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REVISITING DETERRENCE THEORY IN THE CONTEXT OF GLOBALIZATION: AN ANALYSIS OF «CRIME SUBSTITUTION» AS A STARTING POINT

Deterrence theory plays an important role in controlling crime and is one of the ideological foundations of the criminal justice system. Globalization has had a significant impact on traditional crimes and crime methods, and crime substitution among countries has gradually become a norm phenomenon. Whether in the dimension of crime cost calculation, the dimension of sanction method, or the dimension of individual diversity consideration, deterrence theory has varying degrees of deficiencies and cannot effectively combat the problem of crime substitution among countries. The purpose of deterrence is to reduce the absolute number of crimes, rather than to transfer the crimes to other countries or regions. Therefore, the deterrence theory should be revised to respond to the need to reduce crime in the era of globalization. First, we should rationally recognize that crime substitution is a costly process; second, we should introduce criminological research methods into deterrence theory and focus on individual differences; finally, we should rationally recognize the deterrent effect of non-legal sanctions on potential criminals.

Deterrence theory must evolve to address the complexities of crime in the globalized era. Rather than merely transferring crime across borders, deterrence theory should focus on reducing crime globally, including emerging threats such as terrorism and cybercrime. These developments call for innovations in deterrence theory to effectively prevent crime in a rapidly changing world.

Keywords: crime substitution, deterrence, crime costs, non-legal factors, morality.

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Жаһандану жағдайында бұлтартпау теориясын қайта қарау: «қылмысты ауыстыруды» талдау бастапқы алғышарт ретінде

Бұлтартпау теориясы қылмысты бақылауда маңызды рөл атқарады және қылмыстық сот төрелігі жүйесінің идеологиялық негіздерінің бірі болып табылады. Жаһандану дәстүрлі қылмыс пен қылмыстық әдістерге айтарлықтай әсер етті және елдер арасындағы қылмысты алмастыру бірте-бірте қалыпты жағдайға айналды. Бұлтартпау теориясы қылмыс құнын есептеу өлшемінде, санкциялар өлшемінде немесе жеке әртүрлілікті қарастыру өлшемінде әртүрлі дәрежеде кемшіліктерге ие және елдер арасындағы қылмысты алмастыру проблемасымен тиімді күресе алмайды. Бұлтартпау мақсаты – қылмысты басқа елдерге немесе аймақтарға тасымалдау емес, абсолютті сандар бойынша қылмысты азайту. Сондықтан жаһандану дәуіріндегі қылмысты азайту қажеттілігіне жауап беру үшін тежеу теориясын қайта қарау керек. Біріншіден, қылмысты алмастырудың қымбатқа түсетін процесс екенін ұтымды түсіну, екіншіден, тосқауылдық теорияға криминологиялық зерттеу әдістерін енгізу және ең соңында, заңсыз санкциялардың ықтимал қылмыскерлерге тосқауылдық әсерін ұтымды түсіну.

Жаһандану дәуіріндегі қылмыстың күрделі мәселелерін шешу үшін бұлтартпау теориясы дамуы керек. Қылмысты тек шекараларын ауыстырып қана қоймай, бұлтартпау теориясы жаһандық ауқымдағы қылмысты, соның ішінде лаңкестік және киберқылмыс сияқты жаңа қауіптерді азайтуға назар аударуы керек. Бұл тез өзгеретін әлемде қылмыстың тиімді алдын алу үшін бұлтартпау теориясында инновацияларды енгізуді қажет етеді.

Түйін сөздер: қылмысты алмастыру, тосқауыл қою, қылмыс шығындары, құқықтық емес факторлар, мораль.

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Пересмотр теории сдерживания в контексте глобализации: анализ «замещение преступности» как отправная точка

Теория сдерживания играет важную роль в борьбе с преступностью и является одной из идеологических основ системы уголовного правосудия. Глобализация оказала значительное влияние на традиционную преступность и преступные методы, и подмена преступности между странами постепенно стала нормой. Теория сдерживания имеет недостатки в той или иной степени, будь то в измерении ущерба от преступлений, в аспекте санкций или в аспекте учета индивидуального разнообразия, и не может эффективно бороться с проблемой замещения преступности между странами. Целью сдерживания является сокращение преступности в абсолютных цифрах, а не перенос преступности в другие страны или регионы. Поэтому теория сдерживания должна быть пересмотрена, чтобы ответить на необходимость снижения преступности в эпоху глобализации. Во-первых, рационально понять, что замещение преступления является дорогостоящим процессом; во-вторых, внедрить методы криминологического исследования в теорию сдерживания и обратить внимание на индивидуальные различия, наконец, рационально понять сдерживающее воздействие неправовых санкций на потенциальных преступников.

