



A CRITICAL EXAMINATION OF THE OFFENCE TREASON IN NIGERIA

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Abstract

The crime of betraying one's country, especially by attempting to kill or overthrow the sovereign or government is now at alarming rate¹. Treason is the offense of attempting by overt acts to overthrow the government of the state to the offender owes allegiance or to kill or personally injured the sovereign or the sovereign's family². Crime is at alarming rate globally but mostly in Nigeria a common law jurisdiction due to non-independence of judiciary, lack of appropriate penal sanction, corrupt leadership, bribery and corruption on the part of law the law enforcement agencies. Crime can be defined as an act that the law makes punishable, the breach of a legal duty treated as a subject matter of a criminal proceeding. It is also termed criminal wrong. Crime is an unlawful act punishable by a state or other authority. Crime in modern criminal law does not have universally accepted definition. Crime is an illegal act for which someone (accused) can be punished by the government especially a gross violation of law. It is a grave offence especially against State. Compounding felony such as treason was the focus of this research article. The research methodology applied was purely doctrinal in nature because it involved the use of primary and secondary sources of information, primary sources includes statutes, journals, law reports magazines, newspapers and the likes while secondary sources includes textbooks, Encyclopedia, Dictionaries and others. It also includes internet sources, summarily the resources materials used in the cause of writing this journal was purely both traditional and digital or virtual library, therefore it was a library based in nature.

Keywords: Law, Crime, Offence, Constitution, Treason. Misdemeanor, felony, compounding felony etc.

1.0 Introduction

Law is the bed rock of the term constitution hence before the description of the concept "constitution" let me first define the definition of law. According to black law dictionary, law can be defined as regime which orders human activities and relations through systematic application of force of politically organized society or through social pressure, backed by force, in such a society, the legal system respect and obey the law.³

Law is the aggregate of legislation, judicial precedents, and accepted legal principles, the body of authoritative grounds of judicial and administrative action; it is the body of rules, standards and principles that the court of a particular jurisdiction apply in deciding controversies brought before them. Law is a set of rules or principles dealing with a specific area of legal system. Law can be defined as judicial and administrative process, legal action and proceedings when settlements negotiation failed;

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¹ <<https://www.meriam-webster.com>> accessed 12th November, 2023.

² <<https://dictionary.cambridge.org>> accessed 12th November, 2023.

³ B A Garner, *Black law Dictionary* (9th Edition, West Publishing Company, 2009) 962.

they submit their dispute to the law. Law can be defined as the act of parliament either at the State house of assembly National assembly. It is the body of rules and regulations made by the legislative body in assembly to govern the modus operandi of the people living in a state for peaceful co-existence⁴. According to Oliver Wendell Holmes, law is what the judges in Massachusetts say in the Court room and nothing more pretentious is what the law is. In consonance to John Austin, law is a command which is made by the sovereign been for an inferior being which must be obeyed and it is always backed by sanctions⁵.

According to black law dictionary, constitution can be defined as the fundamental and organic law of a nation or state that establishes the institutions and apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties. The written instrument embodying this fundamental law together with any formal amendments.⁶

According to N.A Inegbedion in his book titled 'Constitutional Law in Nigeria' Constitution is a formal document setting out the main organs of government. However, studies have revealed that constitution could be understood in a broader sense to mean the whole system of legal rules which regulates the government of a country. Constitution is the whole system of legal rules; non legal rules and extra rules are enforceable by the court. The extra-legal rules are enforceable whereas the non-legal rules are not enforceable by the courts but nevertheless, are generally accepted by the people as binding on them e.g. conventions, customs and practices.⁷

According to J. Bryce's defines a constitution as a frame of political society organized through and by law i.e. to say one in which law has established permanent institutions with recognized functions and definite rights.⁸ According to Samuel Edward Finer defines a constitution as codes of rules which govern the allocation of functions, powers and duties amongst various governmental agencies and define the relationship between them and the public.⁹ C.F Strong: Said that a true constitution will have the following facts about it clearly marked. First, how the various agencies are organized, secondly what power is entrusted to these organs and thirdly in what manner is such power to be exercised?¹⁰ Here are the fundamental human rights as enshrined in chapter four of the constitution federal republic of Nigeria as stated below:

- i. Such as section 33 Right to life¹¹
- ii. Section 34 right to dignity of human person¹²
- iii. Section 35 right to personal liberty¹³
- iv. Section 36 right to fair hearing¹⁴

⁴ C C Wigwe, *Jurisprudence and Legal Theory* (Read wide Publishers Accra Ghana, 2011)3.

⁵ n4.

⁶ B A Garner, *Black law Dictionary* (9th Edition, West Publishing Company, 2009) 353.

⁷ N A Inegbedion, *Constitutional law in Nigeria* (Amfitop Books Indiana Universities, 2009)1.

⁸ J Bryce, D.C.L. *Studies in history and jurisprudence* (London, Henry Frowde, New York, University Press, 1901)195.

⁹ S E Finer, *Comparative government* (2nd Edition, Penguin Publishers, 1974) 145.

¹⁰ C F Strong, *Modern political constitution* (London: Sidgwick & Jackson 1939)

¹¹ CFRN 1999 as Amended s 33.

¹² CFRN 1999 as Amended s 34.

¹³ CFRN 1999 as Amended s 35.

¹⁴ CFRN 1999 as Amended s 36.

- v. Section 37 right to private and family life¹⁵
- vi. Section 38 right to freedom of thought, conscience and religion ¹⁶
- vii. Section 39 right to freedom of expression and press¹⁷
- viii. Section 40 right to peaceful assembly and association¹⁸
- ix. Section 41 right to freedom of movement ¹⁹
- x. Section 42 right to freedom from discrimination ²⁰
- xi. Section 43 right to acquire and own immovable property²¹
- xii. Section 44 right to compulsory acquisition of property²²

2.0 Conceptual Clarification

2.1. Constitution

Constitution has been defined as body of rules established to regulate the system of government within a state. The reason for drafting a codified constitution is usually associated with the time in which a particular State is formed or associated with a major change that has taken place at national level. For instance, Italy drew up a new constitution in 1948 and Germany did the same in 1949 following their defeat in World War II and also to mark the destruction of their previous regimes. The United States drafted a codified constitution upon independence from Britain in 1787, and India drafted a constitution after independence from Britain, in 1950. Nigeria drafted her constitutions consecutively in year 1963, 1979 and 1999 as amended in year 2017 after 1960 independence from Britain.

