

# Natural crime and legal crime

[Law](#), [Crime](#)



Crimes are generally acts carried out that are considered offensive to laws provided by a certain state. Crimes are necessarily defined by the statutes and the by the common law. First, we can say that crime always involves ‘conduct’ only if we stretch the meaning of that term so far as to empty it of substantial content (D. Husak, 1987). This suggests that we can, whether justly or not, be held criminally liable not merely for what we do, or fail to do, but for what we are, perhaps even for what we think or we intend (Robinson, P. H. 1997). On the other hand, one author suggests that “we must not, or must not yet, read ‘wrong’ here as morally wrong” (Dworkin, G., 1994).

Some of these crimes were defined the law based on the existing and generally accepted moral standards of a certain society while others are based only on a discretion on what is deemed proper for the benefit of the general public. These general types of crimes are called *Mala in se*, or that which is wrong in itself and *Mala prohibita*, which became only wrong after being defined by a certain statute (Simester, A. P., & Sullivan, G. R. 2000). We should the always remember that since not all crimes are defined according to moral standards, not all illegal acts, as defined by law are morally wrong. There are crimes that are not wrong in itself, based on the nature of the act, but are considered crimes and therefore are necessarily punishable, once they have been covered by the criminal law (Norrie, A. W. 1993).

In discussing the difference between the two types of crimes, it is important that we first understood how these crimes are classified by law. The Federal Bureau of Investigation (FBI) crime index, these crimes is classified in thirteen general categories. First category consists of offenses against

religion and public worship (blasphemy, disturbing public worship). Second category consists of offenses against the sovereign power (treason, misprision of treason). Another category consists of offenses against a nation's currency (counterfeiting, impairing currency). Crimes are also categorized according to offenses against public justice (bribery, perjury, prison-breaking, extortion, compounding felonies, etc.) and those against public peace (riots, unlawful assemblies, libel).

Crimes are also classified according to offenses against public trade (cheats, forestalling, and monopoly, engrossing) and those related to chastity (sodomy, adultery, incest, bigamy and fornication). There are also crimes against decency and morality (public indecency, drunkenness, violating the grave) and those against public police and economy (common nuisances, vagrancy, and beggary). Gambling and illegal lotteries are crimes under public policy. Homicide, rape, poisoning with intent of murder, assault and battery, kidnapping and abduction are only few of the crimes classified under individual crimes. Crimes against private property include burglary, arson, robbery, forgery and counterfeiting. Lastly, offenses against public persons include conspiracy (US Department of Justice, FBI 2006).

Natural crimes or the so-called *Mala in se* are those crimes which have been criminalized because of their inherent wrongfulness and are usually based on moral standards. Examples of natural crimes include killing (murder), rape, arson or robbery. These are acts that are morally unacceptable and are inherently wrong (Dressler, J. 2001). These are acts that are necessarily punishable even in the absence of a law. Note that these acts involve harming others lives and properties which are morally wrong. Natural crimes

therefore have the element of morality. Mala in se consists of conduct that is wrong independently of the criminal law.

In contrast, legal crimes which are also called mala prohibita are crimes that consist of conduct that is not wrong based on moral perspective or those which are not inherently wrong based on morality. They become wrong in the eyes of the law which define them as crimes. They only become wrong and thus become crime because of the prohibition of the law (Moore, M. S. 1993). Examples of these crimes are illegal parking, over speeding and probably of forgetting to bring your driver's license with you when you go out of the house with your car. In these examples, we cannot in anyway draw a moral element on which we can base the unacceptability of the acts.

Parking at the side of the road which has a yellow line painted along it cannot be considered as morally wrong because it anyway, the act does not harm anyone at that same point. However, it becomes illegal and therefore a crime because certain law defined it as it is. In certain instances, driving over a designated speed is a crime (legal crime) because there are existing laws that prohibits such acts (Fletcher, G. 1978). In the moral perspective, exceeding such designated speed is not morally wrong. In the same way, it is not immoral to forget or leave your driver's license at home whenever you go out and drive. It is however a crime because a specific statute prohibits anyone to drive without a license.

There are certain grounds on which we can draw clear lines between natural crimes (mala in se) and legal crimes (mala prohibita). In the context of Mala in Se crimes, judges are given less discretion under the "Rule of Law" because such behavior is presumed to be known and understood to be evil

(Hart, H. L. A. 1994). Because these crimes are based on moral standards, it would be safe to assess that these acts were defined as crimes as largely influenced by the society's religions. Killing and raping are acts against a fellow human being and religious perspectives generally view these acts as immoral and are necessarily unacceptable. Therefore, a judge holding such a case does not have the strong discretion of identifying if the act is wrong or not. It is in this context that the old maxim of judges that "ignorance of the law excuses no one" can be appreciated (Dworkin, G. 1994).

Closely related to the analysis made by other authors, Heath (1999) sees another aspect of crimes that defines the distinction between natural and legal crimes. That element, according to Heath is the victim. "In a mala in se crime such as assault the victim is the one who was assaulted, and the criminal is the perpetrator" (Heath, Hari 1999). On the other hand, Heath assessed that it is the defendant who is the victim in mala prohibita crimes. Again using the examples used earlier, illegal parking and over speeding were acts that does not necessarily harm anyone but in these cases, the person who did the acts are held liable and are therefore called criminals. In this case, the person turned out to be the victim. Because of the violation, the law enforcers will cause damages or harm to the criminal by imputing legal financial liabilities at least.

On the perspective of this paper, it is argued that although there is the absence of morality in mala prohibita crimes, these are justifiable based on the intention of the law to create a more orderly and peaceful society. For example, over speeding may not harm anyone at glance, but this could possibly cause a driver to meet an accident and thus would harm him,

properties and lives of others even without his intention. Illegal parking may not seem harmful to anyone at first but try to imagine if people can just park anywhere they want. Would it be a chaotic environment to cars in everywhere?

Mala prohibita, for the purpose of this paper, do not at all suppress the freedom and liberty of anyone as some people see them. Mala prohibita laws are intended to set boundaries to human's great possibility to exceed beyond what they ought to be. Humans have the tendency to act according to what they know is right and what benefits them the most. In certain cases, such acts are out of the consideration of the welfare of others and that is what mala prohibita laws are intended to avoid.

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