Analysis of some basic underlying principles in the Nigerian criminal law

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Received 5 Jan 2023; Accepted 11 Feb 2023; Published 20 Feb 2023

Abstract
As stated by Lord Kenyon in the maxim, "It is a principle of natural justice and our law that actus non facit reum nisi mens sit rea- the intent and the act both concur to constitute the crime. The purpose here is to see if by any stretch of interpretation, the elements of an offence namely a physical act and a state of mind known as actus reus and mens rea in English law are truly covered by sections 24 and 25 of the Nigerian Criminal Code. First, of all, it is pertinent to analyze fully the extent of actus reus and mens rea in English law. There have been great debates in many jurisdictions as to what level of physical and mental state an accused person must possess for him/her to be held criminally responsible for his/her act or omission. Is culpability a function of purpose, knowledge, recklessness or negligence? Or would one ever be considered strictly liable for an act or omission of these physical and mental states? This issue, no doubt, boarders on the relevance of the English common law doctrine of mens rea and actus reus. However, in Nigeria, section 24 together with section 25 seems to cover the field of the mens rea requirement and a lot more. Yet, it is discovered that lack of comprehensive study and understanding of the Criminal Code provision had led to much judicial misapplication. Be that as it may, the thrust of this paper is to analyze the effect of section 24 on criminal liability with regards to the problem of concurrency of the physical and mental elements of a crime in southern Nigeria which is the specific territorial jurisdiction in which the Code operates.

Keywords: punishment, imprisonment, retribution, misdemeanours, aggravated

Introduction

1. What is crime?

Criminal law is an aspect of law that deals with crimes, which are seen by courts as moral wrongs or conducts that demand retribution [1]. The basic assumption of law about crime is that "people are able to choose whether to do criminal acts or not and that a person who chooses to commit a crime is responsible for the resulting evil and deserves punishment [2]." Courts, therefore, see themselves as maintaining the required graduation in the relationship between penalty and the crime committed so that the degree of iniquity perceived in the criminal will be reflected in his/her punishment. In this regard, sentence is seen as a reflection of the revulsion "felt by citizens for the particular crime"; it is designed to punish the criminal but it is also "a public denunciation of the conduct in question [3]."

In the Nigerian legal system, the words 'crime' and 'offence' are used interchangeably in both the Criminal Code (CC) and the Penal Code (PC), and in the Constitution of the Federal Republic of Nigeria [4]. An offence is defined in section 2 of the Criminal Code as "an act or omission, which renders the person doing the act or making the omission liable to punishment." It follows that a conduct or an act or omission may be morally wrong but it may not constitute a crime or an offence. For instance, in Southern Nigeria, it is a condemnable act to indulge in adultery, but the criminal code does not punish any person caught in the act. In sentencing, however, two things are largely considered, namely: the moral fact and the harm done. The courts assess the gravity of the offence; that is, its wickedness in general, then they consider the offence, paying attention to the public view of the case or crime; hence, it is said that courts do sometimes pander to public opinion or sensibility.

Nigerian courts have been guided by the factors of morality and the harm done by the imposition of punishments. Thus, in the *State v Obi*, [5] D was convicted of causing death by dangerous driving; he was sentenced to 12 months (IHL – Imprisonment with hard labour) or a £150 fine because he had driven for 14 years without blemish, and his track record in driving was considered excellent and morally sound. In *Ebisua v COP*, the High court of Lagos was told that D uprooted an iron stake erected by C on C's land to block a footpath. He was convicted of a conduct likely to cause a breach of the peace contrary to section 81 of the CC. He was sentenced to imprisonment without option of fine. On appeal from the Magistrate to the High Court, on ground of which failed, the Court took up the question of sentence and said, "there is no appeal on sentence but to sentence an accused who is a first offender to a term of imprisonment without option of a fine or even a warning for merely uprooting an iron post on another man's land is to completely misconstrue the object of criminal punishment." Sentence was varied to £5 or 1 month in prison. But in cases where there has been grievous harm done to the victim or the society or where there was a gross moral fault, the courts have insisted on equally harsh punishment.

