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An Inquest to the Definition of Crime

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ABSTRACT

To define any phenomena or any concept is very difficult is a very difficult because it is a scientific process. The definition of a social concept is very much objective in nature. There should not be any room for ambiguity or implication in a definition. Giving a definition is not an exception as well. To defining an act as a crime is very difficult task because criminality cannot be imposed on any person by way of implication or on the basis of vague idea. There are many criminologists who have tried to define crime by their own assumption. Every such definition is also criticized by other criminologist as based on vague ideas. In this paper, it is tried to discuss the various definition of crime put forward by the criminologist and also have endeavor to find out a proper definition in a very objective way.

I. INTRODUCTION

The word crime is difficult to define, but an attempt at definition must precede the study in crime. Originally crime were not defined officially and involved no official action but were private matter. Individual who were wronged seek retribution against the wrong doer or his family. This concept of personal justice is clearly visible in all early law, including the code of Hamurabi from 1900 BC, The roman tablet of law from 450 BC, the Mosaic code, law in early Greek society as revealed in the Iliad and Odyceey and the law of Tacitus prevalent among the German people.

The system broke down only when the family structure change and private vengeance become difficult if not impossible to enforce. But while the system existed, the harmed person and the family would get revenge if not from the wrong doer, then from one or more members of that person's family.

Later the concept of crime developed and eventually the king representing the state, realise that the peace of the community was at stake and decreed that when a person is wronged, the act should be reported to the king, who would take action for punishment. Thus anyone who injured one of the king subject was considered to have injured the king, and the phrase "keeping the peace of the king" developed.

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II. LEGAL DEFINITION OF CRIME

Legal and non-legal definition of crime and criminal have been used by criminologists. It is necessary to use legal definition since the system of criminal justice with which we are concerned based on legal approach – crime is an act defined by law, unless the element specified by statutory or case laws are present and proved beyond reasonable doubt, a person may not be convicted of crime.²

The legal definition of lawyer-sociologist Paul Tappan

Crime is 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 felony or misdemeanour- *Paul Tappan: Crime, justice and correction*.

We shall analyse the definition by phrases below:

Crime is an intentional act or omission. In the first place, a person cannot be punished for his or her thought, an act or omission of an act must be committed. In some cases word may be considered as acts, as in treason or in aiding or abetting another to commit a crime. To consider murdering a spouse but to do nothing towards the commission of that act is not a crime. But to hire someone to murder the spouse would be a crime.

Act or omission in order to be criminal, must also has been voluntary and that presume that the actor has control over his or her action. If a person had a heart attack while driving a car and kill another human being, he or she cannot be convicted of the crime of manslaughter. The heart attack is involuntary act over which the person has no control. The case would be deferent, however the individual have had a series of heart attack and therefore knew it was dangerous to drive an automobile.

The legal meaning of intent is complicated and the scholar of law are not in complete agreement on the issue. The requirement of mens rea does not mean the actor must always intent specifically what actually happens. One might held criminally liable for the unintended consequence for which a reasonable person should have known those consequence were substantially certain to result from the forbidden act or one might be held criminally liable for injury or death to a victim other than the intended victim or for harm different from the harm intended or for a more serious degree of harm than that intended.³

In violation of criminal law: One distinction that must be made in a discussion of crime is

² Clarkson, C. M. V. (2010). Understanding criminal law (4th ed.). Sweet & Maxwell.

³ Simester, A. P., & Sullivan, G. R. (2016). *Criminal law: Theory and doctrine* (5th ed.). Hart Publishing.

between criminal law and non-criminal law or criminal wrong and civil wrong. We can differentiate them in two ways. First, when a criminal wrong has been committed, the state government bring the action against the person who is accused of committing the crime. That is the state is the prosecutor and the accused is the defendant. The state brings the action because the crime is considered to be so serious as to threaten the welfare of the entire state. A non-criminal wrong is considered to be a wrong against a particular individual. In such case the person bring the action against the individual defendant and is called the plaintiff in the law suit.

Secondly the civil wrong and crime may be distinguished in terms of remedies. In a criminal case, the state may seek probation, imprisonment, capital punishment or a fine payable to the state. In a non-criminal suit, the party against whom the action is brought, if he or she losses, may have to pay momentary damage to the plaintiff who has been wronged.

Committed without defence or justification: The next part of our definition of crime is that the act or omission of an act is not a crime if the individual has a defence that may be raised are insanity, intoxication in some cases, mistake of fact, ignorance of law, duress and consent of victim, entrapment and justification.

A person faced with the possibility of death from another individual might use the defence of justifiable homicide or killing that individual. It is, however, not require that the person actually be facing the danger of death, it is sufficient that it would be reasonable for the person to think the death is reasonable. Although the mistake of fact may also be a defence to a crime.

It can also be argued that there cannot have been intent if the accused did not know the law, ignorance of law is usually not a defence. But the law has not been published or otherwise made reasonably available or if the accused was acting in good faith on the accurate interpretation of the law by a recognised official, this defence may be used. The law must not be vague, and it must provide adequate notice to the prospective violator.

Sanctioned by the state as a Felony or Misdemeanour: No crime without a punishment (nullam crimen sine lege) under the American concept of criminal law, person cannot be punished for an act that may be considered to be socially harmful for which society have provided no punishment. If a child of four years murdered his father, is a socially harmful act. But since the state provides no punishment because the child considered to be too young to be responsible for his act, he has not committed a crime.

