

**ISLAMIC UNIVERSITY IN
UGANDA**

JOURNAL OF COMPARATIVE LAW

CRIME IN JURISPRUDENCE: A CRITICAL ANALYSIS OF THE CONCEPT

By

Gloria Shajobi-Ibikunle (Ph.D)* & Chidinma Therese Ibekwe**

Abstract

The proper concept of crime in a society should form the basis for a study of criminal conduct, formulation of reduction of crime strategies and appropriate punishment for deviant behavior. This paper critically analyzes the various definitions of crime in society and their continued relevance. It also traced the definition of crime by other schools of thought other than that which is purely legal. The paper thus provides a wholistic view of what should be the attitude of the criminal justice system to crime vis a vis societal concepts of crime. This is to enable the justice system properly reflect the ethos of a society to deviant criminal behavior such that sanctions for such crimes will deter criminals and not reward them as well as mirroring the societal contempt for such crimes.

Introduction

Throughout the history of mankind, punishment has always existed as a sanction for wrongdoing. In the Bible, God pronounced punishment on Adam and Eve for contravening his instructions.¹ Today, this authority resides with the legislature who are deemed to be representatives of the people rather than the sentencing magistrate or Judge who must sentence according to prescribed sanction in a law². No wonder, Tanimu posits that punishment must bear some proportion to the evil posed by crime if the law is to command wide acceptance.³ It has been argued that a criminal has his usefulness to society. Marx⁴ assents to this view thus;

The criminal produces an impression now moral, now tragic, and renders a 'service' by arousing the moral and aesthetic sentiments of the public. He produces not only textbooks on criminal law, the criminal law itself, and thus legislators but also art, literature, novels and the tragic drama...The criminal interrupts the monotony and security of bourgeois life. Thus, he protects it from stagnation and brings forth that restless tension, that mobility of spirit without which the stimulus of competition would itself become blunted...

* Lecturer in the Department of Public and International Law, Faculty of Law, University of Abuja.

** Lecturer in the Department of Public and International Law, Faculty of Law, University of Abuja.

¹ Genesis 3:14-19, Holy Bible.

² Bamgbose, O.O., *The Sentence, the Sentencer and the Sentenced: Towards Prison Reform in Nigeria*, Ibadan, Ibadan University Press, 2010.p 1

³ Tanimu, T.A., Capital Punishment and its effects on Nigerian Criminal Law. <<http://dspace.unijos.edu.ng/bitstream/10485/352/1/>. Last> accessed July, 2014. p 22-23.

⁴ Marx, K. *Theories of Surplus Value*, 1969, Vol 1 p.387-388

He further argued that crime takes off the labor market a portion of the excess population, diminishes the competition among workers, and to a certain extent stops wages from falling below the minimum. Furthermore, the war against crime absorbs another part of the same population. Would the locksmith's trade have attained its present perfection if there had been no thieves? It is debatable if these sentiments are widely acceptable when crimes such as sexually based offences involving children, drug related offences, trafficking of persons e.t.c is in contemplation.

Considering the fact that at the early stage of the development of English Criminal Law, and possibly up until the end of the 12th century, every person was generally liable for certain wrongs resulting from his conduct, irrespective of any other considerations; the concept of crime in society presently cannot be glossed over.

Definition

Formulating a definition of crime that is both precise and at the same time exclusive is difficult, but any definition of an offence in criminal law must of necessity import an act which is illegal or an illegal omission to act where there is an obligation to act. The word 'crime' is difficult to explain and yet appears easy to comprehend. The justice system is mobilized when a victim or a witness sees an event deemed a crime and reports to the police. The police then decide whether or not a crime has been committed, and if so to investigate, and decide whether or not to prosecute. The courts decide the fate of the accused and if convicted, the prisons assume custody. The criminal justice system is thus established to dispense justice that is due to or deserved by criminals.

According to Black's Law Dictionary⁵, a crime is an act that the law makes punishable; the breach of a legal duty treated as the subject matter of a criminal proceeding. The dictionary further affirms that the term 'crime,' 'offences,' and 'criminal offence,' are synonymous and ordinarily used interchangeably. Therefore, if a person is under no obligation by law to act and so does not act, the person will not be said to have committed any offence, even if the person's omission caused considerable harm to another person.