Теория сдерживания должна развиваться, чтобы решать сложные проблемы преступности в эпоху глобализации. Вместо того, чтобы просто переносить преступность через границы, теория сдерживания должна сосредоточиться на сокращении преступности в глобальном масштабе, включая новые угрозы, такие как терроризм и киберпреступность. Эти разработки требуют инноваций в теории сдерживания для эффективного предотвращения преступности в быстро меняющемся мире.

Ключевые слова: замена преступности, сдерживание, издержки преступности, неправовые факторы, мораль.

Introduction

“Crime has always been a local phenomenon” (Keenan, 2006). Most violent crimes (such as murder, robbery, etc.) and property crimes (such as theft) occur where the criminal lives. However, with the deepening development of globalization, “transaction costs related to transnational activities have been greatly reduced, and countries and citizens of different countries have become more closely integrated” (Stiglitz, 2003), resulting in transnational activities, including transnational crimes, being faster, easier and cheaper than before. The local nature of crime has gradually weakened, and crime substitution between countries has become the norm phenomenon. Take sex tourism as an example. As their own laws on sexual activities and sexual crimes become increasingly stringent, sex tourists from North America, Europe, Japan and Australia travel to developing countries in Asia, Latin America and the Caribbean to have sex with local prostitutes (2004), and their number is growing (Michael Clancy, 2002). This means that crime substitution between countries has become an issue that cannot be ignored.

The problem of crime substitution between countries has also triggered a series of thoughts. When the same crime is subject to different levels

of control in two countries, what will happen in the country with lighter control? Will crime be transferred? How much will it be transferred? What factors affect the amount of transfer? How should states regulate crime substitution – as a local response to crime or as part of an international collaborative effort? The current deterrence theory can hardly provide us with an effective solution. Therefore, in order to deal with the problem of crime substitution brought about by globalization, it is necessary to revise the deterrence theory.

Material and Method

This paper uses two research methods, literature analysis and empirical analysis, to analyze the limitations of deterrence theory in the era of globalization.

Literature analysis method – This paper analyzes the deterrence theories of Hobbes, Beccaria and Bentham, and points out the limitations of traditional deterrence theory in dealing with the problem of crime substitution in the context of globalization. This article also analyzes economist Becker’s deterrence model and points out its limitations.

Empirical analysis method – This article compares the crime trends and total crime counts in the United States, Europe, and China, and combines

cross-border crime data from the United Nations to point out that deterrence theory should be revised.

Literature Review

To date, the international community has not yet reached a consensus on the definition of deterrence, but almost all definitions of deterrence contain the meaning that “punishment, if used properly, can effectively shape behavior and thus prevent future crimes” (Akers, Ronald.L, 1990). In order to understand the concept of deterrence more clearly and concretely, it is necessary for us to do a brief knowledge archaeology of the concept of deterrence.

The theory of deterrence can be traced back to the political philosopher Thomas Hobbes. In *Leviathan*, Hobbes pointed out that people are neither inherently good nor inherently bad, but act according to their own will – “The sequence of thoughts is controlled by certain desires and purposes” (Hobbes T., 1985). According to Hobbes’s logic, when people seek material benefits, personal safety, or social reputation, they will act in their own interests without considering whether their actions will harm others – “If you get one thing, you will think of another, and the desire for power will never stop until you die” (Hobbes T., 1985). Therefore, Hobbes believed that human society needed a strong monarch to control these natural tendencies through punishment. Because the monarch can use the legal system to impose a punishment much greater than the proceeds of the crime, that is, deterrence, to minimize crime, “so that it will not be harmed by the temptation of greed, ambition, lust or other strong desires” (Hobbes T., 1985). In Hobbes’s view, deterrence is not only a fear of power and the loss of power.

On the basis of Hobbes’s social contract theory, criminologist Beccaria further developed the deterrence theory. He followed the utilitarian position and pointed out that “the benefits that individuals can gain from their deviant behavior increase the motivation for crime” (Beccaria, 2008). In other words, criminals will commit crimes only when the benefits outweigh the costs, based on utilitarian considerations. Therefore, Beccaria believed that only through definite and timely punishment could “we hope that the associated concept of punishment would awaken those vulgar minds from the tempting and profitable criminal prospects” (Beccaria, 2008) and the deterrent effect of punishment could be effectively and scientifically applied.

Based on his utilitarian philosophy and combined with the views of Montesquieu and Beccaria, Bentham developed a more specific theory of

deterrence. Bentham believed that “men decide to commit a crime only when the potential benefit or pleasure outweighs the potential cost or pain” (Bentham, 2001). Furthermore, Bentham introduced the concept of “utility” into deterrence theory, proposing that “for the sake of public safety, the law should take into account factors related to the crime before (the crime) causes harm” (Bentham, 2001).

With the development of deterrence theory, its purpose and significance in the dimension of punishment have been deeply rooted in criminology. Although deterrence has not yet developed a universally accepted definition, almost all theoretical studies on deterrence acknowledge that deterrence is based on such an assumption. That is, when potential criminals decide whether or not to commit a crime, they will avoid committing the crime out of fear of the consequences of punishment.

