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Motive As An Essential Element of Crime

Walter Harrision Hitchler

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Motive As An Essential Element of Crime

It has been frequently stated, in varying language, by both writers and judges, that motive is never an essential element of crime.[1] It is quite true that some acts are criminal though prompted by a variety of motives; that an act may be criminal though prompted by a good motive; and that an act prompted by a bad motive is not necessarily criminal.

But the implication of the statements referred to is that the motive which prompts an act can have no effect upon its criminal quality; that an act has *per se* such quality; and, whether it is criminal or not criminal, it remains criminal or not criminal through all the vicissitudes of motive and purpose from which it may spring. An examination of the correctness of such statements and their implications may be of interest.

Motive Defined.

Motive is a desire prompting conduct.[2] It is a desire transformed into a practical incentive or excitant to action. A motive is thus a desire viewed in its relation to a particular action, to the carrying out of which it urges or prompts.[3]

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[1]16 C. J. p. 78; Clark and Marshall on Crimes, p. 76; May's Criminal Law, p. 25; McClain's Criminal Law, p. 92; P. v. Corrigan, 195 N.Y. 1; 87 N. E. 792; S. v. Santino, (Mo.) 186 S. W. 976.

[2]Austin's Jurisprudence, p. 160. For other definitions, see S. v. Hyde, 234 Mo. 200, 136 S. W. 316, 20 Ann. Cas. 191; Ball v. C., 125 Ky. 601, 101 S. W. 956.

[3]Sully, the Human Mind, Vol. 2, p. 196; Arnold, Psychology Applied to Legal Evidence, p. 38.

Motive Confused With Intent.

Motive is frequently confused with intent.[4] As a consequence, it has sometimes been decided that a person had no criminal intent simply because he was actuated by a good motive.[5] This confusion of thought is admirably illustrated by the following case. A defendant, who was indicted for the statutory crime of gambling, defended on the ground that, as a member of the city council and, as such, one of the committee on police, he undertook, under the direction of the mayor, to secure evidence against certain persons suspected of violating the law relating to gambling. With this end in view, and for this purpose only, he visited a suspected room; and there entered a game of poker with certain persons, betting a small sum on the result. It was agreed that his sole object and purpose in engaging in the game was to disarm suspicion and to enable him to secure evidence to convict habitual violators of the law. The court held that he ought not to have been convicted, saying "There clearly was no criminal intent. The general proposition is that without a criminal intent there ought not to be a criminal punishment." But a dissenting judge correctly said: "The misdemeanor prohibited by law was playing at cards for money. The defendant did this. He did the thing prohibited by statute, and he did it purposely, that is, intentionally. It will not do to say he had not the intention to gamble, for he did gamble, but said he did so with a view to catching others. That was merely his motive as distinguished from his intention. His intention was to do the act prohibited, and his motive

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[4]Stephen, History of Criminal Law, Vol. 2, p. 110. "Intent in its legal sense is quite different from motive." Baker v. S., 120 Wis. 135, 97 N. W. 566. "Motive must be distinguished from intent. Motive is the motive power which impels action for a definite result. It is that which stimulates or excites a person to do an act." P. v. Corrigan, 195 N. Y. 1, 87 N. E. 792.

[5]Stephen, History of Criminal Law, Vol. 2, p. 110. "Motive is the inducement for doing an act and intent is the resolve to do it." P. v. Kuhn, 232 Mich. 210, 205 N. W. 188; Jones v. S., 18 Ala. App. 10, 68 So. 690.

was to catch others. But one's motive, however sincere, will not excuse his violation of the penal statute."[6]

Malice.

The confusing of motive and intent is facilitated by the fact that the "slippery" word malice is applied to both, and the result is a puzzling ambiguity. The statement that an act was done maliciously may mean either one of two things. It may mean that the act was done intentionally or it may mean that the act was done with some wrongful motive.[7] In the definition of arson the term malicious is equivalent to intentional. One burns a house maliciously if he burns it intentionally. There is no reference to any ulterior purpose or motive.[8] On the other hand, it has been held that the term malicious in the definition of malicious mischief means not only that the injury to the property must be done intentionally but that it must be prompted by a bad motive.[9]

Motive a Mental State.