Crime may be defined as an intentional act or omission in violation of criminal law (statutory and case law) committed without defence or justification and sanctioned by the state as a felony or misdemeanour.⁶ A crime may be defined as any act done in violation of those duties which an individual owes to the community and the breach of which the law has provided that the offender shall make satisfaction to the public.⁷ Dambazau contends that in a strict legal definition, a crime is a violation of the criminal

⁵ *Black's Law Dictionary*, Sixth Edition, Centennial Edition, St Paul, Maine, 1990, Print.

⁶ Reid, T. Sue, *Crime and Criminology*, Oxford University Press, New York, 2012 p 7

⁷ *Ibid.*

law, which is subsequently followed by legal punishment.⁸ Therefore, he submits that in criminal law, a crime is an act of omission, which attracts sanctions, such as fine, imprisonment, or even death. The definition of crime will therefore recognize factors such as value systems, norms and religious attitudes in a given culture.

It is worthy to also note that with respect to the elements of crime, crime is a combination of three distinct human activities; that is, thought, communication and conduct (also known as act). Thoughts alone cannot be punished as crimes but thoughts can constitute the required mental element (*mens rea*) for certain offences. Communication implies spoken or written words, as well as symbols. Communication could constitute offences in themselves, for example, communication constitutes the offence of assault;⁹ or may be combined with either thoughts or actions to constitute crime. In the same vein, conduct may constitute strict liability crime, and in such case, the State is only required to establish that the accused committed a forbidden act or omission. When the State is required to prove a specific mental element (*mens rea*), however, it must establish the required intent, purpose, or knowledge which is an essential element of the crime.

Ultimately, whatever the content of the criminal law or the definition of crime may be, the principle of *nullum crimen sine lege, nulla poena sine lege* remains a fundamental element of criminal justice in any legal system.

Universality of the Definition

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. If so, then is a crime a local affair restricted to what a particular society so deems? An act might 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 time. In some cases, even if same or similar acts are defined as crime in different societies, the gravity or seriousness to which each society views the acts may be different. In addition, there are conflicting views on the definition of crime among criminologists and social scientists, mostly bordering on ethical and ideological orientation. The United Nations Research Institute¹⁰ observed that crime, in the sense of a breach of a legal prohibition is a universal concept, but what actually constitute 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.

⁸ Dambazau, A.B. *Criminology and Criminal Justice*, Ibadan, Spectrum Book, 2007 A.B, 2007, p. 48.

⁹ See Section 252 of the Criminal Code and Section 264 of the Penal Code

¹⁰ United Nations Research Institute for Social Development, “*States in Disarray, The Social Effects of Globalisation*”, 1995

Crime and the Criminal Codes

Generally, every society sets a code of conduct/ standards by which it directs the activities of the individuals living within it. Individuals living in such society are expected to abide by such decisions and will be called to account where there is a violation of such code of conduct. Criminal law constitutes one of the most significant aspects of such code of conduct because it relates to breaches against society's standards which affects the safety, well-being and survival of such society and its residents.

The word "crime" is said to be synonymous with "offence"¹¹. In both the Criminal and Penal Codes, the words "crime," "offence" and "criminal offence" are interchangeable. Section 2 of the Criminal Code (CC) defines offences as "*acts or omissions which render the person doing the act or making the omission liable to punishment under this Code.*"

Section 3 of the Penal Code (PC) provides equally as follows:

"(1) Every person shall be liable to punishment under the Penal Code for every act or omission contrary to the provisions thereof of which he shall be guilty within Northern Nigeria.

(2) After the commencement of this Law, no person shall be liable to punishment under any native law and custom."

The Administration of Justice Law of Lagos State 2011 defines an offence as offence against any enactment in force in Lagos State. A crime is an act committed or omitted in violation of a law forbidding or commanding it and to which if arrested, upon conviction, either, or a combination of the following punishments; deaths; Imprisonment; fine; removal from office; disqualification to hold and enjoy any office of honour, trust or profit is imposed.

The term "offender" is commonly used in statutes to indicate a person implicated in the commission of a crime and includes a person guilty of a misdemeanour or traffic offence¹² Anyanwu submits that both the Criminal Code and the Penal Code do not use the word "crime" but the word "offences"¹³. However, both codes use the adjective 'criminal' in the definition of offences, so the practice in Nigeria is to use both words interchangeably.