In law, "a person who attempts to commit a crime is generally liable to the same maximum punishment as one who succeeds. But it is the practice of the courts to punish the attempt less severely than the completed offence. No harm or, at least, less

harm has been done [6]." Under the Criminal Code of Southern Nigeria, an attempt is generally a misdemeanour. In *R v Adebesiu* [7], sentences of 10 years and 8 years for armed robbery and burglary were increased on appeal to 15 years and 12 years respectively. The court held "for the protection of the public they should be sent to prison for even longer terms than those imposed by the trial judge." Also, in *State v Nweze* HU/23c/71, (Umuahia High Court case unreported) Aniagolu J held 5 years IHL, and suspension for one year of driving licence. The accused had driven a car with defective steering and brakes at great speed round a bend and killed a little girl. In *F. A. Ikpett v COP* Appeal No. IK/9CA/71, High Court of Lagos – the accused stole a sum of £1021.15.9, which came into his possession by virtue of his employment as a customs officer. The magistrate convicted and sentenced him to a fine of £100 or 6 months IHL taking into account the fact that the accused had lost his job, and been dismissed from service. On appeal by the accused on other grounds the court rejected the reason for the magistrate's leniency. There was an order for the refund of £100 paid as fine and in its place the accused was to serve 6 months IHL. An unreported Benin case in Nigeria of *State v Bolivia* was a classic in this category [8].

So, criminal liability is "the strongest formal condemnation that society can inflict, and it may also result in sentence which amounts to a deprivation of the ordinary liberties of the offender [9]." However, the aim of sentencing is not primarily to punish; it may be corrective. In Northern Nigeria, the Penal Code provides generally in Section 95 for half of the punishment provided for a particular offence as punishment for its attempt, except where and only if there is specific provision for the punishment of the attempt in relation to a particular offence. In the South, Section 508 of the Criminal Code makes attempts misdemeanours unless otherwise state. Conclusively, therefore, while under the English penal system a convict for an attempt may receive maximum punishment as one who commits the full offence, under the Nigerian system, an attempt is generally a misdemeanour attracting punishment exceeding six months but less than 3 years. In other words, an attempt for the offence of stealing contrary to s 390(7) CCA carrying maximum sentence for 7 years cannot exceed 3 years except there are other provisions for the punishment of such attempts [10].

The horizon of criminal law tells one to do or refrain from doing certain acts whether or not one likes doing them. When one does such prohibited act, one's liberty can be severely and legally deprived. However, by official deprivation of liberties, one does not want to say that one who kills the other is in the same level as one who evades tax or levy on commercial transactions. As Andrew Ashworth rightly puts it, "most cases of taxation do not carry any implication of 'ought not to do,' whereas criminal liability carries the strong implication of 'ought not to do.' It is the censure conveyed by criminal liability which marks out its special social significance, and it is this censure (as well as the liability to punishment) which requires a clear social justification [11]." However, in juridical parlance, such a deprivation is tagged logical rather than official.

Criminal law in England is chiefly concerned with anti-social behaviour. However, it must be noted that the scope of criminal liability in modern society such as England has greatly widened:

> There are many offences for which any element of stigma is diluted almost to vanishing point, as with speeding on the roads, illegal parking, riding a bicycle without lights, or dropping litter. This is not to suggest that all these offences are equally unimportant; it can be argued, by reference to the danger to others that exceeding the speed limit ought to be regarded in a more serious light than commonly appears to be the case. Yet it remains true that there are many offences for which criminal liability is merely imposed by parliament as a practical means of controlling an activity, without implying the element of social condemnation characteristic of the major or traditional crimes [12].