The term motive is sometimes sharply differentiated from intent, and is used to denote the condition of fact desired.[10] Thus instead of saying that the desire to kill is a man's motive for entering a house, we sometimes say that the killing constitutes his motive for entering. In strictness, however, a motive is an *internal* cause of volition. It is a particular idea with an affective tone attaching to it, the idea becoming a motive as soon as it solicits the will.[11]

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[6]S. v. Torphy, 78 Mo. App. 206.

[7]Salmond, Jurisprudence, p. 400.

[8]The failure to observe the distinction between intent and motive has lead to some confusion in the arson cases. Thus it has been held that one who set fire to a jail in order to escape was not guilty. P v. Cotteral, 18 Johns. 115. But it has been held correctly that one who deliberately sets fire to a jail intends to burn it, whether his motive be self-sacrifice, revenge or escape. Luke v. S., 49 Ala. 30.

[9]Clark and Marshall on Crimes, p. 521.

[10]Terry, Anglo-American Law, p. 67.

[11]"Motive is a state of mind." Wagman v. Knorr, 69 Colo. 468, 195 Pac. 1034.

A motive, in the proper sense of the term, i.e., a mental state, a desire, necessarily precedes the act for which it furnishes the stimulus. But in order to be governed by a motive an actor must look beyond his act to its consequences, which are, as we have just stated, sometimes called the motive for his act. It is obvious, however, that the consequence of an act, consequences which are not and may never be, cannot afford a motive for an act in any proper sense of the word. The contemplation of the probability of these consequences, and the desire to bring them about, are properly called a motive, but to speak of the consequences themselves as a motive is to use a loose and inaccurate expression.[12]

It ought therefore to be clearly understood that motive, in the correct sense, is the emotion supposed to have lead to an act, and that the external fact is merely the exciting cause of this emotion and not identical with the motive itself.[13]

Motive A Species of Intent.

Motive, as has been stated, is sometimes confused with intent and sometimes sharply distinguished from it. In reality, motive is a species of intent. A wrongful act is seldom desired for its own sake. The wrongdoer has in view some ulterior object which he desires to attain by means of it. The evil which he does to another, he does and desires only for the sake of some resulting good which he will obtain for himself. He *intends* the attainment of this ulterior object no less that he *intends* the wrongful act itself. His *intent*, therefore, is twofold, and is divisible into two distinct portions, which we may distinguish as his *immediate* and his *ulterior intent*. The former relates to the wrongful act itself; the latter is that which passes beyond the wrongful act, and relates to the object or series of objects for the sake of which the act is done. The ulterior intent is called the motive of the act.

[12]Mercier, Criminal Responsibility, p. 69.

[13]The object which one has in view is sometimes called purpose. Kessler v. Indianapolis, 157 N. E. (Ind.) 547; 53 A. L. R. 1.

The immediate intent is that part of the total intent which is coincident with the wrongful act itself; the ulterior intent is that part of the total intent which lies outside the boundaries of the wrongful act.[14] The wrongdoer's immediate intent is his purpose *to* commit the act; his ulterior intent is his purpose *in* committing it. Every wrongful act may raise two distinct questions with respect to the intent of the doer. The first of these is: Did he do the act intentionally? The second is: If he did it intentionally, why did he do it? The first is an inquiry into his immediate intent; the second is an inquiry into his ulterior intent or motive. Motive may therefore be said to be an intention to bring about a certain consequence as an end, by means of other consequences which are also intended but only as means.[15]

The motive of one wrongful act may be the desire to commit another. One may make dies with intent to coin bad money; he may coin the money with intent to utter it; he may utter the money with intent to defraud. Each of these acts may be a distinct criminal offense, and the intention of any one of them is immediate with respect to the act itself but ulterior with respect to all the acts which go before it in the series.[16] The intent to produce an *ulterior* consequence, coining, which is not the *ultimate* consequence sought, defrauding, is the motive with which a *prior* consequence, making the die, is produced. And, likewise, the intent to utter is the motive with which the coining is done.