Conclusively, whatever the content of the criminal law or the definition of crime may be, the principle of *nullum crimen sine lege, nulla poena sine lege* remains a fundamental element of criminal justice in any legal system. This principle is theoretically part of the Nigerian legal system as one of the fundamental rights of the individual. Section 36 (12) of the 1999

¹¹ Agaba, J.A.A *Practical Approach to Criminal Litigation in Nigeria (Pre-Trial and Trial Proceedings)* Abuja, Law Cord Publication, 2011, p 1

¹² *Supra* pg 1081

¹³ Anyanwu, I. *An Outline of Nigerian Criminal Law*, Kasimefuna Publishing, Lagos, 2009, p. 70.

Constitution (as amended) of the Federal Republic of Nigeria provides that a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefore is prescribed in a written law.

Overall, offences are acts or omissions which render the person doing the act or making the omission liable to punishment under the law. In this regard, it is important to note that every criminal offence must be borne in a written law.¹⁴

Theories of Crime

1. Classical & Positivist School

The various theories of crime approach crime from different perspectives. While the classical school dealt with the legal definition of crime, the positive school defined crime in the context of disease and sought the definition of crime in the criminal not criminal law. In general, the positivists' school 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 it with the concept of natural crime. Garofalo defined natural crime as conduct which offends the basic moral sentiment of pity and probity in the community¹⁵. However, Lombroso, the leading figure of the positivist school developed the idea of a born criminal fatally designed to commit crime because of his (her) bio-psychological makeup.¹⁶

2. Social Theory

It is said that crime and criminals are functional and dysfunctional social phenomena.¹⁷ Therefore, it is to be submitted that crime occurs in all societies. An interest in knowing why people engage in criminal behaviour is infinitely more desirable to societal order than a purely legal approach. Social interests argue that deviant behaviour should be studied and that criminology should explore why certain people who engage in specific acts are labelled criminal or deviant while others who engage in those same acts are not labelled.¹⁸ It is also argued that a society exempt from crime would necessitate a standardization of moral concepts of all individuals which is neither possible nor desirable. This is basically the 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 recognized and respected by all. Yalaju believes that the consensus view is

¹⁴ See s. 36 (12) of the 1999 Constitution (As amended) of the Federal Republic of Nigeria.

¹⁵ Ahmad Siddique's *Criminology & Penology*, S.M.A. Quadri, Lucknow, Eastern Book Company, 6th Edn, 2011, p84

¹⁶ Lombroso, C. *The Criminal Man*, New York: Pitman, 1911.

¹⁷ Alemika, E.E.O, "Disorders and Transformation of the Nigerian Criminal Justice System", <http://dspace.unijos.edu.ng/handle/10485/818>, last accessed 20 July 2017

¹⁸ Reid, *Op cit*, p 6-7

popularly accepted though certain issues make such definition tenuous for example, the relationship of crime to morality.¹⁹

Durkheim defined crime within a social context. He saw crime as a social product, determined by social conditions capable of being controlled only in social terms²⁰ Another view of a crime is that it is 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.

Smith & Hogan²¹ posit that a crime is both a public and moral wrong. It is a public wrong because crimes are acts that have harmful effect on the public and do more than interfere with private rights. Both authors state that the definition of crime as a public wrong explains why acts have been made crimes either by judicial decisions or legislation. Smith and Hogan go on further to state that crime is not just a public wrong; it is a moral wrong. This has been the traditional attitude of common law that crimes are essentially immoral acts deserving punishment. Allen sums it up with the following observation that: "Crime is crime because it consists of wrong doing which directly and in a serious degree threatens the security or well-being of society, and because it is not safe to leave it redressed only by compensation of the injured party."²²

This however does not accurately represent the present state of affairs, for a crime may remain a crime long after it has ceased to be a threat to the security or the well-being of society. Therefore, Allen's definition is what ought to be criminal rather than what is criminal.

It can be argued then that crimes are wrongs which judges have held to be so, or the Legislature has from time to time laid down, to be sufficiently injurious to the public to warrant the application of criminal procedure to deal with them.²³

3. Psychological School

The role of psychology cannot be overlooked as it is said that the real power of control over people's conduct is not the threat of official sanction but rather the power of social influence and internalized norms. It has been argued that the court and penal system is the crudest of all systems used to deal with deviant misconduct and though often used to deal with those who pose a high risk to society, more often than not it is used for persistent,

¹⁹ Yalaju J.G, *Criminology (Theories, Patterns & Typologies)* Princeton Publishing, Lagos, 2012, p. 22.

²⁰ Durkheim E, *The Division of Labour in Society*, Simpson G(Trans), New York: Macmillan, 1933.