The Constitution of India is the longest written constitution of any country in the world containing 444 articles in 22 parts, 12 schedules and 124 amendments, with 146,385 words in its English language version. The Constitution of Monaco is the shortest written constitution, containing 10 chapters with 97 articles, and a total of 3,814 words. The Constitution of the United States is the world's oldest continuously active codified constitution, having been in force since 1789. Only half of all constitutions function continuously for more than 19 years

Sources of Constitution

1. **Opinions of political and constitutional writers:** Another source of a country's constitution is the writings of great political thinkers. Concepts such as Separation of Powers, Checks and Balances, Rule of Law, Socialism, Capitalism and many others were proposed by great writers on politics. The writings of Karl Marx, for example, influenced the constitution of the former Union of Soviet Socialist Republic.
2. **Constitutions of other countries:** Framers of a country's constitution may study the constitution of other countries and pick up best practices which are then incorporated into the new constitution. It is

¹⁵CFRN 1999 as Amended s 37.

¹⁶CFRN 1999 as Amended s 38.

¹⁷CFRN 1999 as Amended s 39.

¹⁸CFRN 1999 as Amended s 40.

¹⁹CFRN 1999 as Amended s 41.

²⁰CFRN 1999 as Amended s 42.

²¹CFRN 1999 as Amended s 43.

²²CFRN 1999 as Amended s 44.

believed that parts of the 1960 Constitution of Ghana were derived from the content of the American, French and British Constitutions.

Parts of 1999 Nigerian constitution were derived from 1960, 1963, 1979 constitution and from British and United States of America.

3. Customs and conventions: The customs and practices of the people can also be the source of a constitution. These are the portions of the constitution that have not been written down but which over the years have been accepted as practices under the constitution, i.e. constitution must be peoples lead, processed culturally grinded and driven, hence historical school of jurisprudence applies. (i.e. autochthonous constitution)

4. Previous constitutions: Also, previous constitutions serve as the source of a country's new constitution. In coming out with a new constitution after a previous one has failed or after a long period of military rule, the earlier constitution is studied and any aspects that are relevant are incorporated into the new one. It is believed that 1960 constitution of the republic of Ghana influenced some of the provisions of the 1969 constitution; also, comparatively 1963 and 1979 constitutions of the federal Republic of Nigeria influence some of the provisions in 1999 constitution as amended in year 2017.

5. Decisions of a constituent Assembly: Another source of constitution is the decision of a Constituent Assembly that has been put together to draft a constitution for a country. Proposals are forwarded to the constituent assembly from various quarters of the country and these proposals are thoroughly discussed and decisions arrived at as to what to include and what not to include in the proposed constitution.

6. Judicial Precedents/Case law: These are rulings of the courts that have found their ways into the constitution. In constitutional cases, especially, whenever a judiciary rules on a matter before it, that then becomes the new law (judge made law). That decision is used as the bases of another decision in the future, especially where the cases are similar. According to Oliver Wendell Homes, law is what the judges in Massachusetts say in the Court room and nothing more pretentious is what the law is. This assertion is in consonance with the ideology of realist school of jurisprudence.

Types of Constitution

According to black law dictionary, constitution can be categorized into four types, such as follows:

- 1. Flexible constitution:** A constitution that has few or no special amending procedures. The British constitution is an example; Parliament can alter constitutional principles and define new baselines for government action through ordinary legislative processes. The Canadian Constitution also grants its legislature some limited ability to amend the Constitution by legislation.²³
- 2. Rigid constitution:** A constitution whose terms cannot be altered by ordinary forms of legislation, only by special amending procedures. The U.S. Constitution is an example. It cannot be changed without the consent of three-fourths of the state legislatures or through a constitutional convention. U.S. const. article V²⁴

²³ B A Garner, *Black law dictionary* (9th Edition, West Publishing Company, 2009)353-354.

²⁴ B A Garner, *Black law dictionary* (9th Edition, West Publishing Company, 2009) 393.

3. **Unwritten constitution:** The customs and values, some of which are expressed in statutes, that provide the organic and fundamental law of state or country that does not have a single written document functioning as a constitution. In British constitutional law, the constitution is a collection of historical documents, statutes, decrees, convention, traditions, and royal prerogatives. Document and statutes include Magna Carta (1215), the Bill of Rights (1689), and the European Communities Act (1972). The implied parts of a written constitution, encompassing the rights, freedoms, and processes considered to be essential, but not explicitly defined in the written document many aspects of an unwritten constitution based on custom and precedent. The U.S. Constitution does not for example; give the Supreme Court the power to declare laws unconstitutional but the Court does so without question. Nor does the constitution expressly guarantee a right of privacy, but the Supreme Court has declared that the right exists and is protected.²⁵
4. **Written Constitution:** A written constitution is a former document defining the nature of the constitutional settlement, the rules that govern the political system and the rights of citizens and government in a codified form, e.g. Nigeria as a common law jurisdiction undergone written constitution. In general a written constitution is assumed to be the same as “Codified” constitution meaning that the supreme law of the land can be found all in one document.²⁶

Definition of an Offence

What is an offence? The Black’s Law Dictionary defines it as “a violation of the law” The Nigerian Criminal Code defines it more comprehensively thus “an act or omission which is rendered punishable by some legislative enactment” apart from the above general definitions, each specific offence is defined by the law which created it. For instance, the offence of manslaughter is defined by section 317 of the Criminal Code²⁷. Under this provision, a person who unlawfully kills another in such circumstances as not to constitute murder is guilty of manslaughter. Now, a careful examination of the definition of any given offence will show that it always consists of two sets of elements, namely, the physical and mental elements. For example, in the offence of manslaughter created under section 317 of the Criminal Code, the physical element is the killing of the deceased while the mental element is the intent to kill the deceased. This example has been chosen advisedly for, in this case, the mental element (intention to kill the deceased) makes all the difference as to the offence which the act of the accused person constitutes.