The Irrelevance of Motive.

It may perhaps be stated as a general rule of the substantive criminal law that one's motives are irrelevant. As a general rule, no act otherwise lawful becomes criminal because done with a bad motive; and, conversely, no act otherwise criminal is excused or justified because of the motives of the actor, however good they may be. The

[14]Simpson v. S., 59 Ala. 1; Mikell's Cases on Crimes, p. 132; Salmond, Jurisprudence, sec. 134; Mercier, Criminal Responsibility, p. 68.

[15]Cook, 26 Yale Law Journal, p. 660.

[16]Salmond, Jurisprudence, sec. 134.

law ordinarily judges a man by what he does, not by the reasons for which he does it.[17]

A rule which made the existence of a bad motive the test of the criminality of an act would be popular because it would tend to bring the law into accord with the popular feeling that the ethical quality of one's act should be the measure of criminal liability.[18]

To such a rule two objections have been raised. In the first place, it has been said that "the aim of the law is not to punish sins but to prevent certain external results",[19] which are considered to be injurious to society, and the injurious consequences of an act are not affected by the motive which prompted it.

It is true that acts are made criminal because of their consequences; but the consequences of an act, because of which it is made criminal may be actual or merely anticipated. An act may be made criminal because of its results or because of its tendencies. Crimes therefore are of two classes: (1) those in which an act is made criminal only by reason of some accomplished harm which in fact ensues from it; (2) those in which an act is made criminal because of its mischievous tendencies, irrespective of the actual result.

The mischievous tendency of an act may be due in whole or in part to the motive which prompts it. The motive of an act may be an index to the probability of certain future harms which the law desires to prevent. Thus the object of the law in making burglary a crime is not to prevent the trespasses involved in the breaking and entering, but to prevent only such breakings and enterings as are prompted by a desire to commit a felony, and thus become the first steps to wrongs of greater magnitude, e. g., robbery and murder.

The second objection to making motive the test of the criminality of an act is the difficulty of ascertaining with

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[17]16 C. J. p. 78.

[18]Ames, Essays on Legal History, p. 438.

[19]C. v. Kennedy, 170 Mass. 18, 48 N. E. 770.

precision the motive for any given act. This objection is of ancient origin. "The thought of man shall not be tried," said Chief Justice Brian, one of the best of medieval lawyers, "for the devil himself knoweth not the thought of man."[20] An equally eminent English judge has declared that "secret things belong to God," [21] and the Pennsylvania court has said that motives are left "to Him who searches the heart"[22] or to the "Unseen Eye from whom the secrets of no heart can be hidden."[23]

The opinion of the Pennsylvania court would be entitled to more weight if it did not place motives in the "heart". It is true that the Greatest of all lawgivers once said, "Out of the heart proceed evil thoughts," but he was speaking symbolically. Today we know that motives do not exist in the "heart."[24]

The difficulties confronting a lay court in a search for motives is of course more or less serious. But the suggestion that motives are left by the law to "Him who searches the heart" is puerile. The search for motives is a frequent phenomenon in the courts, and its difficulty has not been great enough to deter the law-making authorities from incorporating into the definitions of crimes motives as well as physical acts. In a large majority of cases, a jury may attain a reasonable certainty concerning the motives of an act, and, in any event, if justice require that the existence of a particular motive be ascertained, the difficulty of doing so is no ground for refusing to try.

Motive As an Evidential Fact.

