

WHAT IS A CRIME?

Throughout history, a vicious debate has continued about what makes a crime. Some argue crimes are evils in themselves (*mala in se*) such as murder, treason and lying. Others argue crimes are whatever a higher authority has decided to label a crime (*mala prohibita*). These, of course, include *mala in se* crimes, but also rather arbitrary crimes like ‘smoking is forbidden’ or ‘blue hair is forbidden on Wednesdays’ or belief in a certain pattern of thought is forbidden. The volcanic growth of *mala prohibita* crimes has spread across much of the world since 1815: the downfall of Napoleon Bonaparte and the rise of libertarian movements. Clearly, this has left a rift, a chasm between the two legal positions supported by the natural lawyers on the one hand and the positivists on the other.

And yet, crime is a universal affair. Surely the label of crime exists for us as men to prevent certain acts which undermine our universal common interests. A particular dislike of one faction's, or one individual's actions is simply that: a dislike. It would be absurd, ludicrous in fact to punish a certain distaste for something with the full force of the law. And yet, this seems to be becoming more and more a reality in the collectivist world we are beginning to find ourselves in.

Without fully understanding a crime, we as lawyers, lawgivers and pupils of law cannot possibly begin to serve our ultimate purpose: a purpose which includes protecting and growing the law of the land.

And so, accepting that only the universal evils applicable to all citizens at all times may truly be called a crime, we may therefore say that *mala in se* crimes are what we mean by crime, and *mala prohibita* crime, in short, is a whinge with a battle axe. Let us explore why this is so.

In the first instance, there are many advocates for *mala prohibita* crimes being our understanding of crime. From Jeremy Bentham to H. L. A Hart; from hardcore feminists in university cloisters to other groups that wish to describe themselves as a label, rather than the sum of factual experience, *mala prohibita* crimes fatuously seem the best way to describe a crime. On a basic level, this is a child obeying a parent simply because the parent is a parent: wiser and more powerful than the child. Scale this up, and this is the relationship between state and citizen for many. But this relationship is essentially the same as that between master and slave. That is, you obey the law simply because some ‘higher being’ has told you to. This, however, is a toxic, a deeply toxic method for defining crime. In short, you choose to deny your rationality — perhaps the defining feature of mankind — for the opinions of another man; more often that not with malignant intentions. Because of this unusual conclusion to the premises we are given, *mala prohibita* crimes per se lack the strength to apply universal common principles to all citizens at all times, and so therefore cannot under any circumstances truly be called a crime.

On the other hand, and very much different to *mala prohibita* crimes, *mala in se* crimes are universally applicable. With the aid of the natural law — be it through the revelations of Aristotle, Cicero or Thomas Aquinas — simply by observing facts of nature can our minds detect when excess or deficiency exists in a being, and that these excesses and deficiencies must be balanced to serve the common interest. In the case of battery, one man has hit another. The hitting man now has

an excess of power at the deficiency of the other. And so, either the first must be stripped of this power, or the second must gain power on a similar footing. This cycle of order and chaos is what keeps the peace and prevents a return to the state of nature. And this we know not because some authority told us: thought the state or church may do so. We know this because it is simply factually true through sensory interpretation or the employment of logic. Accepting this, therefore, we may only say that mala in se crimes are truly crimes at all.

Mala in se crimes are the only crimes because, by nature, they are universally applicable and universally acknowledgeable. Mala prohibita crimes depend entirely on the whims of the lawgiver. By taking time to observe natural phenomena — from the wind against a tree to the luna cycles or even observing human behaviour — you will learn more about crime and justice than any library of textbooks. Failing to do so will put you in such a dangerous position that you will be learning about law ultimately to no end. So sit in a park, watch nature play its games and then you will know what crime truly is.