Early deterrence theory could only provide general guidance for criminal policy making and judicial reform in theory. When Gary Becker introduced modern economics into deterrence theory, the practicality of deterrence theory was enhanced. Becker combined the cost of committing a crime with the benefits of crime (Gary Becker, 1968), and by establishing a functional model between sanctions, law enforcement inputs, and the results of preventing crime, he derived the most efficient way to invest in each factor. Becker’s research method spread rapidly around the world and became an important theoretical basis for criminal reform and crime prevention in various countries – Not only because “the goal of most criminologists has been to determine how to most effectively prevent crime by devising appropriately severe sanctions and investing sufficient funds in law enforcement” (Keenan, P.J., 2006), but also because Becker’s research methods make deterrence theory intuitively understandable through data panels.

Through the knowledge archaeology of the concept of deterrence, we know that deterrence refers to a psychological effect in which the perpetrator gives up committing a crime due to fear of criminal sanctions. It is based on the “cost-benefit” calculation and is an influence that criminal sanctions exert on the psychology of potential criminals, with the aim of prompting potential criminals to give up committing crimes.

Results

Deterrence theory not only lays the foundation for the legitimacy of punishment, but also provides a more scientific standard for the establishment of the

punishment system. However, the research methods of economics and metaphysics simplify the complex human psychological phenomena and social conditions, and ignore the individual characteristics of the actors. Moreover, deterrence theory holds that crime substitution is a simple, cost-free event, which results in limitations of deterrence theory in both the pre-globalization stage and the globalization stage.

Deterrence theory ignores that crime substitution is a costly process

From the review of deterrence theory above, we can know that deterrence theory is usually based on a simple benefit calculation, that is, “a criminal will commit a crime if and only if the expected benefit of doing so – calculated through his criminal proceeds and the probability of being caught and punished – exceeds the benefit of his abiding by the law”(Mitchell Polinsky, 2000). The goal of deterrence theory, therefore, is to raise the costs of a particular crime so that potential offenders conclude that the costs outweigh the benefits of the crime. But deterrence theory seems to imply the assumption that when a criminal concludes that the costs of committing a crime are greater than the benefits of committing it, he will either refrain from committing crimes again or commit crimes that are completely different from such crimes. Obviously, under the assumption of deterrence theory, alternative behaviors are completely cost-free and simple decisions, and deterrence policies only need to consider the amount of crime diversion. Because “every society has its share of crime, which is caused by natural and social conditions and whose quality and quantity are adapted to the development of each social group”(Enrico Ferri, 2016). The quantity men-

tioned here is the number. Under the premise that the total number of crimes is stable, when the state imposes severe sanctions on a certain crime, resulting in a sharp decrease in the number of crimes, the number of other crimes will increase accordingly. Deterrence theory ignores the cost of crime substitution, which means that any crime other than the “original crime” may become an alternative option for the criminal. According to this logic, in order to ensure the “happiness of the greatest number of people” in society, the legislature may increase the penalties for all crimes to enhance the deterrent effect of the criminal law. Because the deterrence theory holds that the deterrence of criminal law is based on the severity and timeliness of punishment, but the timeliness of punishment largely “depends on police organization and criminal prosecution”(Enrico Ferri, 2016), which is costly. Given the limited judicial resources of a country and the fact that increasing the severity of punishment is less costly than investing in law enforcement, the legislature is likely to “set punishment at the harshest level”(Gary Becker, 1968) to achieve the goal of controlling crime. For example, from 2000 to 2015, the number of crimes in China continued to rise (see Table 1). During this period, the eight amendments to the Criminal Law showed a clear color of heavy punishment. Chinese scholar Zhang Xu pointed out: The revision of my country’s criminal law has basically shown a trajectory of increasing scope of crime and increasing statutory penalties. This is self-evident from the substantial increase in the number of articles in the 1997 Criminal Law, the addition of crimes in the eight Criminal Law Amendments, and the adjustment of statutory penalties for some crimes.

Table 1 – China’s crime rate has been on a downward trend since 2015

year	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
Number of cases filed by the public security department	3637307	4457579	4337036	4393893	4718122	4648401	4744136	4807517	4884960	5579915	5969892	6004951	6551440	6598247	6539692	7174037