The statement that motive is never an essential element of crime is due in part to the fact that motive as an evidential fact is confused with motive as an operative fact or fact in issue. Motive as evidence of another element of crime is confused with motive which is itself an essential

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[20]Y. B. 7 Ed. IV. f. 2, pl. 2.
[21]1 Hale, P. C. 429.
[22]Jenkins v. Fowler, 24 Pa. 208.
[23]C. v. Danz, 211 Pa. 507.
[24]Lange, Crime and Destiny, p. 7.

element of crime. The following is a typical statement illustrating this confusion of thought: "A bad motive is not an essential element of any crime. The existence of a motive is a circumstance to be considered with all the other evidence by the jury in reaching a conclusion of guilt or innocence and the lack of proof of it may be a circumstance to show innocence, but proof of motive is not necessary to convict, nor is its absence ground for acquittal, for crimes may be thoroughly established and no motive appear."[25]

As an *evidential* fact motive is always relevant, but never essential. When a motive of the accused for the commission of a crime is discovered, it is easier to believe that he committed it than when no motive is apparent. For this reason it is always relevant to prove the existence of a motive.[26] But though the discovery of a motive helps to prove the guilt of the accused, there may be ample proof, independent of motive, of his guilt. It it not necessary therefore for the state to prove the motive as an evidential fact.[27]

If we assume that every act must have a motive, i.e., a prior conscious, impelling emotion, it is nevertheless always possible that this necessary emotion may be undiscoverable, and the failure to discover it does not signify its non-existence. The kinds of evidence to prove a fact vary in probative strength, and the absence of one kind may be more significant than the absence of another, but the absence of one kind cannot be fatal. The failure to produce evidence of some appropriate motive may be a great weakness in the whole body of proof but it is not a fatal one as a matter of law. In other words, there is no more necessity, in the law of evidence, to discover the particular ex-

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[25]Hughes, Criminal Law, p. 67. Operative facts are those to which substantive law annexes legal consequences. Such facts as tend to prove or disprove the existence of operative facts are called evidential facts.

[26]Trickett, Criminal Law, p. 1026.

[27]C. v. Danz, 211 Pa. 507. "There can be no escape from punishment for crime when all the elements of it are proved simply because the motive lies hidden in the heart of the only one who knows it," C. V. Danz. Burril, Circumstantial Evidence, p. 314.

citing emotion, or some possible one, than to use any other kind of evidential fact.

Motive As an Operative Fact.

To the rule that motive as an operative fact or fact in issue, as distinguished from an evidential fact, is never an essential element of crime, there are many and important exceptions. The criminality of an act frequently depends upon the motive which prompted it.

The crime of attempt is a conspicuous illustration. Every attempt is an act done with *intent* to commit a particular act. The existence of this ulterior intent or motive is of the essence of the attempt.[28] The act done may in itself be perfectly innocent and yet be deemed criminal by reason of the motive with which it is done. To enter a house and sit on a bed by invitation of the owner is an innocent act, but if it is done with the intention to steal money which is under the pillow, it is a criminal attempt.[29] In such a case the act derives all of its mischievous tendancy, and therefore its wrongful nature, from the motive with which it is done, and a rational system of law cannot avoid considering the motive as material.

Burglary is another example. It consists in breaking and entering a dwelling house at night with *intent* to commit a felony therein. The intent to commit a felony, which is an essential element of the crime, is the motive for the breaking and entering, and burglary is therefore "an exception to the ordinary rule of criminal liability, whereby motive is regarded as immaterial."[30] In like manner, the making of a false instrument is forgery, only where it is prompted by the motive of defrauding.[31]

An intentional homicide may be either lawful or unlawful. If one kills, under proper circumstances, in order to prevent a felony or to defend oneself, the homicide is

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[28]Clark and Marshall on Crimes, p. 150; Salmond, Jurisprudence, p. 402.

[29]C. v. Tudrick, 1 Pa. Super. Ct. 555.

[30]Stroud, Mens Rea. p. 114.

