



Determining the meaning of the objective criminal rule

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Abstract

Our current manuscript includes shedding light on the most important means that define the penal code and its goal, with a mention of what is related to it at the judicial level, depending on the most important sources approved in this field according to data and documents published globally. What is meant by the Crimes and Penalties Law is to give the legislator alone the power to have the ability to specify the acts punishable by law, which are called crimes, and to determine the penalties that apply to the perpetrators, which are called penalties. Any situation that occurs in society in which the perpetrators of the crime cannot be punished unless there is a legal basis or text on which the judge relies, during which the law is applied by all its means, and no one can reject this procedure as it is issued from an internationally agreed legal method.

Keywords: determining, objective, criminal rule

Introduction

In general the 1st civilizations didn't distinguishable between (civil-law and criminal-law). The primarily written codes of law rules were documented by the Sumerians. About (2100 to 2050 B.C) Ur Nammu, the Neo Sumerian-king of Ur, enacted setup legal code which version has been detected the Code of Ur-Nammu ^[1], though an previously Ur-ukagina of Lagash-code (2380 to 2360 B.C) is renowned to have subsisted too. There are other remarkable soon code was the Hammurabi-Code, which organized the core of Babylonian-law ^[2]. Only segments of the early criminal-laws of Greece-ancient have survive, for example that of (Solon, and Draco) ^[3]. The criminal law is a set of legal rules that show the crimes and how to deal with the crime if it occurred through the application of the criminal law, and impose the appropriate punishment for that, or the necessary measures for each crime separately. Criminal law is divided into two types of rules; The general rules and called the general section, and they are the legal rules that are concerned with general theories of crime, and the special legal rules called the special section, and the legal rules that are concerned with the study of crime in all its vocabulary and elements, and deals with its circumstances, and the study of the most important necessary penalties prescribed for it. The substantive law defines the basic standards that must be followed to maintain public order, by establishing a clear evidence of behavior during interactions between members of society, for example, in the case of causing unjustified bodily injuries to a certain person, it is considered a violation of societal rights, and a crime for which the law is held accountable. and intentional assault that cannot be tolerated by law.

The Penal Code, which is the main source of substantive criminal texts, is defined as (a set of legal rules enacted by the state in order to clarify a set of different patterns of behavior that are crimes and to determine what punishment should be imposed on them) ^[4]. The objective criminal rule, as a legal rule like all other legal rules, consists of two parts; *the first* is the assignment part, which is concerned with the content of the legislator's speech, as well as the order of the members of society to perform a certain behavior, in

addition to the fact that it forbids them from any specific abnormal behavior or action, *the second* part: it represents the penalty and is expressed in the legal effect that takes its role when violating the part of the assignment, in which the penalty or precautionary measure approved by the punitive text is applied to those who commit a specific crime, and often these two parts include one legal text ^[5]. The development in the means to reduce crime is evident in some countries of the world, for example in Russia, about (2006) the crime range is per 100.000 between the population reached 2.695 crimes, while in (2018) this ratio reduced to 1.360 ^[6]. Therefore, it is important to have collective responsibility to reduce crime by rejecting the means of violence in society, urging reform and directing the people to a culture of nonviolence, spreading awareness, developing education, raising the level of competencies, and raising the level of science, knowledge and guidance, in addition to practicing various disciplines in order for each of them to take a role in society. The religious institution must also take its role in guiding the members of society to spread love, peace and love of collective cooperation among people first, and secondly, to express opinions and appropriate solutions to governmental judicial institutions, for example (Patrick Tomlin) reasonably orients for the finding a more effective mechanism to protect society from any high criminalization by the state. Despite all this, the criminal law has an important and prominent role in reducing and eliminating crime, and on this basis, the most important means of reducing crime and clarifying its objectives and results must be identified. A framework of words represented shadows of intention in criminal laws in all the world. The liberal element, or mankind's *rea*, of killing, like that which was historically known as malice aforethought. In some jurisdictions relocated intention permits the proceedings for intentional killing if a death take places in the trajectory of commitment an intentional-felony. The intention for the crime is relocated to the murder in this kinds of status. The malice language is the most time disused and intent element of a crime, such as intention for killing, may subsist without a malicious motivation, or even with a charitable motivation, like in the case of mercy

