



Misdemeanours Based on Their Nature and Punishment

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Abstract

Though Locke believed natural rights were derived from divinity since humans were creations of God, his ideas were important in the development of the modern notion of rights. Lockean natural rights did not rely on citizenship or any law of the state, nor were they necessarily limited to one particular ethnic, cultural or religious group. Around the same time, in 1689 the English Bill of Rights was created.

Keywords: Defence; Penalty; Crimes; Prosecution; Penal code; Re-socialize

Introduction

A person may not be tried and convicted for the same crime more than once. And persons unjustly convicted and later exonerated are entitled to fair compensation. Section 24 of the Constitution also provides for a number of protections during criminal proceedings. A person charged with a crime is presumed innocent until convicted. Accused persons have the right to a lawyer at all stages of the criminal proceedings against them. Everyone has the right to a hearing and the right to present a defence. Evidence obtained by torture, coercion, or wrongful interference with private life may not be presented against the accused. Provisions protecting people who have been convicted of crimes can also be found in the sections 30 to 32 of the Constitution [1]. Convicted criminals retain their fundamental rights, except for those necessarily limited by enforcement of the penalty imposed upon them [2]. And sentences of death or life in prison are expressly forbidden by the Constitution, as is any form of cruel, inhuman, or degrading treatment. A more involved discussion of these constitutional provisions is beyond the scope of this chapter, but it is crucial to mention these protections as they form the foundation of the criminal justice system in Timor-Leste. The Penal Code defines two different types of crimes: public crimes and semi-public crimes. The difference between public and semi-public crimes depends on whether a complaint must be filed in order for the government to prosecute the crime. A complaint is a legal document, often filed by the victim of a crime, which claims that a criminal wrong has been committed. If a crime is a semi-public crime, its description in the Penal Code will state that prosecution depends upon the filing of a complaint. Comparatively, public crimes do not require a complaint in order for the State to prosecute. This is because public crimes are more severe than semi-public crimes [3]. Determining when someone is guilty of a crime is a primary goal of criminal law. Unfortunately, the determination of guilt is sometimes extremely difficult. Even deciding which actions should be criminalized, and which people involved in a crime should be punished, can be complicated. There is a general requirement that most crimes include both an objective element and a mental element. That is, for something to be considered a crime, it must include both an act that has criminal consequences and a mental state on the part of the criminal that makes him liable for that crime. A mere accident, without any intention or due to carelessness, does not constitute a crime. Nor does just thinking about committing a crime, constitute criminal conduct without any action. One of the key distinctions of reuse is the difference between omission and commission.

Discussion

Commission refers to the doing of an act, like firing a gun or breaking into a house. Omission is the opposite; it means refraining from doing something. This might seem to conflict with the requirement

that every crime include an objective act. Indeed, most crimes are crimes of commission [4]. For example, killing someone with a gun or a knife is homicide, often a crime of commission. The father has not killed the child in the same way that a shooter has killed his victim, but most people would probably say that he is still responsible for the child's death. Indeed, the Penal Code creates two different crimes for these situations: abandonment describes the father who lets his child starve, while homicide describes the man who shoots and kills another person. Reflecting the differences in the directness of each criminal's level of responsibility for the victim's death, abandonment is punished less severely than homicide. Reviewing this list of crimes of commission and crimes of omission suggests a principle we might use to distinguish them: crimes of commission involve doing something that the law says is wrong, while crimes of omission involve failing to fulfil a duty that the law has created. When we are responsible for the life of another, such as a parent for a child, or someone who cares for someone who is seriously ill, we owe a duty to that person [5]. If the parent or caretaker fails to fulfil that duty and the result is serious harm to the person who needs his care, he commits a crime. Indeed it is this failure to fulfil one's duty that constitutes the objective element of crimes of omission. The requirement that every crime have a mental element is laid out explicitly in the Penal Code. However, if a crime requires purpose, a person is guilty so long as a person desires a certain outcome, regardless of whether the outcome actually occurs. Consider the crime of serious offences against physical integrity, which is defined as causing harm to the body or health of another with the purpose of depriving someone of an organ or limb or seriously disfiguring the victim. If someone intentionally causes harm to another with the purpose of depriving that person of a limb, the perpetrator is guilty of this offense, even if he ultimately fails to deprive the victim of a limb [6]. For example, if someone were to try to cut off another person's arm but only managed to deeply cut the victim's skin, that person would be guilty of a serious offense against physical integrity. The intent element of this crime applies only to causing bodily harm, which the perpetrator did by cutting his victim's skin. The Timorese criminal justice system is based on the concepts of legality, humanity, and culpability. These principles are designed to foster a system that protects the rights, lives, and dignity of

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all people who avail themselves of the justice system. The Constitution provides for a number of important protections that ensure these fundamental concerns, including a presumption of innocence and several important limits on the government's power to prosecute and punish criminals. Legality limits the government's ability to prosecute only if the perpetrator's actions are prohibited under the Penal Code [7]. Humanity directs the government to use the justice system as a means to not only protect every citizen's from criminals, but to also use the system to rehabilitate criminals. Culpability mandates that criminal punishment be given only to those with a guilty mind. The Timorese Penal Code describes the crimes that the state may punish as well as the penalties that may be imposed upon convicted criminals. It recognizes two types of crimes: public crimes, which the government may always investigate and prosecute, and semi-public crimes, which the government may only prosecute once the victim files a complaint. Semi-public crimes are identified in the Penal Code by provisions requiring the filing of a complaint. Every crime has both an act element and a mental element. Only if someone commits the act described in the Penal Code with the mental state that the law requires is that person guilty of a crime. The act element of a crime may be either a commission or an omission. The mental state requirement may take many forms, but crimes defined in the Penal Code are presumed to require intent on the part of the perpetrator [8]. In some instances, the law may require only negligence. The goal of a penalty is not to punish or serve as vengeance, but to teach and re-socialize the offender. As a result of this principle, Article 62 of the Penal Code states a general preference for penalties that do not deprive persons of their liberty whenever possible [9]. For example, fines or community service should be imposed, if legal and appropriate, in lieu of a prison sentence. Prison sentences should only be imposed when other penalties have proven ineffective in preventing the crime. Suspended sentences are another available option for terms of imprisonment of three years or less. In determining a penalty, the Penal Code directs the court to consider all of the circumstances that reveal a higher or lower degree of unlawfulness of the act. Factors that influence our conception of the degree of unlawfulness of the act are known as aggravating or mitigating factors. Aggravating factors are aspects of the crime that make it seem worse or more serious. Mitigating factors are circumstances that make the crime seem less serious. Article 52 provides a list of some general aggravating factors, and Article 55 provides a list of some general mitigating circumstances. These general circumstances may result in a harsher or more lenient punishment at the discretion of the judge. But there is another form

of mitigating circumstances. Namely, extraordinarily mitigating circumstances, which are identified in Article 56 [10]. If any of these are present, the maximum time of imprisonment is reduced by one third and the minimum time of imprisonment is reduced by one fifth.

Conclusion

The maximum fine is reduced by one third and the minimum fine is reduced to the legal minimum. And if the maximum length of imprisonment is three years or less, the penalty of imprisonment may be replaced by a fine. Some aggravating and mitigating factors are summarized below, but remember that the court must consider all circumstances of the crime that might aggravate or mitigate, regardless of whether they appear on this list.

Acknowledgement

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Conflict of Interest

None

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