[31]Clark and Marshall on Crimes, p. 534.

lawful. The lawfulness of the killing in these cases depends upon the motive with which it was done, i.e., to prevent a felony or defend oneself. It follows therefore that though all the external circumstances exist which would justify one in killing to prevent a felony or in self defense, he would be guilty of murder if he killed solely for revenge and not with the motive to prevent the commission of a felony or to save life.[32]

When Motive is Essential.

The definitions of some common law crimes, e. g., burglary and forgery, indicate that a particular motive is an essential element of the crime. This is also true in case of some statutory crimes where the statutes expressly require that the act shall be done "fraudulently" or "corruptly," etc.

A particular motive may, however, be an essential element of a statutory crime even though the language of the statute does not expressly require it. In interpreting statutes courts have frequently concluded, from the evil sought to be remedied and other considerations, that it was the intention of the legistature to make the act criminal only if done with a particular motive, even though there were no words in the statute expressly requiring the existence of such motive. Thus where a statute prohibited, in general language, the taking of fees contrary to law, the court held that the taking of such fees was criminal only when done with a corrupt motive.[33]

It is not true, however, as a general rule, that the courts will require proof of a particular motive when the language of the statute contains no such requirement. The cases simply show that in special instances the court thought it perceived a legislative purpose to require a particular motive as an essential element of the crime. They

[32]P. v. Williams, 32 Cal. 280; Wortham v. S., 70 Ga. 336; Lyons v. S., 137 Ill. 602. Contra: Golden v. S., 25 Ga. 527. It would, of course, be difficult to prove that revenge was the motive in such a case and therefore authorities upon the point are not numerous.

[33]Cutler v. S., 36 N. J. L. 125.

do not sustain the proposition that in all cases where a statute prohibits, in general terms, the doing of an act, the court will interpolate into such statute the requirement of a particular motive, merely on the ground that it better accords with justice.[34]

In some cases the courts have eliminated from the definition of a statutory crime a motive which was expressly required by the language of the statute. Thus where a statute made it a crime to vote "knowingly" and "fraudulently" contrary to law, it was held that one who voted mistakingly believing that under the law he had a right to vote was guilty. The court held that he was "presumed" to know the law and that fraud would be inferred from this presumed knowledge. "If he was not ignorant of the law, and that he cannot be heard to allege, then, he voted knowingly, and, by necessary inference, fraudulently."[35]

Complex Motives.

A person's motive for doing an act may be complex rather than simple. The combination of two or more motives in one conative impulse is exceedingly common and may be said to be the general rule.[36] Many acts which seem at first sight to have but one motive will be found on closer inspection to have a number. In cases where a particular motive is an essential element of crime, the question may therefore arise whether this motive must be (1) the sole motive; or (2) the dominant motive, all others being subordinate or incidental; or (3) a determining motive, i. e., a motive in the absence of which the act would not have been done, the other motives being insufficient by themselves; or (4) simply a motive.

It is a question of construction which one of these meanings is the proper one in a particular case, but, as a general rule, the motive required to make an act criminal

[34]Halstead v. S., 41 N. J. L. 552; Bank v. Piper, (1897) A. C. 383.

[35]S. v. Boyett, 10 Ired. 336.

[36]"In the affairs of life, it is seldom a man does any one thing prompted by one motive alone, to accomplish one end." Bishop, Criminal Law, p. 201.

need not be a sole or principal or determining motive.[37] Thus when the defendant was indicted for shooting at B with intent to do him grievous bodily harm, and the jury found that he had shot at B to prevent B's arresting him, but that in order to effect that purpose he had also the intention of doing B grievous bodily harm, it was objected that as there was a separate statutory crime of shooting with intent to prevent arrest, and as the jury had found that to be defendant's principal motive, he could not be convicted of the crime for which he had been indicted. But the court held that if both motives existed it was immaterial which was the principal and which was the subordinate one.[38]

Any other rule would be difficult to apply. When one's motives are of a composite character they are usually mixed to such an extent that it would be difficult for the actor himself to decide which was a leading or determining motive.