The gravity or implication of criminal behaviour cannot be discussed in isolation of the social values of the people affected. The quantum of punishment alone cannot determine the criminal content of a particular behaviour. The content of criminal law may vary from one age to another, from one socio-economic class to another, from country to country, and may even vary within the same country as with the case of amalgamated Nigeria different nations. The average Christian of Southern Nigeria may wonder at the criminalisation of alcoholic drinking by the Northern Moslem legislator; just as the Moslem North views it as a taboo to adopt the practice in the Christian South of liberalising the movement of married native women and allowing male visitors easy access to the apartment of the female spouses. The gravity or implication of such acts or conducts depend much, morality apart, on the social norms, not really considering the sinfulness or otherwise of such conduct. The variation in both criminal content and implications is reflected, sometimes, in the quantum of punishment; so, in the offence of disturbing religious worship under Section 206 of the Criminal Code, the punishment is two months' imprisonment or a fine of ten naira. Similar conduct of disturbing religious assembly under Section 212 of the Penal Code can carry imprisonment of one year or a fine or both. This reflects the attitude of the Moslem towards religious matters, and so his value as depicted in his socio-religious person. However, it remains that in either jurisdiction the conduct is criminal; and the argument becomes circuitous.

Regulatory offences as such as are intended to be taken care of under 'strict liability' offences. These offences seem to fall between faults which people are reluctant to criminalize and criminal behaviour. So, the term *criminal behaviour* needs some explanation. Ashworth has suggested an alternative approach; that is, to create a new regulatory agency within which some kind of civil process will be invoked. But the problem this approach will bring, according to him, is that it will be too complex or expensive to effect, given that some institutional costs may be incurred by the new regulatory agencies in addition to existing ones. The point that should be kept in mind is that to classify an offence under the law as criminal does not coincide with the common sense designation

of an offence as wicked and hideous, as distinguished from other minor wrongs:

> The only feature which distinguishes some of these minor offences from civil wrongs, like breach of contract and liability in tort, is the decision by Parliament that they shall be criminal offences attended by criminal procedures and triable in criminal courts. Therefore, although some offences in the criminal law are aimed at the highest social wrongs, there is no general dividing line between criminal and non-criminal conduct corresponding to a distinction between immoral and moral conduct, or between seriously antisocial and other conduct. The boundaries of the criminal law are explicable largely as the result of exercises of political power at particular points in history [13].

It must be noted that in Nigeria, such offences, which may be said to be wicked or hideous are technically tagged 'aggravated,' attracting punitive sentences; hence, armed robbery is an aggravated stealing. In *Bolivia*'s case supra, the prisoner pretended to be assisting two girls who were new in Benin to locate the residence of their relation; he drove them in a car to a lonely place and under gun point ordered them into a bush, had sex with each of them, and drove with them. He repeated the rape of each of them also under gunpoint. The court frowned at the wickedness and violence of his conduct.

The aforementioned examples can be distinguished from the seemingly less harmful crimes like wrong parking of vehicles, driving at night with one headlamp, or evading the payment of water rate. While some conducts are crimes as traditionally regarded, others are crimes by virtue of being designated so, albeit they may not have been caused by people who knowingly or voluntarily brought harm in the circumstances; hence, they are viewed as strict liability offences.

2. What conducts creates criminal liability?

It is said that the law is territorial. What is legal in one country may be exactly so in another or on the contrary. Some countries prohibit homosexual activities, and criminalize abortion of foetuses, others legalise them, which means that criminalisation or non-criminalisation of conducts does not settle the question of morality of the conducts in question. It is unfortunate that in Nigeria the test has always been carried out in reflection of English values rather than the local values; hence, Reed J was in a dilemma while dealing with the case of *R v Princewell* [14]. In this case, His Lordship imposed a sentence of one-month imprisonment where the maximum punishment is seven years for the offence of bigamy. Based on the facts of the case, no Nigerian would support punishment because the society sees nothing criminal in marrying more than one wife. This practice may be unacceptable to the majority of the womenfolk and Christians but never an act of criminality when viewed from the context of Nigerian social values, at least, presently.

It is worthy of note that prior to this later development of prescribing what crime is as opposed to the immorality, the English court had punished immoral conducts as criminal behaviour. In *R v Delaval* [15], Lord Mansfield said that the court of King's Bench was the *custos morum*; that is, guardian of morals. However, the point remains that what is actionable in one legal system may differ from one legal system to another: "There are certain serious anti-social forms of conduct which are criminal in most jurisdictions but, in general, there is no straightforward moral or social test of whether a conduct is criminal. The only reliable test is the formal one: is the conduct prohibited, on pain of conviction and sentence?[16]" This accords with the dictum of Lord Atkin in *Proprietary Articles Trade v Attorney General for Canada*: "The criminal quality of an act cannot be discerned by reference to any standard but one; is the act prohibited with penal consequence? This is, I think, the true test for criminality [17]."