An offence is defined as an act or omission which is rendered the accused punishable by some legislative enactment. But if the definition of any particular offence is examined carefully, it will be seen that it nearly always consists of two sorts of elements physical and mental. An offence is an act or omission done or omitted to be done in a particular state of mind. For example, in the offence in section 394 of the Criminal Code²⁸, the physical element is the killing of an animal capable of being stolen; the mental element is the intent to steal the skin or carcass.

²⁵*Ibid*

²⁶*Ibid*

²⁷ C C A s 317.

²⁸ C C A s 394.

An offence is a breach of a law or rule; an illegal act. It held such crimes to be offences against the law of nations, much as was the traditional crime of piracy. It is also clear that the charge of assault against the second applicant is an offence under the criminal law as well as under the Penal Law.

Offence is the British spelling of offense, meaning "a punishable act." If you break a law for the first time, it is your first offence. The noun offence comes from the Latin word *offendere*, which means "strike against." Any time you break a law or a rule it is an offence against that law or rule. In countries like the United States, the preferred spelling is offense.

In sports, offense or offence is also known as attack is the action of attacking or engaging an opposing team with the objective of scoring points or goals. In Britain and elsewhere, the term offence is almost always taken to mean an infraction of the rules, a penalty or foul, and attack is more likely to be used where Americans would use 'offense'.

According to Black Law Dictionary, offence can be defined as a violation of the Law²⁹, a crime often a minor one (Simple Offence). It is also termed criminal offence. According to Black Law Dictionary, offence can be classified as follows:

1. **Acquisitive Offense:** It is an offence characterized by the unlawful appropriation of another's property³⁰e.g. Larceny.
2. **Allied Offense:** It is a crime with elements so similar to those of another that the commission of the one is automatically the commission of the other³¹.When someone commits a crime that is so similar to another crime that they are automatically guilty of both. For example, if stealing a car and stealing a bike have the same elements, then someone who steal a car is also automatically stealing a bike³².
3. **Arrest able Offense:** It is an offence for which the punishment is fixed by Law or for which a statute authorizes imprisonment for 5years, or an attempt to commit such an offense³³. This statutory category, created in 1967, abolished the traditional distinction between Felonies and Misdemeanors.
4. **Bail able Offense:** It is a criminal for which a defendant may be released from custody after providing proper security³⁴, e.g. Misdemeanor theft is a bail able offense.
5. **Capital Offense:** This is a crime for which death penalty may be imposed; it is also termed Capital Crime³⁵.

Crime: Concept, Definition and Analysis:

According to black law dictionary, crime can be defined as an act that the law makes punishable, the breach of a legal duty treated as a subject matter of a criminal proceeding.³⁶It is also termed criminal wrong.

²⁹ B A Garner, *Black law dictionary* (9th Edition, West Publishing Company, 2009)1186.

³⁰ (n29).

³¹ (n30).

³² <<https://www.isd.law>> accessed 20th November, 2023.

³³ B A Garner, *Black law dictionary* (9th Edition, West Publishing Company, 2009)1186.

³⁴ (n33).

³⁵ (n34).

³⁶ B A Garner, *Black law dictionary* (9th Edition, West Publishing Company, 2009)427.



Crime is an unlawful act punishable by a state or other authority. Crime in modern criminal law does not have universally accepted definition. Crime is an illegal act for which someone (accused) can be punished by the government especially a gross violation of law. It is a grave offence especially against the state. It is a criminal activity; it is something reprehensible, foolish, or disgraceful act or its omission.

Crime or offence are two words that are used interchangeably, it has no universally accepted definition. Hence, definition of crime or offence varies from jurisdiction to jurisdiction such as common law jurisdiction and civil law jurisdiction. Definition also varies in criminal code and penal code according to section 2 of penal code of Republic of Uganda, crime can be defined as an act committed by the accused which will make such to be punishable or liable in law³⁷.

What is crime? It is indeed a Herculean task to define crime. It has been always regarded as a matter of great difficulty. R.C. Nigam says that to answer the question, as to what is crime, it is to be known at first, what is Law, because these two questions are closely interrelated. Traditionally, it is known that law is a command enjoining a course of conduct. Crime may therefore, be an act of disobedience to such a law forbidding or commanding it. But then, sometimes, disobedience of all laws may not be a crime, for instance, disobedience of civil laws.

Definition of crime or offence varies from jurisdiction to jurisdiction such as common law jurisdiction and civil law jurisdiction. It also varies in criminal code and penal code, according to section 2 of penal code of Republic of Uganda, crime can be defined as an act committed by the accused which will make such to be punishable or liable in law³⁸.

Therefore, crime would mean something more than mere disobedience of a law, of all branches of law, the branch that closely touches and concerns man in his day-to-day affairs is criminal law. Many attempts have been made to define crime, but they all fail to help us in precisely identifying what kind of act or omission amounts to a crime. The very definition and concept of crime is a changing notion from time to time and from place to place. For instance, suicide was a crime in England until the Suicide Act of 1961 was passed³⁹ and abortion was a crime in India until 1971 when contrary was proved.

3.0 Classification of Crime

1. Administrative crime: An offence consisting of a violation of an administrative rule or regulations that carries a criminal sanction⁴⁰.
2. Commercial Crime: Crime that affects commerce especially crime directed toward the property or revenues of a commercial establishment⁴¹. Examples include robbery of a business, embezzlement, counterfeiting, forgery, prostitution, illegal, gambling, and extortion.
3. Common law crime: (1827) Crime that is punishable under the common law, rather than by force of statute⁴². Statutory crime.

³⁷ Penal Code of Republic of Uganda s 2.