²¹ Smith & Hogan, *Criminal Law*, 11th Ed, (Oxford: Oxford University Press, 2005) p. 12.

²² Allen, C.K. "The Nature of a Crime", *Journal of Society of Comparative Legislation*, 1931, February, *Reproduced in Legal Duties*, 221 at 233-234.

²³ Smith & Hogan, *Op,Cit* at p. 12.

inadequate, disturbed or addicted nuisances.²⁴ It raises the poser, if perhaps our definition of what is crime legally is not inadequate to properly address deviant behaviour.

Crime and Criminal Law

Thomas Hobbes, like Machiavelli, had a low view of human beings. According to him, humans are innately selfish, driven by fear of death and the hope of personal gain, he believed.²⁵ All of us seek power over others, whether we realize this or not.

If you don't accept Hobbes' picture of humanity, why do you lock the door when you leave your house? Surely, it's because you know that there are many people out there who would happily steal everything you own? But, you might argue; only some people are that selfish. Hobbes disagreed. He thought that at heart we all are, and that it is only the Rule of Law and the threat of punishment that keep us in check.

The consequence of this, he argued, was that if society broke down and one had to live in what he called 'a state of nature', without laws or anyone with the power to back them up, one; like everyone else, would steal and murder when necessary. At least, every man living on the surface of earth would have to do that if he wanted to carry on living. In a world of scarce resources, particularly if one was struggling to find food and water to survive, it could actually be rational to kill other people before being killed. In Hobbes' memorable description, life without the Rule of Law would be 'solitary, poor, nasty, brutish, and short'.²⁶

Criminal law can be said to emerge in light of the Hobbesian theory on man and his society. Following this perspective, criminal law appears to be the law which seeks to protect the public from harm by inflicting punishment upon those who have already done harm and by threatening with punishment those who are tempted to do harm. The harm that criminal law aims to prevent varies. It may be physical harm, death, or bodily injury to human beings; the loss of or damage to property; sexual immorality; danger to the government; disturbance of the public peace and order; or injury to the public health.

Criminal law also seeks to punish crimes. However, the purpose of providing punishment is only served by Criminal law through the criminal conviction meted out for a particular offence. For instance, one may lose more money on the stock market by engaging in securities fraud and that would

²⁴ Uglow, Steve. *Criminal Justice*, London, Sweet and Maxwell, 2002. P. 8

²⁵ Nigel Warburton, *A Little History of Philosophy*, (Yale University Press, 2012) <http://yalebooks.co.uk/display.asp?K=9780300187793&nat=false&sort=%24rank&sf1=key word&st1=warburton&m=1&dc=2> last accessed 19 August 2017

²⁶ *ibid*

suffice as a punishment for the act of engaging in the fraud, than a court verdict convicting the person.

Crime and Morality

Crime and morality have a long-standing relationship though rather strained today. There is a public morality which is an essential part of the bondage which keeps society together and society may use criminal law to preserve morality in the same way that it uses it to preserve anything else that is essential to its existence.²⁷ Nonetheless, presently, the reality is that morality and criminal law are no longer co-extensive. Many acts are currently prohibited on the grounds of social expediency and not due to the immoral nature. For instance, alcoholism, and adultery may be a moral wrong but, in most societies, it is not considered a crime.

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.

Conflict theorists view crime in the perspective of the ruling class. In their view, crime is defined as any act or behaviour selectively identified by the few who govern in the society. Such a definition naturally does not include acts within the ruling class behaviour. Property offenses for example, threaten property owners, and are usually committed by the poor. 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 few who are weak and poor in the society, such as tax evasion and environmental pollution, do not attract equal attention. It is therefore on this ground that some scholars argue that crime involves disagreement between the powerful that make the rules and the powerless that defy the rules. It is on account of the struggles of the powerless to control their own destiny that often result in the violation of the "law of the powerful".²⁸ The powerful then use their position in the society to "criminalise" those who disagree with them. Conflict theorists therefore view law as an instrument of control, and a struggle among competing interests to control the law because it is a reflection of power in society.²⁹ Jones submits that if crime is defined only in relation to the criminal law, it has the advantage of precision and there is no

²⁷ Lord Devlin, "The Enforcement of Morals," The Manchester Lecture, 45 Proceedings of British Academy, 129, 1959.

²⁸ Dambazau, 2007, *Op. Cit* at 51-52.