killing [7]. Criminal law is concerned with providing an integrated system that is compatible and consistent with the guidelines of society and its lofty ideals, which are constantly changing and renewed whenever the need arises, through the application and identification of the necessary means. In the United States of America, despite the increase in the number of hunters and the expected great danger to these endangered livestock, the necessary legal measures were followed to protect wildlife in nature and the environment, and preserve them for future generations. The law has the right to specify the basic standards and means to be followed in order to maintain public order, by relying on clear evidence of acceptable behavior as a minimum in society, for example causing strong and obvious bodily injuries to a person without any justification is considered a violation of human rights, a crime for which the law is held accountable, in addition to being a blatant assault that the law cannot tolerate, the law is responsible for providing a system that complies with the community's guidelines and general rules. There is a word in law, which is the word "penalty" that has a general and comprehensive meaning, as it includes a reaction when a particular branch of law is violated, while the word "punishment" reveals the most severe legal penalties, and it is decided upon the occurrence of crimes, from which the term "law" came "Penalties" is an important term that cannot be replaced or dispensed with, because this leads to a breach of security and order.

The role of jurisprudence rules in criminal law

Each of the terms penal law or criminal law, or the so-called criminal procedure, are legal and jurisprudential conventions limited to the following objective criminal rules [8].

1. A statement of the crimes, which are represented by the criminal acts committed by the criminal insisting on committing them, in order to set the appropriate punishment for them according to the jurisprudence and legal rules resulting from that.
2. Determining who are the persons who deserve criminal accountability before the law, and defining them as the criminals who committed the crime.
3. Determining the (criminal penalty) of punishment and precautionary measures prescribed for actions that are considered crimes.

The attention and interest of criminal jurisprudence has appeared long ago in the punishment, in order to develop a legal method that deters the offender from committing the crime, by describing it as the necessary societal means that works to combat crime and reduce it, and this matter results in naming a set of objective criminal rules in the name of the Penal Code. Therefore, the penal code is meant by a set of objective provisions in the criminal law, meaning that they are the rules that define the pillars of crimes and indicate a set of penalties and necessary measures, as well as they determine the reasons that affect them by exclusion, aggravation or mitigation, and this leads to the emergence of two important facts [9]: -

- **The first fact:** Is that there are provisions related to the Code of Criminal Procedure that are not considered among the provisions of the Penal Code because they have nothing to do with substantive provisions such as criminalization and punishment adopted in the Criminal

Code, but rather their role is limited to regulating the procedural aspect in it.

- **The second fact:** It shows that the term penal code is not limited to the provisions regulated by the set of rules stipulated in the codification of the law concerned with penalties exclusively, but is expanded to include all provisions contained in the laws that complement the penal code, an example of this is the law on the offense of drug abuse, use and trafficking, in addition to the law on possession and bearing of arms.

The most important stages of development in criminal law:

Scientists have divided the development of criminal law into a number of stages based on the time periods that human societies have gone through over time, and these stages are: [10]

- The first stage is the stage of individual revenge, which includes the mobile tribes, which considered any attack on one of their members to be an attack on the entire tribe. Thus, the members of the victim's tribe gather and agree to plan the invasion of the perpetrator's tribe, which is considered primarily responsible. For what the offender did, you start a war on the offender's tribe, and this act is with the aim of revenge, in order to satisfy the victim's family, or in order to document certain conditions agreed upon by the two conflicting parties. As for what is within the tribe, it depends on the use of responsibilities by the chief of the tribe, who works through his authority over his tribe by disciplining the members of his tribe using appropriate methods for that. There are very important legal systems such as the system of retribution and the blood money system, which must be enforced in order to stabilize the social situation and for people to live in peace without the occurrence of crime or reduce the occurrence of crime. The emergence of a group of other systems represented in the denial of the offender, and others, play an important role in reducing crime.
- The stage of revenge for the state, which is the stage that began since the establishment of the state system, and which became the authority that approves punishment and applies it on behalf of members of society, it included all crimes of all kinds, the punishment was in the beginning in order to please the gods with revenge, and then Punishment now falls on criminals to take revenge for the group, not just for a specific individual, and there is no idea of reforming the criminal, so the punishment here was not based on justice, but rather concerned with social centers in the state.
- The stage of humanity, which is called the philosophical stage, and its basis depends on changing the punishment system from the system of revenge to the system of humanity and tolerance, and this stage appeared at the beginning of the eighteenth century with the emergence of reformers, among them:
 1. Montesquieu, who wrote the book *The Spirit of Laws*, in which he criticized the prevailing penal system.
 2. Rousseau, the author of the book *The Social Contract*, called for reducing penalties to a minimum in order to protect society from the criminal, and work to prevent him from harming other members of society.

