. The final principle says that there must be a legally prescribed punishment. Not only must the harm be proscribed by law, the proscription must also carry a threat of punishment to violators. The voluntary illegal conduct must be punishable by law. An illegal action coupled with an evil mind does not constitute a crime, unless the law subjects it to punishment.

• The need for punishment helps to distinguish between crimes and torts. While crimes are punishable, torts are civil wrongs for which the law does not prescribe punishment but merely grants the injured party the right to recover damages.
Topic Three:
The legal approach to defense based on the principles

• **Introduction**

• Based on the principles just discussed what options are available for either the prosecution to obtain a conviction or the defense counsel to obtain an acquittal of the suspect?

• Yet indeed, apart from presenting a defense based on the seven legal principles, are there other options of defense legally acceptable?
The options for defence

• The main objective of the criminal law is to prevent something bad (a given harm) from happening.

• Murder is prohibited because the collective conscience of society does not want people to be killed. Arson and theft are prohibited because society wants people to be secure in their possessions. (Adler, Mueller and Laufer, 1998) The detrimental consequences that the law tries to prevent are designated as harms.

• Thus the legal approach to defense based on the seven principles requires the defendant or his counsel to prove that one or more of the seven principles does not exist.
All the ingredients of the concept of crime must be present

• With a few exceptions, if any one of the principles is not present, no crime has been committed, according to Adler, Mueller and Laufer (1998). Thus all the defenses available to a person charged with a crime contend that at least one of these elements is not present.

• As an illustration, although the defendant may have witnessed or experienced some harm, such as himself (or someone) being stabbed or a house is burnt down, a crime may not have taken place if the defense is able to prove either that the accused person lacked the mens rea or criminal intent; or that there was no wilful action or inaction, or that there was no causal relation between the forbidden harm and the voluntary misconduct.
The absence of any one principle detracts from criminality

• In other words, the absence of any one of the seven legal principles outlined detracts significantly from the definition of the action as a crime.

• Similarly, if the specified harm, has not been created by the defendant’s act, the crime is not complete.

• This principle is illustrated by the example of the would-be assassin of President Reagan of the United States, John W, Hinckley, Jr. who shot to kill the President but the President did not die.

• In this circumstance, the harm envisioned by the law against murder had not been accomplished. Hinckley could have been found guilty of attempted murder but he was acquitted by reason of insanity.
Proof of the mens rea subsumes the presence of other relevant ingredients

• Providing an acceptable proof of the mens rea is often critical, since the existence of the mens rea often subsumes the existence of the other critical ingredients of criminality.

• For example, if a person deliberately functions to commit a crime (which is the legal meaning of the mens rea) it would be presumed that the action was wilful, that is, it was carried out deliberately to achieve a certain goal in other words it **must have been an intentional or reckless action or inaction which brought the harmful consequences about.** Thus the criminal could not have, for example, been forced to pull the trigger of a gun and is thus responsible for murder, if someone dies from the bullet.
Further, the presence of the mens rea subsumes **premeditation**. In other words **there was a fusion or concurrence of mens rea and conduct**; which means that the decision to do an act was deliberate and out of the actor’s own volition that is, the action must have been pre-meditated and carried out willingly by the actor.

**Proof of the deliberateness of the criminal action (that is the mens rea) would suggest strongly also that some external consequence or harm (an actus reus) was made manifest.**
Summary

• Before a person can be said to have committed a crime, the following principles must be satisfied:

• There must be certain external consequences or harms, these harms should have been legally forbidden; there must be a personal or willful conduct that brings about the harm; the mens rea must be present.

• The other prerequisites require that there must be a fusion or concurrence of the mens rea and conduct, a causal relation between the harm and the voluntary misconduct and there must be a legally prescribed punishment for the offense.
Summary cotd.

• The legal approach to defense based on the seven principles requires the defendant or his counsel to prove that one or more of the seven principles does not exist.

• With a few exceptions, if any one of the principles is not present, no crime has been committed. Thus all the defenses available to a person charged with a crime contend that at least one of these elements is not present.
Proof of the mens rea critical

• Further, providing a an acceptable proof of the mens rea is often critical, since the existence of the mens rea often subsumes the existence of the other critical ingredients of criminality.
Assignment

• Assuming a friend called you earlier to arrange a business meeting the following day at 9am but upon his arrival in your house you were not in because you had to leave home unexpectedly to see to some pressing issue. He opens your living room door and takes a seat there waiting for your return. Meanwhile, your nineteen year old sister was taking her bath in a room opposite the living room. Unaware that there was a visitor waiting in the room, she comes out of the bathroom completely naked. The visitor, upon catching site of the very beautiful girl got irresistibly turned on and raped her! Do you anticipate any problem in successfully suing your friend for rape?
References