³⁸ *Ibid*.

³⁹ Smith and Hogan, *Criminal Law* (London Butterworth 1983).

⁴⁰ B A Garner, *Black Law Dictionary* (9th Edition, West Publishing Company 2009) 427.

⁴¹ (n40).

⁴² (n41).

4. Computer/Cybercrime: (1971) A crime involving the use of computer, such a sabotaging or stealing electronically stored data⁴³. (Cybernetic crime)
5. Constructive crime: A crime that is built up or created when a court enlarges a statute by altering or straining the statute's language, especially to drawing unreasonable implications and inferences from it⁴⁴.
6. Continuous crime: Crime that continues after an initial illegal act has been consummated⁴⁵. Crime such as driving a stolen vehicle that continues over an extended period.
7. Corporate crime: Crime committed by a corporation's representatives (Agents) acting on its behalf⁴⁶ (Principal). Examples include price fixing and consumer fraud in which principal may not be vicariously liable. Although a corporation as an entity cannot commit a crime other than through its representatives (Agents), it can be named as a criminal defendant also termed as organizational crime or occupational crime.
8. Economic crime: A nonphysical crime committed to obtain a financial gain or a professional advantage⁴⁷.

Strict Liability Offence

Strict liability offences are an exception to the rule that the prosecution must establish the mental element inherent in criminal offences '*actus non facit reum mens sit rea*' this Latin Maxim is not applicable to strict liability offences. These offences have no mental element and only require the occurrence of the prohibited conduct for an offence to occur. Strict liability offences are usually minor offences such as speeding, driving an unregistered vehicle, or failing to wear a seatbelt.

Another Classification of an Offence

This classification is borrowed from the common law. It is also the classification adopted in the criminal code which provides offences are of three kinds, namely:

1. **Simple offence:** An offence, other than a felony and a misdemeanor, it is a simple offence.
2. **Misdemeanor:** Misdemeanor is any offence, which is declared by law to be a misdemeanor and is punishable by imprisonment for not less than six months but less than three years.
3. **Felony:** Felony is any capital offence, which is declared by law to be felony and is punishable, without proof of previous conviction, with death or with imprisonment for three years or more. By statutory classification of offences, felonies are most serious crimes and do attract a punishment ranging from imprisonment for three years or more. Misdemeanor, ostensibly a less serious category carries a punishment of less than three years.

Republic of Uganda's Definition of Crime

Crime or offense in Republic of Uganda can be defined as an act which can make or render the accused to be punishable or liable in Law⁴⁸, hence the elements of crime in Uganda is as follows.

⁴³ (n42).

⁴⁴ (n43).

⁴⁵ (n43).

⁴⁶ *Ibid*.

⁴⁷ *Ibid*.

⁴⁸ Penal code of Uganda s 2.

Elements of Crime in Section 2 Penal Code of Uganda

1. The act must be written in statutory instrument
2. Punishment must be awarded for the act
3. The plaintiff must be suffered damage/injury
4. The law must be capable of restoring the plaintiff to the normal position had it been the wrong has not been committed (*restitutio integrum*)
5. Omission was not mentioned in the above definition of crime, hence omission is not a crime in Uganda

Nigerian's Criminal Code Definition of Crime

According to sections 2 and 3 of Nigerian criminal code, crime can be defined as an act or its omission which will make the accused punishable or liable in law for such an act or its omission⁴⁹.

Elements of Crime in Sections 2 and 3 of Nigerian Criminal Code

1. The act or its omission must be written in statutory instrument
2. Punishment must be awarded for the act or its omission
3. The plaintiff must suffer damage/injury
4. The law must be capable of restoring the plaintiff to the normal position had it been the wrong has not been committed (*restitutio integrum*)
5. In Nigerian criminal code omission is an offence punishable in law.

Although, both *mens rea* and *actus reus* are compulsorily necessary in the defense of civil wrong. Hence the Latin maxim "*actus non facit reum mens sit rea*" i.e. an act must concur with the state of mind before commission of crime can be established. In the case of strict liability offences *mens rea* is irrelevant.

Classification of Crime

(1). **Crime as a Public Wrong/Conventional Crime:** Sir William Blackstone defines crimes in two ways, in his work, first as, "An Act committed or omitted in violation of a 'Public Law' forbidding or commanding it⁵⁰". Since the definition limits the scope to violation of a 'public law', it would only cover political offences and such offences are only a segment of the great bulk of criminal law. Again if 'public law' is to denote 'positive' or 'municipal laws' it would be too wide to cover all legal wrongs, while every legal wrong is not a crime. If 'public law' is to include both constitutional and criminal law, it ceases to define crime in the German sense, as crime is not to be defined with the help of constitutional law in Germany.

At a second stage Blackstone modified his definition as: "A crime is violation of the public 'rights and duties' due to the whole community considered as a community" NB NB Sergeant Stephen, while editing Blackstone's commentaries modified the definition to some extent and his definition is: "A crime is a violation of a right considered in reference to the evil tendency of such violation as regards the community at large". It narrows down the scope of crime to violation of rights only, whereas criminal

⁴⁹ C C A S s 2 and 3.

⁵⁰ W Blackstone, *Blackstone's Commentaries on the Laws of England* (4th Edition, Dickinson Law Review Publishers, 1897) Book iv Chap 1)1.

law fastens criminal liability even on those persons who omit to perform duty required by law. For instance, a police officer who silently watches another police officer torturing a person for the purpose of extorting confession is liable for abetting the said offence as he is under legal duty to prevent torture.

The definition stresses that crimes are breaches of those laws, which injure the community. However, all acts that are injurious to the community are not necessarily crimes. For instance, a person's conduct may amount to a crime even though, instead of being injurious, it is, on the whole, an advantageous act. So, the definition fails to give an adequate and comprehensive definition.

(II) Crime as a Legal Wrong

Jurists define crime as “wrong which the government deems injurious to public at large and punishes through a judicial proceeding in its own name” This definition of crime depends on the laws promulgated by the government from time to time. Any act becomes a crime at any time, if it is declared to be so by a crime as soon as the State deems so.