Source: National Bureau of Statistics

The sanctions content of deterrence theory is one-sided

Traditional deterrence theory holds that formal criminal sanctions are the only form of punishment and that the only way to increase the cost of crime is through state-imposed costs. In the pre-globalization era, this assumption of deterrence theory seemed reasonable for domestic crime. However, in the era of globalization, crime substitution may be a cross-border action. Criminal law is closely related to sovereignty. The scope of application of criminal law is the scope of a country's sovereignty. The deterrent effect of one country's criminal law is difficult to extend to another sovereign state. Especially when a crime is not considered a crime abroad, it is difficult for punishment to deter and prevent crime substitution. For example, "inciting subversion of state regime" and "subverting state regime" stipulated in Article 105 of the Chinese Criminal Law are serious crimes that undermine the socialist system. However, similar acts are protected by the U.S. Constitution in the United States, which means that the deterrence of criminal law cannot reach acts that deliberately smear, defame, or even incite subversion of the Chinese regime in the United States. The inflammatory remarks made by Yang Shuping, Xu Xiuzhong and others are examples of this. In addition, because globalization has reduced the cost of transnational crime, when the cost of crime in a country rises sharply, crime substitution in areas with lower crime costs will occur frequently. In other words, crime will likely shift from one country to another, and the frequent occurrence of criminal acts between countries is likely to cause unrest in the international community. For example, since the outbreak of the September 11th attacks, the United States has increased the cost of terrorist crimes by enacting a series of laws, such as the PATRIOT Act and the CLOUD Act, and launched the war in Afghanistan. Although terrorist crimes in the United States have been greatly reduced, terrorist crimes represented by the Taliban have spread to West Asia, including Pakistan, greatly endangering regional stability in the region.

Deterrence theory ignores individual differences in actors

Deterrence theory attempts to explain criminal behavior as a "cost-benefit" problem using economic methods. However, economic analysis usually focuses on only two variables: the level of investment in law enforcement and the severity of the legal sanctions faced by criminals after being convicted. Economic analysis aims to find the appropriate balance between the cost of enforcing the law

and the severity of punishment for criminal activities, thereby calculating the minimum cost that can effectively curb crime. Although economic analysis methods play a huge role in helping to determine the approximate cost of deterrence, decision makers can more accurately determine how to increase investment and reduce unnecessary costs and formulate relevant policies. However, the economic analysis method assumes that the actors are abstract rational persons who are extracted from their specific contexts, and ignores social factors such as personal interests, social environment, identity, and status. Therefore, when discussing crime substitution, economic analysis methods often ignore the differences in sunk costs of different individuals when implementing crime substitution, resulting in a structural deficiency in the "edge deterrence" theory – "Edge deterrence" not only needs to consider the differences in the social harm dimension of criminal behavior, but also needs to consider the different degrees of social harm when different identities commit the same criminal act. "The purpose of criminal science is to solve actual criminal problems, not just to find out how to punish crimes more appropriately." (Enrico Ferri, 2016) In the era of globalization, with the increase in transnational activities, personal identity factors have an increasingly significant impact on deterrence policies, and deterrence theory should pay more attention to the individual differences of offenders.

First, identity and status factors have the power to weaken norms. In the era of globalization, with the increase of transnational activities, identity and status factors have become important factors that deterrence theory must consider. A "foreigner" is a person who does not have the nationality of a country in the legal sense, but in the sociological sense, he is a cultural foreigner. Compared with locals, outsiders can better demonstrate their own uniqueness and attract the attention of locals. In the era of "public individuation" (Kenny K. Chan, Shekhar Misra, 1990), "people prefer to be different from others to some extent and choose to behave differently from others" (Kenny K. Chan, Shekhar Misra, 1990). This choice can be purposeful or unconscious. In social life, celebrities, mavericks, or foreigners are naturally more easily noticed by ordinary people because of their different identities and status. Especially when the outsider has a higher status or a lower position – ordinary people may regard people with higher status as reference objects based on "self-improvement and self-perfection", and some of his behaviors – behaviors that do not conform to mainstream morality. For example, the

extreme “non-mainstream” culture of the early 20th century, or even worse, criminal behavior – may be seen as a unique behavior and imitated by ordinary people. Scholar Robert C. Ellickson points out: “Norms are not the product of discrete social forces; rather, they emerge from the purposeful actions of individuals, especially those who expect to benefit from the new rules, such as ‘opinion leaders’ who change norms.” (Robert C. Ellickson, 2001) In real society, many “opinion leaders”, such as some instigators who make anti-government speeches, or some initiators of cult organizations like Li Hongzhi, hope to establish a new order that is beneficial to their own illegal interests by devaluing or even destroying the current laws and social order. In era of public individuation, people who pursue individuality are likely to blindly disregard existing laws and social norms based on the criminals’ unconventional tendencies. “While scholars disagree on the exact mechanisms by which social norms are maintained, there is still a broad consensus that opposition and sanctions are core elements in maintaining norms.” (Robert Axelrod, 1986; William K. Jones, 1994; Philip Pettit, 1990) When certain immoral and illegal behaviors are not punished by public opinion and law, or are even accepted, the norms may no longer exist, or at least their deterrent and normative effects are weakened.

