Different Views On What a Crime Is

The question of what qualifies as a punishable offence under the law has played a central role in legal theory for centuries. Attempts have been made by legal scholars and jurists alike, to define a crime. Halsbury's Laws of England define crime as "an unlawful act or default which is an offence against the public and renders the person guilty of the act or default liable to legal punishment." Glanville Williams observed that: "A crime is an act capable of being followed by criminal proceedings, having a criminal outcome…criminal law is that branch of law which deals with conduct…by prosecution in the criminal courts."

Henry M. Hart, in his essay "The Aims of Criminal Law," remarked that: "If one were to judge from the notions apparently underlying many judicial opinions, and the overt language even of some of them, the solution of the puzzle is simply that a crime is anything which is called a crime," and a criminal penalty is simply the penalty provided for doing anything which has been given that name."

However, Henry Hart confesses that such a simplistic definition of crime "is a betrayal of intellectual bankruptcy." Roscoe Pound perhaps comes the closest to articulating the dilemma on defining what constitutes an offence: "A final answer to the question 'what is a crime?', is impossible, because law is a living, changing thing, which may at one time be uniform, and at another time give much room for judicial discretion, which may at one time be more specific in its prescription and at another time much more general."

Early philosophers sought to define crime by distinguishing it from a civil wrong. In his study of rhetoric, Aristotle observed that: "Justice in relation to the person is defined in two ways. For it is defined either in relation to the community or to one of its members what one should or should not do. Accordingly, it is possible to perform just and unjust acts in two ways, either towards a defined individual or towards the community."

Similarly, Emmanuel Kant, in the Metaphysics of Morals, observed that: "A transgression of public law that makes someone who commits it unfit to be a citizen is called a crime simply (crimen) but is also called a public crime (crimen publicum); so the first (private crime) is brought before a civil court, the latter before a criminal court."

Another method of defining crime is from the nature of injury caused by crimes - "of being public, as opposed to private, wrongs." This distinction was brought out by Blackstone, and later Antony Duff, in their theories on criminal law. Blackstone, in his "Commentaries on the Laws of England" put forth the idea that only actions which constitute a 'public wrong' will be classified as a crime. He characterised public wrongs as "a breach and violation of the public rights and duties, due to the whole community, considered as a community, in its social aggregate capacity." Duff adds to the idea of public wrong by arguing that "[w]e should interpret a 'public' wrong, not as a wrong that injures the public, but as one that properly concerns the public, i.e. the polity as a whole."

Robert Nozick and Gary Becker also supported the theory that crime is conduct that harms the public. Nozick argues that the harm caused by a crime, unlike other private law wrongs, extends

beyond the immediate victim to all those who view themselves as potential victims of the crime. Nozick explains that when an injury is caused to a victim unintentionally or by negligence, it will not affect others in the community, although they may sympathise with the victim. However, when such an act is done on purpose, it spreads fear in the general community, and it is due to this additional harm to the community [of causing fear and insecurity], that such actions are classified as crimes and pursued by the state. Becker preferred to describe crime as something which disrupts social stability and has 'the potential for destructive disturbance of fundamental social structures'.

However, Henry M. Hart questioned the theory of simply defining crime as a public wrong, for all wrongs affect the society in some way or the other: “Can crimes be distinguished from civil wrongs on the ground that they constitute injuries to society generally which society is interested in preventing? The difficulty is that society is interested also in the due fulfilment of contracts and the avoidance of traffic accidents and most of the other stuff of civil litigation.”

Henry Hart preferred to define crime in terms of the methodology of criminal law and the characteristics of this method. He described criminal law as possessing the following features:

1. The method operates by means of a series of directions, or commands, formulated in general terms, telling people what they must or must not do…
2. The commands are taken as valid and binding upon all those who fall within their terms when the time comes for complying with them, whether or not they have been formulated in advance in a single authoritative set of words…
3. The commands are subject to one or more sanctions for disobedience which the community is prepared to enforce…
4. What distinguishes a criminal from a civil sanction and all that distinguishes it, it is ventured, is the judgment of community condemnation which accompanies and justifies its imposition.

According to Henry Hart, the first three characteristics above are common to both civil and criminal law. However, the key differentiating factor between criminal and civil law, he observed, is the “community condemnation.” Thus, he attempted to define crime as: “conduct which, if duly shown to have taken place, will incur a formal and solemn pronouncement of the moral condemnation of the community.”

From the discussion above, it is evident that it is fairly difficult to carve out a single definition of crime due to the multi-dimensional nature of criminal law.