The formal test indicates that not all that the law legalises is morally praiseworthy; and it is not either the case that all recognised criminal acts under law are morally reprehensible; this is not to deny that there are anti-social behaviours which are criminalized and are truly morally reprehensible.

Ashworth designates the conditions of criminal liability under three headings; namely, the range of offences; the scope of criminal liability; and the conditions of criminal liability.

a) The range of offences

In England and Wales four major spheres of criminal liability can be underlined, as violations in the following areas:

1. The person, including offences of causing death and wounding, sexual offences, certain public order offences relating to safety standards at work and in sports stadiums, offences relating to firearms and other weapons, and serious road traffic offences;
2. General public interest, including offences against state security, offences against public decency, crimes of breach of trust, offences against the administration of justice, and various offences connected with public obligation such as the payment of taxes;
3. The environment and the conditions of life, including various pollution offences, offences connected with health and purity standards, and minor offences of public order and public nuisance; and
4. Property interests, from crimes of damage and offences of theft and deception, to offences of harassment of tenants and crimes of entering residential premises [18].

In any case, one who does not cause these crimes may still be held responsible as in cases of inchoate liability and criminal complicity. With regard to inchoate liability, "a crime is described as inchoate when the prohibited harm has not yet occurred. More generally, there are the inchoate offences of attempting to commit a crime (e.g. attempted murder), conspiring with one or more other people to commit a crime (e.g. conspiracy to rob), and inciting another to commit a crime [19]." These offences as one would see broaden the scope of criminal liability by largely providing for the conviction of persons who merely tried to or planned to cause the doing of an act by commission or omission.

It is observed that under inchoate liability, there is some distinction between conspiracy and attempt: in conspiracy, a person may be convicted with conspiracy and also with the full

offence or either of the two, conspiracy being a distinct offence from the substantive crime [20]. This is unlike attempt, where there is step towards the commission of the full offence, in which case a person may only be convicted with the offence of attempt or that of actual offence.

In the case of incitement, a person may be found liable for procuring or counselling another to commit an offence or for actually participating in the commission of the offence [21].

Criminal complicity is "designed to ensure the conviction of the person who, without actually committing the full offence himself, plays a significant part in an offence committed by another. Thus, a person may be convicted of aiding and abetting another to commit a crime, or counselling or procuring the commission of a crime by another [22]."

b) The conditions of liability: Different crimes require different conditions to be fulfilled. Crimes that require only minimal fault or no personal fault at all are usually termed 'strict liability' offences. The creation of these offences is aimed at some companies like multi-million corporations, and some aim at individuals; for example, road traffic offences.

Generally, however, more traditional offences, which are penalised by English common law require *mens rea*. This Latin term generally indicates, "a person should not be convicted unless it can be proved that he intended to cause the harm, or that he knowingly risked the offences of the harm [23]." To commit a crime the defendant should be personally aware of what he did or omitted to do. This is equally the position under Nigerian criminal jurisdictions. *Mens rea* (which actually differs from crime to crime in its precise form is "a range of possible defences to criminal liability, so that even people who intentionally inflict harms may be acquitted if they acted in self-defence, while insane, while under duress, and so on [24]." H. L. A. Hart and many others have insisted that although *mens rea* is a general requirement it is not always necessary for criminal liability. Hence, strict liability offences are examples of exceptions to the *mens rea* requirement..

3. The principle of individual autonomy

At the basis of criminal liability lies the principle that individuals should be treated as being responsible for their own behaviour. According to Ashworth, there are factual and normative elements to this principle. The factual element leans on the fact that individuals in general have the capacity and sufficient free will to make meaningful choices. There are some philosophers who claim that man is not free, therefore, he cannot be responsible for his actions. But this position tends only to exaggerate the physical, psychological and other conditionments of human freedom. However, "most philosophers arrive at compromise positions which enable them to accept the fundamental position that behaviour is not so determined, that blame is generally unfair and inappropriate, and yet accept that, in certain circumstances, behaviour may be strongly determined (e.g. by threats from another) that they normal presumptions of free will may be displaced [25]."