Secondly, identity and status factors will affect the calculation of the cost of crime, which may cause decision makers to make wrong decisions and waste national resources. In real life, people with higher status are often those who have made great contributions to society, whether it is economic contribution, scientific contribution, or other contributions. This also leads to the result that beneficiaries often tolerate unethical or even criminal behavior by people of higher status based on their own interests. For example, in January 2002, the *NATO*-led international peacekeeping force in Afghanistan reached a bilateral agreement with the Afghan government, stipulating that Afghanistan would give up its criminal jurisdiction over the *US* military on its territory. In the same year, the *US* signed a series of Status of Forces Agreements with Afghanistan. Afghanistan has exchanged the extraterritoriality of the *US* military for domestic regime stability, with the result that *US* troops who have committed war crimes in Afghanistan are at large. In the era of globalization, many countries still grant foreign capitalists extraterritorial rights to some extent in order to attract foreign investment to develop their own economies.

The role of deterrence theory is to find an appropriate balance between the cost of enforcing the law

and the severity of punishment for criminal activities, so as to calculate the lowest level of cost that can effectively curb crime and provide more scientific advice to decision makers. However, deterrence theory ignores the individual differences of actors, especially their identity and status. The results it calculates are likely to differ greatly from reality, causing decision makers to formulate incorrect deterrence policies and waste national resources.

Discussion

Existing deterrence theories cannot effectively deal with the problem of crime substitution between countries. Due to the constraints of sovereignty, the neglect of sunk costs of crime substitution and the individual characteristics of the actors, there is a huge asymmetry between the deterrence theory’s expectation that the legal system can control crime and the actual effectiveness provided by the legal system. In the era of globalization, the ties between countries are becoming increasingly close. The frequent occurrence of criminal substitution between countries may not only trigger explosive turmoil in the international community, but also endanger the current peace and stability among countries. In order to curb the deterioration of crime substitution and give full play to the role of deterrence theory in curbing crime, it is necessary to revise the current deterrence system.

Rationally recognize that crime substitution is a costly process

Deterrence theory ignores the fact that crime substitution is a process and only regards crime substitution as an event. However, this is not the case. Crime substitution is not a costless, simple event, but a costly process. Viewing crime substitution as a simple, cost-free event may not only cause a country to make unscientific policies and waste resources, but may also lead to the “homelessness” of crime substitution behavior on an international scale, damaging the national interests of other countries and even one’s own country, and triggering international disputes.

First, crime substitution has sunk costs. Sunk cost is a concept in economics, first proposed by scholar Thaler, referring to “costs that cannot be changed or avoided in current or future decisions” (Thaler, 1980). These costs include some inevitable investments in economic activities, such as infrastructure, commodities, real estate, etc. Because sunk costs are unavoidable, “mainstream economists tend to assume that sunk costs are unavoidable and therefore irrelevant to decision making, because

a rational decision maker will ignore things he cannot change” (Robert Frank, 2003). In fact, from a psychological perspective, sunk costs have a sunk cost effect for investors, that is, “the time, money or other resources previously invested by individuals will have an impact on subsequent decisions” (Hal R. Arkes, Catherine Blumer, 1985). Thaler once conducted an experiment on the sunk cost effect (Thaler, 1980): He placed an ad in a local pizza shop promising to refund half of the customers’ admission fees. Economists would rationally predict that both would eat the same amount, but in reality, those who received the refund ate much less food than those who did not. Whether it is that people who did not receive a refund felt the need to justify their efforts, or that people who received a refund lacked a sense of participation in the activity, Thaler’s experimental results show that people in the real world are not the rational, abstract people that economists believe them to be, and their decisions are affected by the sunk cost effect. Specifically, people who invest money in something value it more than those who get it for free.

The current deterrence theory does not take the concept of sunk costs into account, which causes scholars to ignore the important role of sunk costs in criminals’ crime substitution decisions when considering crime substitution. When discussing crime substitution, current deterrence theory often assumes that crime substitution is a simple and cost-free decision that can be made quickly and easily. However, according to the sunk cost effect theory mentioned above, when a group of criminals who commit a certain crime are faced with a higher risk of being arrested and a heavier punishment, those with less sunk cost investment are more likely to give up the current crime and commit an alternative crime instead; Criminals who have invested higher sunk costs may continue to commit crimes or simply give up crimes because, for them, crime substitution means a new round of sunk cost investment and they face almost the same or even greater risks. The introduction of sunk costs not only explains why crime substitution is a costly process, but also has practical significance for countries to formulate policies and control crimes.

Secondly, deterrence theory should examine the components of crime substitution sunk costs. Since the sunk cost effect is extremely important to deterrence theory, it is extremely important to define the elements of the investment structure of criminal behavior. This article preliminarily proposes the following three elements of criminal investment. First, experience or knowledge investment.