According to Paul Tappan in his book “Crime is an intentional act or omission in violation of criminal law, statutory law and case law committed without defense of justification and sanctioned by the State as a felony or misdemeanor⁵¹”.

According to the legal approach, crime is an act defined by law. Unless the elements specified by statutory or case law are present and proved beyond a reasonable doubt a person may not be convicted of a crime. Tappan also maintained that non legal definitions were too loose, too ambiguous, and left too much room to the definer to determine what crime is.

Crime is an intentional act or omission according to a part of the definition of Tappan. Mere thinking about committing an act will not constitute crime. Sometimes words may also be construed as acts, as it reason or abetting another to commit a crime. Likewise failure to do an act may also constitute crime but there must be a legal duty to act in a particular case, the act of omission must be voluntary. An act or omission must also be intentional, that is, criminal intent or *mens rea* must be present, because ancient maxim says, “evil intent is the essence of crime”. There are, however, exceptions granted to the existence of criminal intent. There must be an act or omission in violation of a criminal law in both statutory and case law.

An act when done with intent must also be an act in violation of criminal law. One distinction, however, that is to be made in a discussion of crime is between criminal law and non-criminal law. Criminal wrongs and civil wrongs are often one and the same act as viewed from different standpoints, the difference being not one of nature but one of relation.

When a criminal wrong has been committed, the State or Federal government brings the action against the person who is accused of committing the crime that is the State is the prosecutor and the accused the defendant. In a non-criminal wrong the act is against an individual and the person brings the action against the doer, the defendant and is called plaintiff.

⁵¹ P W Tappan, *Crime, Justice and Correction* (McGraw-Hill Book Co, New York 1960)1.

In a criminal case, the state may seek any of the following probation, imprisonment, fine payable to the state or capital punishment in a non-criminal suit the party against whom the action is brought may have to pay monetary damages to the plaintiff.

Definition of Treason

Treason has been defined as “the offence of attempting to overthrow the government of the State to which one owes allegiance either by making war against the State or by materially supporting its enemies. Under the Nigeria legal system, treason is criminalized under section 37 and 38 of the Criminal Code⁵². The sections are reproduced hereunder for ease of reference.

Section 37 (1) “Any person who levies war against the State, in order to intimidate or overawe the president or the Governor of a State, is guilty of treason, and is liable to the punishment of death”⁵³.

Section 37(2) “Any person comparing with any person, either within or without Nigeria, to levy war against the state with intent to cause such levying of war as would be treason if committed by a citizen of Nigeria, is guilty of treason and liable to the punishment of death provided that nothing in this section shall prevent any act from being treason which is so by the law of England as in force in Nigeria”⁵⁴.

Section 38 “Any person who instigates any foreigner to invade Nigeria with an armed force is guilty of treason, and is liable to punishment of death.”⁵⁵

The first point to note with reference to these provisions is that the Code appears to have imported the principle in English law to the effect that offender need not levy the war directly before he can be convicted of treason. It is sufficient if the prosecution can prove that he gave consideration support to enemy or enemies in levying the war. By the same token, a foreigner can be convicted of treason in Nigeria if it is established that he engaged himself in any act that can constitute the offence if committed by a Nigerian citizen. And it is immaterial whether the foreigner committed the offence within or outside Nigeria.

Treason is the crime of attacking a state authority to which one owes allegiance. This typically includes acts such as participating in a war against one's native country, attempting to overthrow its government, spying on its military, its diplomats, or its secret services for a hostile and foreign power, or attempting to kill its Head of State. A person who commits treason is known in law as a traitor. Historically, in common law countries, treason also covered the murder of specific social superiors, such as the murder of a husband by his wife or that of a master by his servant. Treason against the king was known as high treason and treason against a lesser superior was petty treason. As jurisdictions around the world abolished petty treason, "treason" came to refer to what was historically known as high treason.

Treason is the most serious offence in the Code and it is punishable with death penalty. Prosecutions for this offence are very rare indeed. The gist of the offence is the levying of war against the State in order to intimidate or overthrow the President or the Governor of a State. A person conspiring with any

⁵² C C A s 38.

⁵³ C C A s 37(1).

⁵⁴ C C A s 37(2).

⁵⁵ C C A s 38.

person either within or without Nigeria to levy war against the State is guilty of treason. Any person who instigates any foreigner to invade Nigeria with an armed force is guilty of treason. It was held in *Enahoro v. R.* that a conspiracy to levy war against the State which is treason under section 37 (2)⁵⁶ of Nigerian criminal code should be charged under that section and not under Section 516⁵⁷ of Nigerian criminal code which deals with conspiracies generally and it is intended to apply to conspiracies which are not specifically provided for in the Code.

Element of Treason

Three key elements are necessary for an offense to constitute treason: an obligation of allegiance to the legal order, and intent and action to violate that obligation. Treason is a breach of allegiance and of the faithful support a citizen owes to the sovereignty within which he lives. A citizen of the United States who is subject to the law of a foreign state may owe allegiance to that State at the same time he owes fealty to the United States. But this dual nationality does not relieve him of obligation to refrain from volunteering aid or comfort to the foreign nation if it is at war with the United States. Although the matter has not been presented to a court in this country, an individual present here and enjoying the nation's protection owes it his obedience while he is resident, and thus may be guilty of treason if he commits what would be an offence when done by a citizen.

What Constitute Treason

Treason is a unique offense in our constitutional order the only crime expressly defined by the Constitution, and applying only to Americans who have betrayed the allegiance they are presumed to owe the United States. While the Constitution's Framers shared the centuries old view that all citizens owed a duty of loyalty to their home nation, they included the Treason Clause not so much to underscore the seriousness of such a betrayal, but to guard against the historic use of treason prosecutions by repressive governments to silence otherwise legitimate political opposition. Debate surrounding the Clause at the Constitutional Convention thus focused on ways to narrowly define the offense, and to protect against false or flimsy prosecutions.