3. Cesare Beccaria, the author of the book Crimes and Punishments, saw that the basis of the penal code is to protect the public interest of the group and preserve its entity, and that it is necessary to have the right to punishment in order to defend all its interests, and thus the goal is determined from punishment by preventing the criminal from returning to the criminal reality and preventing people from imitating him.
 - The modern stage, which is the stage that was marked by the increase in the spread of crime in the mid-nineteenth century, so a new and distinctive theory appeared in Italy, which was called the (Realist School), and the basis of this theory is the interest in the offender (the perpetrator) in the first place, and then comes after that. Second, physical actions, but this theory does not depend on the principle of freedom of choice, but rather on the principle of compulsion, and the main reason behind the offender’s crime is the presence of internal factors related to the psychological aspect of the perpetrator of the crime, and other external factors related to living conditions and the environment precautionary measures can be taken to prevent its occurrence. The proponents of this theory have said the importance and necessity of studying the psychological and social causes that may lead to the execution of the crime by the criminal, and seeking to treat these causes before they occur. The stages of development in criminal law listed in table no.1 below:

Table 1: To show the stages of development in criminal law (1\ stage of individual revenge. 2\stage of revenge for the state. 3\ stage of humanity. 4\ modern stage).

No.	stages of development in criminal law
1.	stage of individual revenge.
2.	stage of revenge for the state: (Montesquieu, Rousseau, Cesare Beccaria)
3.	stage of humanity.
4.	modern stage.

The purpose of the criminal law

The criminal law derives its importance from the purposes for which it was established, which can be summarized as follows: [11]

▪ **Protection of collective and individual interests and benefits**

This means that if the matter was left in coexistence among people without a law protecting the interests of the individual, attacks and disturbances would prevail among people and their private and public interests would be lost.

▪ **Providing security, safety and tranquility for the individual and the community**

Every member of the community performs his actions without fear of being attacked by a criminal, due to the existence of the Penal Code. It is the reason why individuals feel reassured and not afraid of injustice and aggression

against them, and in the event of an attack, they are aware that the perpetrator will not escape punishment.

▪ **Justice prevails among people**

everyone should know that people are equal before the law and there is no difference between them, it can be applied to everyone without any favoritism, and the reason for this is that the law defines unacceptable acts and warns them in advance and considers them criminal, so that No member of the community can be punished unless he commits a criminal act, but if he commits the crime, he will be punished like other people who committed crimes of all kinds before him.

▪ **Preventing crime by legal means**

The importance of the role of criminal law and the use of the means required in the application of the law is to prevent crime, and to strive to address crimes before they occur, by putting in place precautionary and preventive measures in society.

The basis of criminal law globally

The sources of criminal law differ between the state from one state to another, and it is not possible to limit them to one source worldwide. For example, criminal legislation in Islam is the Qur’an and the Prophet’s approach, which are considered the basis for the adoption of rulings, but at the present time it is possible to rely on the jurisprudence of jurists and what they unanimously agree on, and therefore the criminal law bases its rules on a number of sources that can be divided into direct and indirect sources, which are: [11]

▪ **Penal laws related to criminalization and the method of punishment**

it is precisely the legislative authority that has the right to issue penal laws, by issuing them in the form of general and abstract rules. Which will be punished in the event of committing the crime, and it shows the most important penalties that are supposed to fall on the perpetrators of the crime, and on this basis, no one can be punished for an act he has committed unless it is stipulated in the law, and from here the principle was found What is customary in the judiciary is “there is no crime or punishment without a text.”

▪ **Administrative penal systems**

Although criminal laws come from the legislative authority as its source represented by Parliament, it is possible to give full powers to the organizational authority of the head of state, or to the administrative authorities in the government as in ministries, as well as central and public administrations, where it is allowed It has to issue the most important binding decisions that can be adopted, and violating them is a clear crime that deserves to be punished by law.

▪ **Customary**

it is intended to be the public’s opinion about a specific issue in society, but criminal legislation does not depend on it, but rather depends primarily on the stipulated legislation. The provisions in the Penal Code take into account societal systems and customs, provided that there is proportionality between them.

Criminal rules are united in terms of application in many characteristics, including the following

1. First, the legal nature

In general, the criminal rules have a legal nature that affects the public order, it is not possible to agree on what is contrary to them, and every agreement without them is considered void ^[12], for example, if any person agrees to be arrested and placed in prison by the police, and he is a confession of his guilt This consent on his part cannot lead to dispensing with the trial even if it is accepted by the public authorities, because there must be a lawsuit brought before the judge in order to issue his ruling on that case or lawsuit, and without this action there would be no No legality of punishment, (no punishment without trial). Committing any error in criminal behavior allows the state to sue the accused and apply the criminal law to him and has the right to apply punishment to him regardless of his will, contrary to the rules of private law that individuals have the right to resort to voluntarily in order to open the door to justice if they want, so that it is announced They have the judiciary to rule legally in resolving the existing dispute, but this ruling was not a ruling that leads to the application of the just truth in reality ^[13].