If criminals want to reduce the possibility of being caught, they must invest a lot of time and money to learn crime-related knowledge through their own experience or from others. Take drug trafficking as an example. A successful drug dealer, such as the famous female drug lord Yang Kelian, has developed a strict system of buying, selling, transportation and intelligence. How to distinguish undercover agents from actual clients; how to stand out from the crowd of drug lords; how to evade police pursuit; if arrested, how to exonerate yourself; if imprisoned, how long you will face, etc. are necessary professional knowledge for successful drug dealers like Yang Kelian. For transnational drug traffickers, the required knowledge investment cost may be higher. For example, transnational drug traffickers need to understand the host country’s legal norms, police conditions, sales markets, etc. In summary, committing a crime requires a huge investment of knowledge. Crime substitution means that the perpetrator will give up a lot of knowledge cost investment and assume the role of a “novice” in alternative crimes. For criminals who have made a huge investment in knowledge, the state’s increased punishment for this crime may not be enough to encourage them to commit alternative crimes. They are likely to continue to commit this crime, as Barry Staw pointed out: “When people are already invested in a losing activity, they are more likely to continue investing in that activity.” (Barry Staw, 1981) This is also something decision makers need to pay attention to when formulating deterrence policies. Second, the cost of public opinion. Ethical issues are rarely mentioned in criminal law discussions today, and the few discussions that do occur are arguments for decriminalizing crimes that use ethics as a basis for conviction. But it is undeniable that “legal norms and moral norms have a common foundation in the basic values of human common life (the so-called basic values)” (Bernd Rüthers, 2003). Therefore, crime is not only an act that violates the criminal law, but also a blatant disregard for public morality and social ethics. People do not live in isolation, but are individuals living in society. When an individual commits a crime, he or she may not only feel guilty or reduce his or her self-respect in other ways, but may also be judged by public opinion, resulting in him or her being disapproved of by the group or region. In the era of globalization, actors may leave their original groups or regions and join other groups or regions, but they may also face similar public opinion when entering other groups or regions. Third, the cost of violating norms. It has become a basic consensus that legal clarity is an important manifestation

of the principle of legality. The principle of clarity means that the provisions of criminal law, whether regarding crimes or penalties, must be as specific as possible. In other words, criminal law norms are individual and specific, and the charges and penalties for each crime are specific. For example, Article 263 of the China's Criminal Law stipulates that robbery is the act of robbing public or private property by violence, threats or other means. Robbery, which is similar to robbery, is described as the act of robbing public or private property. The principle of clarity in criminal law makes every crime internalized in the corresponding legal norms. When the actor decides to violate a certain norm and takes action, he makes an investment – an investment in violating a specific norm, rather than an abstract illegal investment. When the perpetrator commits a substitute crime, the cost of norm internalization becomes apparent. For example, A commits the crime of trafficking in human organs. When the cost of the crime increases due to more severe penalties or a higher probability of being discovered, A turns to the crime of trafficking in drugs. The norm internalization cost is the cost for A to implement crime substitution, which specifically includes two types. First, the cost of A's investment in human organs; second, the cost of selling human organs and re-capitalizing them.

Introducing criminological research methods to expand the cost list of deterrence theory

Deterrence aims to find an appropriate balance between the cost of enforcing the law and the severity of punishment for criminal activities, thereby calculating the minimum level of cost that can effectively curb crime. Deterrence theory helps determine the approximate cost of deterrence effects, so that decision makers can more accurately determine how to increase inputs and reduce unnecessary costs and formulate relevant policies. However, this economic analysis method assumes that criminal behavior is a general problem. Individuals are abstracted from specific contexts and become abstract rational persons. It ignores the consideration of personal interests, social environment, criminal knowledge and other factors. As John Roman said: "A key difference between sociological and economic research is that sociological research on crime declines tends to focus on specific factors that have a direct impact on criminals, while economic research looks at broader general consequences." (John Roman, 2022) This also leads to the fact that economic analysis methods often ignore the sunk costs of crime substitution and the impact of the sunk cost effect on the perpetrators, causing the decision-making recommendations provided by economic analysis to often be

inconsistent with reality. For example, Becker believes that penalties should be set at the most severe level, because potential offenders have to consider both the severity of the penalty and the possibility of being discovered, and increasing the severity of the penalty is less expensive than investing in more efficient law enforcement actions (Gary Becker, 1968). Becker's policy recommendations clearly have a strong color of severe punishment.

Although criminology rarely engages with deterrence theory, sociological research methods overlap with deterrence theory in terms of their purpose – reducing crime. Criminology research reveals the criminal motives (causal mechanisms) of each criminal by studying the potential influencing factors of crime: criminal selection, target selection, social environment, interpersonal relationships, etc. Unlike economic analysis methods, criminological research focuses on personal interests and preferences and is more realistic. In addition, criminological research pays more attention to the deterrent effects of non-legal factors such as social systems and environment on potential criminals. In other words, the introduction of deterrence theory in criminological research can identify more factors and intervention points for controlling crime, and increase the cost of crime from more dimensions to achieve the goal of controlling crime.