The Constitution specifically identifies what constitutes treason against the United States and, importantly, limits the offense of treason to only two types of conduct: (1) "levying war" against the United States; or (2) "adhering to the enemies of the United States, giving them aid and comfort." Although there have not been many treason prosecutions in American history indeed, only one person has been indicted for treason since 1954 the Supreme Court has had occasion to further define what each type of treason entails. Treason cases has been charged against the following's peoples in Nigeria: Late Chief Obafemi Awolowo, Akinloye Akinyemi, Daniel Bamidele, Buka Suka Dimka, Oladipupo Diya, Anthony Enahoro and Lateef Jakande respectively.

The Court construed the other treason offense authorized by the Constitution similarly narrowly in *Cramer v. United States* (1945). That case involved another infamous incident in American history, the case of Nazi Saboteur Affair (1942). Cramer was prosecuted for treason for allegedly helping German soldiers who had surreptitiously infiltrated American soil during World War II. In reviewing Cramer's

⁵⁶ C C A s 37(2).

⁵⁷ C C A s 516.

treason conviction, the Court explained that a person could be convicted of treason only if he or she adhered to an enemy and gave that enemy “aid and comfort.” As the Court explained: “A citizen intellectually or emotionally may favour the enemy and harbor sympathies or convictions disloyal to this country’s policy or interest, but, so long as he commits no act of aid and comfort to the enemy, there is no treason⁵⁸. On the other hand, a citizen may take actions which do aid and comfort the enemy making a speech critical of the government or opposing its measures, profiteering, striking in defense plants or essential work, and the hundred other things which impair our cohesion and diminish our strength but if there is no adherence to the enemy in this, if there is no intent to betray, there is no treason.” In other words, the Constitution requires both concrete action and intent to betray the nation before a citizen can be convicted of treason; expressing traitorous thoughts or intentions alone does not suffice.

INGREDIENTS OF THE OFFENCE OF TREASON

1. LEVYING WAR

The word “war” does not bear the restricted meaning which it bears in international law. In order to constitute a levying of war it is not necessary that the accused persons should be members of a military force or even trained in the use of arms and the type of weapons used is not material. It is also immaterial that the number of persons engaged in levying the war is small.

“The words ‘levying of war’ were general and descriptive. It was obvious that war might be levied in very different means in different ages of the world. “The war must be levied for a general and public purpose. If it is done merely for a private purpose the offence may be simply a riot.

In *R. v. Boro*⁵⁹, counsel had argued that to establish the offence of treason under section 37 (1) of Nigerian criminal code⁶⁰, it must be proved that the Head of State was personally intimidated or overawed. Rejecting this argument the Supreme Court held that there is no difference between intimidating and overawing the State and doing the same to the Head of State for as the Head of State is the embodiment of the State, to intimidate him is the same as intimidating the State.

Although the term “war” is not defined in the Code it seems from the wording of section 37(1) that any act that can intimidate or overawe the President or the Governor of a State will do. It is yet to be ascertained or even determined by any known judicial authority the question of when the president or Governor of a State can be said to be intimidated or overawed by any act or action so as to establish that such act or action constitutes treason under section 37(1) of the Code. But the court in *R v. Boro* took the view that the prosecution need not prove that the Head of State was personally intimidated or overawed. The court further held in this case that for the purpose of section 37(1) the Head of State is the embodiment of the State and there is thus no difference between overawing the State and doing the same to the head of State.

⁵⁸ (1942)284 KB 13 pages.

⁵⁹ (1226)163 Cal App and (1966)1 All NLR 266.

⁶⁰ C C A s 37 (1).

The interpretation given to section 37(1) of the code in the Boro's case, it was submitted, is very dangerous and needs to be applied with caution. It throws up the age long controversy as to whether or not public interest is synonymous with the interest of a sitting President or Governor. In Nigeria, while those in government have tended to support the proposition that public interest is not separable from the President or Governor's interest members of the opposition parties and, indeed, the civil society have always held a contrary view. The argument may continue unabated as people's positions are often coloured by the side of the divide to which they belong. But in order to guard against the possibility of a malicious or even vindictive prosecution, it is suggested that the courts should go beyond considering the personal interest of an incumbent President or Governor in interpreting the provision of section 37(1) of the Criminal Code.

2. CONCEALMENT OF TREASON

Any person who becomes an accessory after the fact to treason, or knowing that another person intends to commit treason fails to give prompt information thereof to the appropriate authority or fails to use other reasonable endeavours to prevent the commission of the offence is guilty of a felony and is liable to imprisonment for life.

3. TREASONABLE FELONIES

The offence of treasonable felony is set out in Section 41 of Nigerian criminal code and is punishable with life imprisonment⁶¹. The intention to do any of the things set out in that section must be manifested by an overt act. An act of conspiracy with any person to do any of the things in section 41 and every act done in furtherance of such things by any of the conspirators is deemed to be an overt act manifesting the intention.

4 PROMOTING NATIVE WAR

Any person who, without lawful authority carries on or makes preparation for carrying on, or aids in or advises the carrying on of or preparation for any war or warlike undertaking with, for, by, or against, any native chief, or with, for, by or against any band of natives, is guilty of a felony, and is liable to imprisonment for life.

LIMITATION OF TIME

The law of treason creates an exception to the general rule that in criminal matters statutes of limitation are inapplicable. Under section 43 of the Criminal Code⁶², a person cannot be tried for treason or any of the felonies defined in Sections 40⁶³, 41 and 42⁶⁴ unless the prosecution is commenced within two years after the offence is committed.

⁶¹ C C A s 41.

⁶² C C A s 43.

⁶³ C C A s 40.

⁶⁴ C C A s 42.



CONVICTION FOR TREASON

The Criminal Code provides that no person charged with treason or with any of the felonies set out in Sections 40-42 can be convicted except on his own plea of guilt, or on the evidence in the open court of two witnesses at least to one overt act of the kind of treason or felony alleged, or the evidence of one witness to one overt act and one other witness to another overt act of the same kind of treason or felony.