Freedom is said to be a vindication of personality; in any case, the factual element in the principle of autonomy is not without qualification. There is also morale in insisting that only those who are capable can be held responsible. Hart has proposed a capacity-based responsibility argument in favour of the principle of autonomy. Both in law and morals, capacities are held as general criteria for responsibility. Hart writes:

> The capacities in question are those of understanding, reasoning, and control of conduct: the ability to understand what conduct legal rules or morality require, to deliberate and reach decisions concerning these requirements, and to conform to decisions when made. Because 'responsible for his actions' in this sense refers not to a legal status but to certain complex psychological characteristics of persons, a person's responsibility for his actions may intelligibly be said to be 'diminished' or 'impaired' as well as altogether absent, and persons may be said to be 'suffering from diminished responsibility' much as a wounded man may be said to be suffering from a diminished capacity to control the movements of his limbs [26].

To hold a person responsible on the basis of capacity criteria, the person being held is taken to understand the nature of his action, to know the relevant circumstances, and is aware of the possible consequences that might follow from the changes he brings about in the world. In addition, he must have had a fair opportunity to do otherwise, that is, to exercise control over his action by means of choice.

Hart recognises that the expression 'responsible for his actions' is most of the time used in asserting or denying that a person's responsibility, blame or punishment is the issue. However, it could also be used in a descriptive sense. For example, B may simply report about D's relationship to his action that is, describing D's psychological conditions. Hart explains:

> Hence it may be said purely by way of description of some harmless inmate of a mental institution, even though there is not present question of his misconduct, that he is a person who is not responsible for his actions. No doubt if there were no social practice of blaming and punishing people for their misdeeds, and excusing them from punishment because they lack the normal capacities of understanding and control, we should lack this shorthand description for describing their conditions which we now derive from these social practices. In that case we should have to describe the condition of the inmate directly, by saying that he could not understand what people told him to do, or could not reason about it, or come to, or adhere to any decisions about his conduct [27].

And when terms, such as 'responsibility' and 'liability' are used, they do not necessarily imply blame or liability to punishment.

At times the question of holding a person responsible on the account of capacity-conception is not just resolved by considering simply that he lacked capacity or not. The law classifies persons into categories such as normal persons, children, the insane, and so on. Some groups, like children, are exempted from responsibility on the basis of the category or the legal status the law gives them.

Thus, they are exempted from responsibility by virtue of their

age or class:

> Such exemption by general category is a technique long known to English law; for in the case of very young children it has made no attempt to determine, as a condition of liability, the question whether on account of their immaturity they could have understood what the law required and could have conformed to its requirements, or whether their responsibility on the account of their immaturity was 'substantially impaired,' but exempted them from liability for punishment if under a specified age [28].

This exemption technique is well known to the Nigerian law. Thus, under the Criminal Code Act [29] of the Federal Republic of Nigeria and the Penal Code or Law [30] of Northern Nigeria, a normal person who commits an act or makes omission independently of the exercise of his will or by accident is not responsible for wrong done; or if he acts or makes the omission under an honest and reasonable but mistaken belief; or where he acts upon compulsion or provocation or in self-defence. Equally, a person who is suffering from mental disease or mental infirmity is not responsible for his acts or omissions, as he is by such disease or infirmity deprived of the capacity to understand what he is doing, or control his actions, or to know that he ought not to do the act or make the omission. Intoxication is also a defence in certain circumstances to an extent. A child of seven years is incapable of committing an offence while a child of twelve can only be responsible for an act or omission if it can be shown that he had the capacity to know that he ought not do the act or make the omission; and also a male child under the age of twelve is presumed incapable of having carnal knowledge [31]. These constitute what technically are regarded as exception clauses.