In the era of globalization, the current deterrence theory is obviously unable to effectively solve the problem of "crime substitution between countries", and its neglect of individual characteristics also makes it impossible to put forward more scientific policy recommendations for different criminals. Criminological research that focuses on individual differences and the effects of non-legal sanctions introduces deterrence theory and includes relevant non-legal factors in sociology in the cost list. This can not only enrich deterrence theory, but also identify more crime intervention points to increase the cost of crime, and provide decision makers with more effective policy recommendations to reduce crime and combat the problem of crime substitution among countries.

This article argues that the deterrence theory introduced into criminological research should be developed in the following two frameworks:

Framework 1: Deterrence framework.

Crime = Profits from crime – Cost of crime¹ + Cost of not committing a crime – Profits from not committing a crime > 0

The cost of crime¹ includes not only the timeliness, certainty and severity of punishment, but also social deterrent factors such as reduced social evalu-

ation and the condemnation of the criminal's conscience.

Framework 2: Crime substitution framework.

Crime substitution = crime benefits – sunk cost¹ – sunk cost² + cost of not committing a crime – benefits of not committing a crime > 0

Sunk costs¹ include the investment of expertise, time, money, etc. in the original crime, but do not include the reduction in social evaluation, and the criminal's inner condemnation is relatively low; Sunk costs² include investments in alternative crime such as expertise, time, and money, as well as social deterrent factors such as expected reduction in social evaluation and inner condemnation.

Emphasis on the deterrent effect of social sanctions

The concept of deterrence is very simple. It is a psychological state in which a person does not commit a criminal act due to fear of sanctions or punishment. Traditional deterrence theory focuses on the criminal system, “the belief or expectation that criminal sanctions deter crime” (Raymond Paternoster, 2010). But when a society undergoes comprehensive changes, state-controlled laws alone cannot build a social order that we believe is appropriate and acceptable. And, “despite the centrality of legal punishment and criminal justice policy in deterrence theory and our high expectations that it will keep crime at bay, we do not have very solid and credible empirical evidence that deterrence through the imposition of criminal sanctions works well” (Raymond Paternoster, 2010). However, since the 1990s, crime rates in Europe and the United States have been on a downward trend, and China's crime rate has also been on a downward trend since 2015. A decline in crime rate means a reduction in crime. So, in addition to criminal law and criminal policy, what other forces can prevent or deter perpetrators from committing crimes? A large amount of literature shows that “morality, tradition” and other forces play a significant role in social life. The reason why social norms or systems such as traditions and morals are binding and deterrent is that they are stable and economic forces based on human nature.

First of all, tradition is the accumulation of social experience. Mr. Fei Xiaotong pointed out: The purpose of behavioral norms is to coordinate people's behavior to complete social tasks, and the social task is to meet the living needs of all members of society. To meet their needs, people must cooperate with each other and adopt effective technologies to obtain resources from the environment.

This method was not designed by each individual, nor was it planned by a group of people gathered together temporarily. People have the ability to learn, and the effective results tested by the previous generation can be taught to the next generation. This effective experience passed down from generation to generation is nothing but tradition. Tradition is not formed randomly; it is closely related to specific social production methods and living conditions. Precisely because tradition is effective and economical, it is constantly repeated and evolved in the social living environment, thus being internalized into people's hearts and possessing the binding force of behavioral norms. The reason why tradition is called tradition is not only because of its economy and effectiveness, but more because of its stability. The stability of tradition is not only reflected in its internalization into people's daily behavior habits, but also in legal norms and legal culture. It is the real constitution of the country. As scholar Su Li said: A large amount of practice has proved this point... Some legal system changes that seemed not radical at first glance, or even conservative, have been successful... The achievements of the French revolutionaries were far less than they had initially imagined... They unconsciously inherited most of the feelings, habits, and ideas from the old system...

Second, the heteronomy of morality. Heteronomy refers to the moral standards or motivations on which people or moral subjects rely for their actions, which are primarily subject to external forces and are dominated and controlled by external bases. Morality plays the role of soft law outside of the law. It guides public opinion and the rational power of spiritual influence to trigger people's inner obedience to moral norms, and plays the role of regulating interpersonal and interest conflicts and guiding the orderly development of society. Morality does not have state coercive force, but this does not mean that moral norms are not binding. Morality originates from the production relations in which the moral subject exists, as Engels said: Men, consciously or unconsciously, ultimately draw their moral ideas from the actual relations on which their class position is based – from the economic relations in which they carry on production and exchange. Through education and public opinion guidance, morality will create external pressure on any individual who enters this production relationship or culture, and this external pressure will also have a deterrent effect on the individual's behavior. For example, in many cases of “moral kidnapping” in society, the perpetrators may not be people of high moral standards, but they are forced to behave in accordance

with mainstream moral standards out of fear of social judgment of good and evil.