No punishment without law (Nulla poenna sine lege) : today the distinction between felony

and misdemeanour is mainly in terms of the sentences that may be imposed. Generally felonies are crime for which the person may be sentenced to death or imprisonment for long period of time. Misdemeanours are the less serious offence, for which a fine or a short term incarceration may be provided.

The distinction is important. It determines, for example, how much force a policeman may use in apprehending a suspect. Use of deadly force is never permitted in case of misdemeanour. Until recently in criminal cases, the right to counsel was extended only to those accused of committing felony.⁴

Judges and Jury as final determiner of crime: In summary, crime is defined as an act or omission that violate criminal, statutory or case law and for which the state has provided a penalty.

Crime defined as a labelling process: Crime has also been defined as a label that is attached to the behaviour of some by those in position to exercise those powers. It is therefore a consequence of social interaction or in the word of another sociologist **Austin T Turk**, social aspiration. According to Turk, criminality is indeed status and not behaviour. Turk emphasise that since most people engage in behaviour which is defined as crime, criminal database on arrest and conviction are not useful in telling us who commits crime, but rather who is labelled criminal.

Similarly **Howard S Becker**, in looking at the more general concept of deviance, point out that it is not quality of the act committed but rather the result of the label applied.

Finally according to **Recharad Quinney**, crime is a definition of human conduct that is created by authorised agent in a politically organised society. Quinney goes on to explain the crime is definition of behaviour that is conferred on some person by others..... crime is created.⁵

III. ANALYSIS OF DEFINITION OF CRIME

We start with Paul Tappan's legal definition of crime and we now turn to his analysis of non legal definition. Tappan maintain that non legal definition are too loose, too ambiguous and left too much room to the definer to determine what is crime.

Whether criminology aspire one day to become a science or a repository of reasonably accurate descriptive information, it cannot tolerate a nomenclature of such loose and variable usage. The rebel may enjoy veritable orgy of delight in damming as criminal almost any one

⁴ Ashworth, A. (2009). *Principles of criminal law* (6th ed.). Oxford University Press.

⁵ Becker, H. S. (1963). *Outsiders: Studies in the sociology of deviance*. Free Press.

he pleases.

Vague omnibus concepts are blight upon either a legal system or sociology that strives to be objective. They allow judges, administrators and conceivably sociologists in an undirected, freely operating discretion to attribute the status “criminal” to any individual or class which conceive nefarious. This can accomplice no desirable objective, either politically or sociologically.

The author **Sui Titus Reid** take the position that the term crime should be used in its strict legal definition and the term criminal used only to refer to those who have been convicted in the criminal court. The term crime and criminal have severe implication and they should be used only after applying proper procedure for establishing which act are criminal, as in the case of defining, or in the case of defining criminal after one has been gone through a criminal trial and guilt decided by judges or jury. It is not to suggest, however, that the non legal definitions are not important. Those definitions are crucial for sociological theory of causation. These are also important to study the criminal justice system from a process point of view. Labelling is critical and the criminologists should be concerned with why the label ‘criminal’ is applied to some and not to other who commit the same act.⁶

IV. NON LEGAL DEFINITION OF CRIME

We have been speaking of crime which is defined in law, which is an act or behaviour that fulfils certain legally stated conditions. Under this legal definition, a person is become criminal only when he or she has been dully convicted of having broken the law by committing an act previously defined in law as a crime.

Many act are publicly considered deviant, abnormal or abhorrent, that are not crime, while some act defined by law as crime are popularly regarded wrong or abnormal.

Criminologists have tended to restrict their studies to convicted or even imprisoned population. But convict are almost certainly not a representative sample of those whose crime are known. Much less of those who perform act that are legally defined as criminal but their behaviour never come to public attention.

One of the best known proponents of non legal definition of crime is criminologist **Thorsten Sellin**. Sellin goes on to discussed the development of what he called ‘Conduct Norms’ ways of doing things that are developed by a group by social interaction. A normal (right) and a abnormal (wrong)way of reacting, the norms developing upon the social values of the group

⁶ Hagan, F. E. (2010). *Introduction to criminology: Theories, methods, and criminal behavior* (7th ed.). SAGE Publications.

which formulate it. These conduct norms are socially defined and defers from group to group and are not necessarily codified into law. In the end Sellin prefers, rather than extend the legal definition of crime, to leave that as it is, and refers to violation of conduct norms, which are not illegal as abnormal conduct. Reiman, J., & Leighton, P. (2017).⁷

V. CONCLUSION

Criminologists generally have not embraced such broad definition of crime, and have taken the position that, the violation of conduct norms, 'sin' or other form of 'immorality' should be studied as deviance but not called crimes. However some would modify the strict legal definition of crime by expanding the use of the term to include the people who commits acts defined as crime, but who are either not apprehended, or if apprehended are not tried, or if tried are not convicted. Edwin Sutherland used the term 'White Collar Crime' to refer to crime committed by member of upper socio-economic class in the ordinary course of their business. Sutherland advocated even when such violation are processed by administrative agencies rather than in criminal courts, they should be included in the definition of crime. He noted the serious injury to society caused by White Collar Crime and, therefore, extend the legal definition of crime to include act violative of any law, civil or criminal, that are socially injurious. In another publication Sutherland said that the essential characteristic of crime is that it is behaviour which is prohibited by the state as an injury to the state and against which the state may react, at least as a last resort, by punishment.

⁷ *The rich get richer and the poor get prison: Ideology, class, and criminal justice* (11th ed.). Routledge.

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