It is possible to have a legal system that does not make allowance for exceptions in the psychological conditions of responsibility. Certainly, it will still be a legal system with valid rules: it may apply its sanctions equally to all whether or not they are blameworthy. But Hart adds that "it is none the less dependent for its efficacy on the possession by a sufficient number of those whose conduct it seeks to control of the capacities of understanding and control of conduct which constitute capacity-responsibility [32]." We think that Hart opts for a system that allows for fair assessment of the person's capacity (to comply to rules and discern alternative actions there are) in order to insist on the fact that voluntariness constitutes a fundamental requirement for criminal liability. Hart supports a system where people give effect to their desires and intentions through the choices they make. In this way, the justice of the system will radiate its efficaciousness. Why? Hart responds:

> For if a large portion of those concerned could not understand what the law required them to do or could not form and keep a decision to obey, no legal system could come into or continue to exist. The general possession of such capacities is therefore a condition of the *efficacy* of law, even though it is not made a condition of liability to legal sanctions. The same condition of efficacy attaches to all attempts to regulate or control human conduct by forms of *communication*: such as orders, commands, the invocation of moral or other rules or principles, argument, and advice [33].

To hold a person responsible for his actions, it is desirable that he knows the rules he is required to keep and has the capacities to comply to such rules. He should know the relevant implications of the state of affairs he wishes to alter: the nature of his acts (constitutive features of the action) and the relevant circumstances (regulative features of his environment). With Hampshire, Hart, in his philosophical discussion of decision and intention, refers to these basic features that surround an action and its environment of occurrence:

> First, the agent must have ordinary empirical knowledge of certain features of his environment and of the nature and characteristics of certain things affected by his movements. Second, and more important, if his action is intentional (what he intends to do), the agent must know what he was doing in some sense which differentiates (for example) his shooting at the bird from other non-accidental actions performed at the same time, such as making the cartridge explode [34].

One who has the capacity and understands the nature of one's action is taken to be giving effect to one's choice. A system that allows for 'choice through capacity operations' is said to embody and realise a condition of efficacy. Efficacy, however, as intended by Hart should not be confused with Bentham's notion of efficacy in relation to punishment.

Jeremy Bentham talks about excusing conditions as situations where punishment will be inefficacious, not because it will be wrong to punish, for example, infants, who did not break the law voluntarily but because the threat of punishment will be ineffective [35]. Hart subscribes to the view that part of the efficacy of the system is that excusing conditions are allowed so that people know in advance through their choice how to plan their lives. In any case, he disagrees with Bentham on the reason he gives for recognising excusing conditions. Contrary to Bentham's view, there may be some utilitarian reason for punishing infants. In actual fact, in law we do not punish, for example, infants not because the threat of punishment would be ineffective but simply because infants lack adequate knowledge by virtue of their limited capacity to make a responsible choice. Since this fair chance or opportunity is lacking, it will be morally wrong to punish them. Hence, Hart advocates for a system that takes into account excusing conditions or *mens rea* in order to determine whether one has or has not acted with full knowledge and capacity.

The whole capacity-based responsibility claims that individuals are to be protected from criminal law and unless they have chosen the conduct, they are said to be liable. In other words, strong emphasis on choice negate offences based on paternalistic grounds, such as offences of strict liability. On this count then, liberals claim, "if the autonomy of individuals is to be respected, the state should not take decisions in their own best interests but should leave the individuals to decide for themselves [36]." However, the strong liberal position or the question of autonomy has been criticised. There is no doubt that the principle of autonomy strives to protect individuals'

interests against collective or state interests. Liberals seem to forget that we live in a social context - a common world. Sometimes, community goals might override individual interests; thus, the unflinching and unqualifiedly position that the individual should be free to choose is not very realistic, since the principle of autonomy should also pay attention to the principle of welfare.

4. The harm principle

In the case of *Aigbangbee v State* [37], the Supreme Court of Nigeria held that the principle of the case (of murder) is that the prosecution has to prove *inter alia* that the accused did something or omitted to do something which resulted in harm to the victim, and that the victim died or the cause of death of the victim was as a result of the said injury or harm.