REVOLUTION NOW: OMOYELE SOWORE'S AND HIS TEAM TAKE IT BACK MOVEMENT

I Adewusi N. A describe the birth of an impressive new movement in Nigeria. I see the Revolution Now campaign as a spark around which national structures are being built. The blog post draws lessons from earlier popular struggle in the country and argues that the new movement is fanning the embers of revolts, as part of the revolutionary struggles sweeping across the world.

On 5 August, the Revolution Now campaign was unfurled with protests in 14 States, cities and towns across the country. Most of these involved just a handful of people, with the largest having barely a hundred protesters. But this was because the States rolled out its full arsenal of coercion. Armed to the teeth, men and few women of the secret police, elite squads of the police, the army and air force took over the venues designated for demonstrations across 23 States of the federation.

In an era where mass anti systemic demonstrations have not been witnessed for seven years, it took determination for action to have been taken by those who dared. Truncheons, gun butts, jackboots and bullets drew blood from protesters. Fifty-seven people were arrested and detained. These included some journalists. Two days before the demonstration, Omoyele Sowore, National Chairman of the African Action Congress (AAC), the central party in the Coalition for Revolution (CORE) along with the Take It Back movement which is the flip side of the same coin with AAC was arrested in an attempt of the government to truncate mobilization.

He has subsequently been charged for treason. The federal government has made the process for him to secure bail as tedious as possible, and this only after loud outcry against his continued incarceration after an arrest that was more of abduction in the dead of the night. Arraigned along with him is Olawale 'Mandate' Bakare who turned 22 years in prison. Another CORE activist is being tried in the coastal city of Calabar.

Despite this, The Take It Back (TIB) African Action Congress (AAC) CORE members remain unfazed. They have organized a series of protests and mass awareness programmes over the last few months and continue to meet, including within wards of several states of the federation, building new layers of activists.

This blog post puts Revolution Now in historic perspective. Contextualizing it as a spark, around which a national organization is being built, the post further draws lessons from earlier popular struggle in the country.

The Take It Back (TIB) movement was launched at the beginning of 2018. It was the campaign platform of Omoyele Sowore, for president in the general elections that were scheduled for the first quarter of



2019. It was made clear from the onset that this would be a campaign with a difference. TIB declared itself as a fighting platform, interested in much more than just the votes of the electorate. It aimed to help the 'inconsequential masses' to take back their destiny, rights and future, which the ruling class had squandered.

TIB's radical reformist politics came with a liberal programme which included support for public private partnerships. Many on the left were quick to point out, the discrepancy of the aim of taking back the better life for the poor masses and any concession to privatization in the movement's programme. But behind this contradiction lay the different forces that came together to establish the movement.

These included the right wing of former moderate reformist's students' union leaders who are now part of professional middle class. There was also the expelled National Secretary of the party who subsequently formed a faction, Dr. Leonard Nzenwa. A Centre, comprising some more radical politics than the right wing for sure, and which comprised the bulk of the early personnel of the movement. And on the left, which was the more radical end of the radical reformist tendency of the movement. None better personified this than the Convener, Omoyele Sowore.

The greatest influence on policy formulation at the time was in the hands of the centre and the right wing. As the party's membership grew, being increasingly swelled by working class youth and students, its politics developed considerably while Marxists, who dwell only on the purity of programme, kept away from the flourishing renewal of popular politics which TIB/AAC brought to bear on the 2019 general elections.

By April 2018, TIB already had over 10,000 listed members. Public meetings it organized were so crowded that people were forced to stand by windows outside the room to take part. What is more, unlike the normal case with political parties in the country in recent decades, these were not paid attendees. On the contrary, they were ready to and did contribute money to further mass mobilization. There was the general mood of 'enough is enough' and a feeling in the air that yes, we can take back our fate from the traditional politicians.

However, Take It Back could not be the platform for electoral contestation. It had to be part of an officially registered party. After several discussions with a number of left leaning parties, particularly the National Conscience Party (NCP) failed, TIB took its fate in its hands and registered the AAC. It received its certificate of registration on 15 August 2019 and the campaign moved on to another level.

Within four months, the membership of the party had gone beyond 20,000 people. Whilst the bulk of these were in Nigeria, a sizeable number were Nigerians residing in different countries across the world. These supporters organized several fundraising activities as well as contributed to propagating the party through the internet.

In what is definitely a record for any left leaning party, almost half a million US \$ was raised as contributions for the party in the course of its campaigns and these monies were transparently accounted for on social media. This shows how an inspiring presentation of a radical programme could to a reasonable extent address the recurring problems of financial resources. Working class people and youth



are sick and tired of the present situation of things, but connecting with their feeling of anger requires sincerity and creativity.

The Coalition for Revolution (CORE) started as a coalition of the Alliance for the Masses Political Alternative (AMPA) and the TIB. The Alliance was essentially one between the Socialist Workers and Youth League (SWL) and the Socialist Vanguard Tendency (SVT). Both groups had worked closely together as a socialist bloc within the NCP and understood the need for independence of socialists within a united front.

AMPA expanded as a loose alliance. The Federation of Informal Workers Organization of Nigeria (FIWON), the Committee for the Defense of Human Rights and the National Conscience Party swelled its ranks. In addition, TIB/AAC moved further and further to the left and right, leading several communities in struggle for electricity rights, against demolition and to challenge police brutality. It was also central to giving support to workers at the Lagos State Polytechnic embroiled in fight back against a draconian registrar. The need for what effectively was a two layered coalition was superseded.

IN JULY 5, CORE DEMANDS FOR REVOLUTION NOW, THUS:

1. An economy that works for the masses. No to an economy which throws 90 million people into poverty, while just five people own N11 trillion!
2. An effective and democratic end to insecurity. Poverty, discrimination, repression by government and manipulation of ethnic differences by the rich elite are the roots of perpetual insecurity, we must end all these!
3. An end to systemic corruption and for total system change. The boss's system is inherently corrupt. We must overthrow them and build a new society based on solidarity and democracy from below!
4. The immediate implementation of the N30, 000:00 minimum wages. Workers deserve living wages; all salary arrears must be immediately paid. Politicians must be placed on civil service salary scale. Even the N30, 000:00 is not adequate; negotiations for upward review by 2021 must start now!
5. Free quality and compulsory education for all, education is a right and not a privilege. Massive investments must be made to develop public schools infrastructure. Curriculum must be reviewed to promote critical thinking. Independent student unionism must be respected!