²⁹ *ibid*

need to worry about the scope of the subject as the legislature or the Judiciary has fixed it.³⁰

It is submitted that this definition is unsatisfactory for the following reasons; it suggests that without the criminal law there would be no crime. It tells us nothing about why certain forms of behaviour are criminalized; and the definition fails to explain why the content of criminal law can vary over a period of time. A perfect illustration can be perceived in the context of the qualification given to crime at a given time; that is, the fact that time can change what qualifies an individual from being a criminal to a hero. For instance, historically, Aristotle was regarded as criminal by the State in his day, but he is presently a renowned philosopher and clearly a hero in today's era. Similarly, Nelson Mandela is a modern-day example of villain turned hero.

The definition also fails to explain why, at a given point in time, key differences can be observed within the same country, be they different states in a Federation such as the United States of America or between the different systems in the United Kingdom. For instance, the liberalizing of the abortion law in England, Wales and Scotland as a result of the Abortion Act 1967 has never been adopted by Northern Ireland.³¹

Components of Crime

With respect to components of crime, from the 13th century, criminal law became influenced by some factors which drew attention to, and emphasized, the importance of mental element in every evil conduct.

At the early stage of the development of the English Criminal Law, and possibly up until the end of the 12th century, every person was generally liable for certain wrongs resulting from his conduct, irrespective of any other considerations. The state of the accused person's mind – his moral blameworthiness – was rarely relevant in considering criminal liability: the act alone created liability, and the presence or absence of criminal intention was usually discountenanced. For instance, if X injured Y accidentally and without negligence, X would be held liable. Here, liability is said to be strict.

In the Middle Ages, animals were equally held criminally responsible for harm which they had done, irrespective of lack of mental capacity on the animal's part. Animals were tried in the same manner as human beings except that domestic animals were taken to secular courts, whereas wild animals were led to face ecclesiastical (religious) courts.³²

³⁰ Jones, S. *Criminology*, (2nd Ed.) The Cromwell Press, Wiltshire, U.K, 2001, p. 30.

³¹ Henry Mcdonald, "No Extending Abortion Act to Northern Ireland, First Female Leader Says" the Guardian Newspaper (16 January 2016): p.14

<https://www.theguardian.com/world/2016/jan/06/no-extending-abortion-act-to-northern-ireland-first-female-premier-arlene-foster-court-ruling-rape> >last accessed 20 August 2017

³² K. Skyes, Human Drama, Animal Trials: What the Medieval Animal Trials Can Teach Us About Justice for Animals, Academia Online Journal, (2011)

At many animal trials, horses, pigs, dogs, rats and even roosters were accused of such crimes as murder, battery, and destruction of crops. In 1694, a mare was convicted of homicide in France and was burnt to death.³³ The court held that the horse was possessed by demons. In the same vein, as at 1712, an Austrian court sentenced a dog to a year in the market pillory where human beings were also confined. The dog was convicted for biting a man in the leg.

The case is different today as no legal system would hold that an animal possesses the mental capacity to formulate criminal intent even if the animal's act causes harm that would ordinarily amount to an offence. In most cases, an animal that causes death or grievous harm to a human being would be destroyed in order to prevent the possibility of a recurrence and not as a punishment. Criminal responsibility, if any, would not be attached to the vicious animal but the owner.

The Law came to recognize the significance and role of criminal intention as an essential feature of many crimes. Consequently, the following doctrine came into being – “*actus non facit reum nisi mens sit rea*,” i.e., an act does not itself constitute guilt unless the mind is guilty. In other words, no-one can be held guilty for the commission of a crime without a guilty mind. This maxim contains a cardinal doctrine of English Criminal Law, as enunciated in *Younghusband v. Luftig*.³⁴ It draws attention to the two essential elements of a crime:

- (i) the physical element (also known as the active element) or the deed, also known as *actus reus*; and
- (ii) The mental element or *mens rea*.

Moreover, it has practically enunciated all that the prosecution is required to prove in support of the allegation of the commission of a crime, and the proof usually must be beyond reasonable doubt. Actually, it was held, in *Woolmington v. DPP*³⁵ that:

Subject to the exceptional case of the defence of insanity, and to certain statutory exceptions, the onus of proving beyond reasonable doubt that the accused not only committed the guilty act, but also did so with the guilty mind requisite to constitute the crime charged, rests upon the Prosecution throughout a criminal charge, and never shifts to the defence. In particular, the guilty mind will not of necessity be presumed from the fact that the accused committed the guilty act.