Criminal law comes into force when harm has been done. This position is appropriated from John Stuart Mill. According to Mill, everyone in the society is expected "to observe a certain line of conduct towards the rest. This conduct consists, first, in not injuring the interests of one another, or rather certain interests which, either by express legal provision or by tacit understanding, ought to be considered as rights; secondly, in each person's bearing his share (to be fixed on some equitable principle) of the labours and sacrifices incurred for defending the society or its members from injury and molestation [38]." One can upset people's feelings or hurt them in some less significant ways. When one violates their constituted rights, then the question of the action being judged as harmful to others arises. Mill writes:

> As soon as any part of a person's conduct affects prejudicially the interests of others, society has jurisdiction over it, and the question whether the general welfare will or will not be promoted by interfering with it becomes open to discussion. But there is no room for entertaining any such question when a person's conduct affects the interests of no persons besides himself, or needs not affect them unless they like (all the persons concerned being of full age and the ordinary amount of understanding). In all such cases, there should be perfect freedom, legal and social, to do the action and stand the consequences [39].

Save where what one does harms others, Mill sustains that everyone is the final judge of their action. One's liberty should not be restricted. He declares, "In the conduct of human beings towards one another it is necessary that general rules should for the most part be observed in order that people may know what they have to expect; but in each person's own concerns his individual spontaneity is entitled to free exercise [40]." General rules should direct people to refrain from harming others. It is only when harm to others results that society will be justified to deploy the criminal law.

It has to be noted that opinions are divided on the issue of paternalism: where does harm to oneself end and the harm to the other begin? What are the criteria for saying that an act or event has gone beyond mere toleration by others and then constitutes harm to their persons? These are issues that cannot be answered in this volume [41]. Suffice it to note that the criminal law is largely deployed against someone who has injured another or done something, which the law recognises, at once, as harm and a crime.

5. Conclusion

This paper has postulated that according to John Stuart Mill, Criminal law comes into force when harm has been done. According to Mill, everyone in the society is expected "to observe a certain line of conduct towards the rest. This conduct consists, first, in not injuring the interests of one another, or rather certain interests which, either by express legal provision or by tacit understanding, ought to be considered as rights; secondly, in each person's bearing his share (to be fixed on some equitable principle) of the labours and sacrifices incurred for defending the society or its members from injury and molestation. Jeremy Bentham talks about excusing conditions as situations where punishment will be inefficacious, not because it will be wrong to punish, for example, infants, who did not break the law voluntarily but because the threat of punishment will be ineffective [42]. Hart subscribes to the view that part of the efficacy of the system is that excusing conditions are allowed so that people know in advance through their choice how to plan their lives. In any case, he disagrees with Bentham on the reason he gives for recognizing excusing conditions. Contrary to Bentham's view, there may be some utilitarian reason for punishing infants. In actual fact, in law we do not punish, for example, infants not because the threat of punishment would be ineffective but simply because infants lack adequate knowledge by virtue of their limited capacity to make a responsible choice.

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29. Sections 24, 25, 26, 28, 29, and 30 Criminal Code Act Chapter 77 Laws of the Federation, 1990. Read also S23 CC.
30. Sections 43, 45, 48, 49, 50, 51 and 52 Penal Code Chapter 89 Laws of Northern Nigeria, 1963.
31. Provisions of Children and Young Persons Act.
32. Hart HLA. Punishment and Responsibility: Essays in the Philosophy of Law, 229.
33. Ibid.
34. Stuart Hampshire, Hart HLA. 'Decision, Intention and Certainty,' in Mind. 1958;67:8.
35. Jeremy Bentham. Principles of Morals and Legislation. New York: Prometheus Books, 1978, Chapter 13.
36. Ashworth A. Principles of Criminal law, 2d., 27.
37. 1 ACLR, 168 at 171, 1998.
38. John Stuart Mill. On Liberty. London: Penguin Books, 1982, 141.
39. Ibid., 141-142.
40. Ibid., 143.
41. For an elaborate treatment of paternalism, see F. O. C. Njoku, Philosophy in Politics, Law and Democracy. Owerri: Claretian Institute of Philosophy, 2003.
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