Towards pressing home its demands, CORE announced 5 August as commencement of Days of Rage. On that day, whilst the state tried its best to suffocate the Revolution Now campaign at birth, over five million Nigerians searched the word 'revolution' on the internet. In some of the areas where pockets of demonstrations took place, persons that were afraid to join, because of the State's siege supported the action in several ways.

Some sent water, and other refreshments and some stood up with the protesters against the state. Probably the most graphic example is that of Sariyu Akanmu, a woman in her seventies. She was hawking her wares when she heard the message of revolution being confronted by the bayonets of security personnel. She joined the side of struggle and was beaten up by shameless policemen.

In the aftermath of 5 August 2019, there have been debates on the Nigerian left about the significance of the 'Revolution Now!' campaign. Some mocked the whole campaign of the 5 August and ridiculed



the limited numbers that eventually protested. Others describe the whole idea of Revolution Now as exuberance on the part of some youthful comrades, while others dismiss it for supposedly not being driven by Marxist organization or aiming at a clearly defined socialist revolution.

The aim here is not to address these criticisms, most of which I regard as being baseless. What we can say is that those groups and activists that have conducted work within the working class have welcomed Revolution Now. With CORE at its Centre, they are coalescing into a 'broad left' platform.

There are lessons to be drawn from an earlier phase of long-lasting struggle in the recent history of Nigeria, which speak to CORE's role at this historic moment.

Learning From Campaigning for Democracy

Between flag independence on 1 October 1960 and the end of the 20th century, the civilian wing of the ruling class was in power for less than ten years. The first and second republics collapsed in the wake of elections in 1966 and 1983 respectively. A transition programme draped in the garb of a third republic ended in a fiasco when the military annulled the presidential elections held on 12 June 1993.

The military government reaped a whirlwind, with the annulment. For six years revolutionary pressures stirred by the pro-democratic movement was in contention with reaction personified as Sani Abacha, a thieving dictator.

Well before the 'June 12' elections and subsequent struggles around it, the socialist left and liberal democrats had separately or in temporary alliances, taken on different juntas of the military dictatorship. In 1991, the Campaign for Democracy (CD) was formed as a united front which brought together reformist and revolutionary groups. CD decried the transition programme for what it was and called for a boycott of the elections.

Despite bringing the left together, CD lacked any real influence on the masses up to that point in time. Indeed, at least twice before June 12, it had declared that it would convoke a Sovereign National Conference, the last of these being barely six months before the annulled elections. It is instructive that, apart from not being able to convoke any conference sovereign or not, CD never had the capacity to organize a national demonstration before June 12.

Yet the fact that it was nurtured as a coalition with a national spread made it invaluable for seizing the steam of mass anger at the annulment of the elections and transform itself into a mass movement in the opening moments of the June 12 struggle. Revolution now is not only a spark. The concerted organization across several States and several Cities across the world including London, New York, Geneva, Toronto, Berlin, Rome, Johannesburg and Madrid demonstrate that the scaffolding of TIB/AAC/CORE is rising up the house of popular struggle.

Summary

The dialectical approach of Marxism is one of totality, in brief it is impossible to fully understand the particular without grasping its relations with the whole. Thus, it is impossible to fully understand national political phenomena without grasping the international context which it is both part of and shaped by. Indeed, when we cast our minds back to our recent history, this seems clearer.



For example, the call for a Sovereign National Conference and pro-democratic struggle spread across many countries in the early 1990s. It captured the spirit of anti-military/one party dictatorships in a world where the collapse of the Soviet Empire appeared to justify a so called ‘end of history’ with socialism consigned to the dustbin of that history (Matters were not helped in some African countries where the call was most strident were state capitalist dictators had passed their regimes off as being ‘Marxist Leninist’).

Similarly, and more recently, the 2012 January uprising in Nigeria, was dubbed ‘Occupy Nigeria’ precisely because it was part of a moment of revolt, which the imagery of the 99% occupying everything the 1% had held dear including Wall Street the high throne of global capitalism.

As some of the critics of Revolution Now point out (being correct only in part) ignition points of revolutions are spontaneous. However, apart from the fact that spontaneity is never absolute, it is not after such spontaneity that a nationwide structure for taking the revolutionary moment can be built. Nor will it be built simply on the shoulders of a handful of Marxists.

With Revolution Now activists including many coming into political struggle for the first time are fanning the embers of simmering revolts, as part of the revolutionary awakening sweeping across the world in Sudan, Algeria, Catalonia, Chile, Lebanon, Haiti, Hong Kong and Iraq. Our day shall come.

4.0 Conclusion

Omoyele Sowore and his take it back (TIB) team’s attempt to over throw president Muhammad Buhari who was democratically, constitutionally, lawfully and legally voted and was sworn into power by the Anthony general of the Federation.

Such attempt was illegal, unlawful, barbaric and unconstitutional which is tantamount to offence called treason pursuant to section 37(2) of criminal code⁶⁵ which is punishable under south Western part of Nigerian Law, Section 1(1) of penal code which is applicable in 19 Northern States of the federation⁶⁶ and also in Article 111 Section 3 Clause 1 of the Constitution Federal Republic of Nigeria⁶⁷.

Such attempt as become tool in the hand of power monger, dubious and self-centered leaders who wants to come into power by all means. Meanwhile, such people must be allowed to face the wrath of the law so as to serve as deterrent to others and curb the menace treason in this country.

⁶⁵ C C A s 37 (2).

⁶⁶ P C s 1(1).

⁶⁷ C F R N Article 111 s 3 clause 1.