Conditional Motives.

The ulterior intent with which an act is done may be conditional. An assault is an act of which the actual or apparent motive is the commission of a battery. The motive to commit a battery may, however, be conditional. An act accompanied by a threat of a battery in case a condition, which the actor has no right to impose, is not complied with, is an assault. The condition may be that the victim do something which he is under no obligation to do or that he refrain from doing something which he has a legal right to do. It is immaterial whether the victim does or does not comply with the condition. Thus one was held guilty of an assault though his act was accompanied

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[37]"If, moved by more intents than one, a man does what the law forbids, some of the intents being elements in the crime and others not, the latter do not vitiate the former, which in their consequences are the same as though they stood alone." Bishop, Criminal Law, p. 201.

[38]Rex v. Gillow, 1 Moo. 85.

with the declaration, "Take off your hat or I will knock you down,"[39] or "Move and I will kill you."[40]

The rule is the same if the condition is one performance of which the defendant has no right to compel by use of the force threatened. Thus where the defendant drew a pistol and threatened to shoot if A stopped the defendant's mules, the defendant was held guilty of an assault. Although A had no right to stop the mules an attempt to stop them did not justfy the use of a deadly weapon.[41] But if the condition is one which the defendant has a right to impose and compel performance by the force threatened, an assault is not committed. Thus where the defendant drew a gun on one who was rushing at him with a knife and threatened to kill the rusher if he did not stop, there was no assault.[42]

Proof of Motive.

A motive which is an essential element of a crime is never presumed as a matter of law, but must be proved as a matter of fact equally with the physical part of the crime. In proving the requisite motive two facts must be established: (1) The mental capacity of the accused to entertain the motive; (2) its actual formation and concurrence with the physical act. The capacity of the accused to entertain the requisite motive is presumed until the contrary appears; but may be disproved by any evidence which indicates that at the time of the commission of the physical act his mind, from any cause whatever, was in such a condition that he could not have conducted those intellectual operations which enter into the formation of that particular motive. The test of this capacity is by no means the same as the test of general criminal responsibility. A person may be old enough and sane enough to be criminally responsible for his external conduct and yet incapable of so estimating ends and selecting means for their accomplishment as to form a

[39]S. v. Myerfield, 61 N. C. 108.
[40]C. v. Burk, 8 Phila. 612.
[41]Hairston v. S., 54 Miss. 689.
[42]S. v. Blackwell, 9 Ala. 79.

particular motive which is an essential element of a crime.[43] For example, the fact that a man was drunk does not ordinarily excuse him from criminal responsibility for his acts, but, if one is accused of burglary, the actual condition of his mind is open to investigation and if he were too drunk at the time he did the breaking and entering to put together the factors of the intellectual problem and correllate them in a definite purpose to commit a felony, the requisite motive of the crime of burglary is lacking and he is not guilty.[44]

In reference to proof of the formation of the requisite motive where the capacity to form it is not denied or successfully disputed, the ordinary rules of evidence prevail; and the existence or non-existence must be inferred from the circumstances.[45]

The requisite motive, or desire, may exist in the mind of the accused, though for reasons not disclosed to him, the result desired cannot be accomplished. Thus an assault with intent to rob may be committed although the victim has no property in his possession which is the subject of theft.[46] But of course no sane person can intend a consequence which is in itself and is known by him to be inherently impossible.

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[43]Robinson, Elementary Law, sec. 471.

[44]Stroud, Mens Rea, p. 114. Drunken burglars, however, are quite common types of felons; and Lord Coke's observation, crimen ebrietas et incendit et delegit, seems to apply with peculiar force to crimes involving felonious design; so that in practice it is commonly found very difficult to substantiate the plea of drunkenness as negativing or precluding a burglarious motive.

[45]Trickett, Criminal Law, p. 1026; Wigmore, Principles of Judicial Proof, p. 215.

[46]Hamilton v. S., 36 Ind. 280.