2. Second: the formal nature

It is the criminal rule that is characterized by its formality, and it does not need to rely on the organization of objective relations, but rather its organization is limited to establishing relations with the criminal litigation. The rules of the Penal Code, but in general, it seeks to regulate the procedural relations that aim to apply the Penal Code and to define the scope of the guarantees that must be respected when applying ^[14]. The difference between the substantive rules and the procedural rules from a formal point of view may appear, depending on the place where the rules are placed, it cannot be adopted in determining the nature of the rule, whether it is objective or not, the Procedure Code may contain a certain objective rule, and it is possible that the Penal Code also contains a rule Procedural, and the same with regard to its objectives, since the procedural rules lead to the achievement of the interest of the accused in any way. As for the objective rules, their goal is to achieve the interest of society in the application of punishment according to the common rule that states that: the law of procedures is the law for the honorable, As for the Penal Code, it is the law for the wretched.

3. Third: Relativity and Dependency

The objective of the procedural criminal rules cannot achieve absolute results in general, nor is it intended for all individuals, such as the application of the objective criminal rules, but rather it is sufficient to rely on the discourse to some individuals who are related to the criminal litigation ^[15], as is the case in the rules In which the authority of the Public Prosecution and the Court is regulated, they are relative rules that address only those charged with what is consistent with these procedures. The penal code can only be applied through criminal procedural rules, as there is no penalty without a judicial ruling, on this, dependence means the close relationship between the two laws, assuming that there is a penal law logically unless there is a procedural law ^[16].

4. Fourth: Speed of procedures and access to facts

There must be justice in criminal judgments and speed in procedures, so that the Code of Criminal Procedure plays its role in a strong and effective way in reaching the facts and their clarity. Criminal law and increasing the time difference between crime and punishment, activating the role of punishment quickly clarifies its role in achieving the purpose of its implementation in the period between its signature and the date of committing the crime ^[17]. The speed in taking the necessary measures during the acquittal of the offender reduces the litigation period, and thus reduces the amount of damages that the innocent accused against whom the lawsuit is falsely filed.

5. Fifth: The rules that are divided between more than one text

What is meant here is that both the assignment and the penalty are available in more than one legal text, the legal texts are either complete or incomplete, the complete is the one that includes the full legal base and this is what is stipulated in the legal article (243) of the Code of Criminal Procedure, which It states:

(When thirty days have passed from the date of notification of the judgment in absentia issued in the occurrence of a specific crime by the criminal, and three months from the date of notification of the judgment issued in the crime, and six months have passed in the felony without the convicted person coming to the court from which the judgment was issued and without If he objects to it within the said period, he will be convicted before the court.) ^[18]. While the incomplete text is the text that cannot accommodate a complete legal rule, but rather is distributed over more than one legal text. In figure no. (1), the criminal rules shown as united in terms of application in several characteristics.

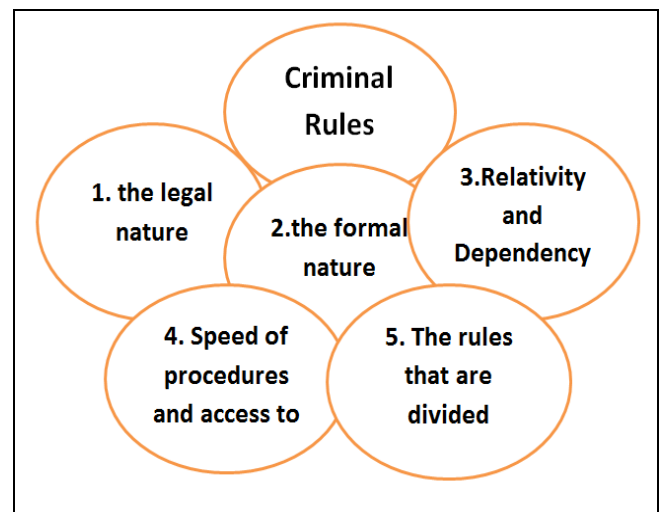


Fig 1: to illustrate the criminal rules which united in terms of application in several characteristics

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