In other words, with respect to the elements of crime, two things are of great significance:

http://www.academia.edu/877610/Human_Drama_Animal_Trials_What_the_Medieval_Animal_Trials_can_Teach_Us_About_Justice_for_Animals> Last accessed 20 August, 2017

³³ <http://www.medievalwarfare.info/torture.htm>> Last accessed 19 August 2017

³⁴ (1949) 2 KB 354

³⁵ (1935) AC 462

- (i) as a result of the accused person's conduct, there has been created a state of affairs which the Law desires to prevent (*actus reus*) and
- (ii) The evidence that the said conduct was accompanied by a certain condition of mind that was detrimental (*mens rea*).

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. To be a crime, such acts or omissions must be voluntary and the accused must have control over his actions. Where there is no *actus reus* there is no crime. It includes all the element in the definition of the crime with the exception of the mental element. The *actus reus* could be made up of conduct, its consequences and the circumstances in which the conduct takes place. A person may not therefore be punished for wrong thoughts except he takes an action towards the commission of the crime. Furthermore, it can be argued that whilst a failure to act may be criminal but this can only be applicable where there is a legal duty to act.

An act or omission alone does not constitute a crime. The second element *mens rea* is the mental element or the guilty mind to establish criminal culpability. 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 dichotomised into serious and minor; felony and misdemeanour; *mala in se* and *mala prohibita*³⁶ crimes against persons and crimes against property. The Constitution of the Federal Republic of Nigeria provides that a person shall not be convicted of a criminal offence unless such offence is defined and the penalty is prescribed in a written law.³⁷

Agaba contends that by this provision, the Constitution seeks to put an end to any idea of customary criminal law³⁸. The general principle of criminal law is that there can be neither crime committed nor punishment meted out except in accordance with the law. In other words, a basic rule of criminal law is that nothing is a crime unless the law forbids it. It is said that no one shall be guilty of any penal offence on account of any act or omission which did not constitute a penal offence at the time it was committed, nor

³⁶ *Mala in se* crimes are those which are almost universally accepted as a wrong or bad in themselves, such as murder, assault and rape. *Mala in prohibita* are those which statutory in nature and may pass in and out of the criminal law.

³⁷ Section 36(12) 1999 Constitution of the Federal Republic of Nigeria.

³⁸ Agaba, *Op. Cit* p. 3.

shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.³⁹

Distinction between Criminal Law and Civil Law

Criminal law views crimes as offences against the state whilst civil law is an infraction against an individual citizen. In the case of the former, the state takes up the prosecution of the offender whilst generally in civil actions, the individual whose interests have been breached initiates prosecution. Furthermore, the punishment for an offender in a crime is majorly incarceration although the justice system does have non-custodial options such as community sentence, probation, fines etc. However, for civil actions, payment of damages is the penalty for proven liability. Whilst for criminal trials, conviction is to be based on evidence of guilt beyond reasonable doubt, evidence to ground culpability in civil actions is on the balance of probability. Previously, there was a sharp dichotomy in the language used for a suspect charged in a criminal action which is ‘accused’ unlike the term ‘defendant’ used in a civil action. However, section 3 of the Administration of Criminal Justice Act 2014 states that a suspect or a defendant alleged or charged with committing an offence established by an Act of the National Assembly shall be arrested, investigated, inquired into, tried or dealt with according to the provisions of this Act, except otherwise provided under this Act. Thus, the term ‘defendant’ can be used also for an accused person in a criminal trial.

Conclusion

Crime attacks the very foundation of law and order, progress and development of any society. Thus, its reach goes beyond the confines of legal jurisprudence. Crime and the causes of crime cannot be ignored whether by the society or by the individual. However, the concept of crime and the causes of crime in any society must at all time, rest on certain key issues which are the provision of rehabilitation for offenders, the disablement of offenders, the society’s sense of right and wrong (i.e., justice), and the satisfaction of the society’s construction of what retribution entails. The concept of crime in jurisprudence therefore rest on the decision-making process and implementation of the above-mentioned issues. While it may not be possible to totally eradicate crime in society, nonetheless a cohesive analysis of its definition and its ramifications is of immense benefit to the criminal justice system and rehabilitation of criminals into society.

³⁹ Section 36(8) Constitution of the Federal Republic of Nigeria.

³⁸ Agaba, *Op. Cit* p. 3.