Traditions and moral norms have widespread influence and authority. Although “all positivists agree on the separation thesis that there is no necessary connection between legal validity (legal correctness) and moral correctness” (Robert Alexy, 2015), it is undeniable that morality and tradition still serve as the ethical basis of law to a large extent. Incorporating tradition and morality into deterrence theory can not only enrich deterrence theory, but its internalized broad deterrent effect also has functions that criminal law does not have in the era of globalization.

First, in today’s globalized world, the scope of application of moral and traditional deterrence is wider than that of the law. Law is closely related to sovereignty, and its scope of application extends to the sovereign borders of a country. Sovereignty is the cornerstone of the international community, and the laws of one country, especially criminal laws, are difficult to apply in another country. Even if it is an international crime that shocks human conscience, “piracy on the high seas is an international crime, but when trying and punishing this crime, the state needs to grant domestic criminal courts jurisdiction beyond the territorial scope” (Cherif Bassiouni, 2003). In other words, international criminal law also needs to work through domestic law, and domestic law is an important manifestation of a country’s sovereignty. With the deepening of globalization, the cost of transnational activities has become increasingly cheaper, and due to the different development and legal conditions of various countries, crime substitution between countries has also become a common phenomenon, such as transnational drug trafficking, sex tourism, money laundering, etc. Since morality and tradition are internalized constraints that are not affected by distance and sovereignty, this means that whether the actor is at home or abroad, he will be constrained by his inner moral code – even if this self-restraint may be weak. However, with the widespread application of communication technology and equipment, the pressure of public opinion has gone beyond national borders and can form pressure to judge the good and evil of criminal substitutes. For example, according to statistics from China’s National Immigration Administration, in 2022, 115.7 million people entered and exited my country, 32,300 illegal and criminal cases that obstructed border management were investigated and dealt with, and 117,800 people of all kinds of lawbreakers and criminals were arrested and investigated. Although there is no direct evidence that the

vast majority of people going abroad abide by the law out of moral and traditional constraints and deterrence, the fact that people go abroad abide by the law in foreign countries that are not subject to domestic laws shows that in addition to the law, there are other deterrent forces that constrain people’s behavior, and this force obviously includes internalized morality and traditions.

Second, morality and tradition are more timely and certain in imposing sanctions on criminal behavior than laws. Beccaria, in discussing the deterrent effect of criminal law, noted: “The shorter the time interval between crime and punishment, the more prominent and persistent the connection between the two concepts in people’s minds. Therefore, people naturally regard crime as the cause and punishment as the indispensable and inevitable result.” (Beccaria, 2008) Criminal sanctions often require going through the legal procedures of filing a case, prosecuting, and trying a case. Sometimes they even have to go through a second trial, a retrial, and another retrial before a final judgment can be reached. This undoubtedly increases the distance between the deterrent effect of punishment and criminal behavior. This also led scholar Von Hentig to point out critically: “Deterrence is doomed to fail because the pleasures of criminal behavior are immediate, while the costs of legal sanctions are distant dangers, so that future dangers cannot offset the more immediate benefits of crime.” (Von Hentig, 1938) Moral and traditional sanctions do not require due process like legal sanctions. Once a perpetrator’s criminal behavior is discovered, with today’s extremely advanced communication technology, his behavior is likely to be known to the entire country or even the world within just an hour. For example, a restaurant in Harbin was criticized and boycotted by the entire Northeast region within just one day because its sweet and sour pork was too expensive (customers did not notice it), and the store was even forced to close. From this we can see that moral sanctions are often more timely and even more severe than legal sanctions, because the prices of meals in this restaurant are not very high, and customers may even consider these to be normal prices based on the price levels in their place of residence. If legal proceedings are taken, the restaurant may not necessarily be breaking the law, and even if it is breaking the law, it will not be sentenced to suspension of business.

Third, moral deterrence is more certain than criminal deterrence. Deterrence theory includes not only the timeliness of sanctions, but also the certainty of sanctions. When discussing the certainty of punishment, Beccaria pointed out in no uncertain

terms the importance of certainty of punishment to legal deterrence: “The most powerful deterrent to crime is not the severity of the punishment, but the certainty of the punishment. This certainty requires judicial officials to fulfill their duties and judges to be impartial and serious.” (Beccaria, 2008) The certainty of punishment is an important aspect of realizing the deterrent function of criminal law, but as Beccaria pointed out, to achieve the certainty of punishment, judicial officials must perform their duties conscientiously and judges must be impartial. In addition, arrest is a prerequisite for trial. The arrest rate of public security organs, the state of judicial cooperation between countries, reconnaissance capabilities, and case-solving capabilities are all important factors that restrict the courts from trying criminals and achieving certainty in sentencing. The lack of any one of these links will lead to criminals going unpunished. Moreover, China has a tradition of “no litigation”. In the culture of ritual governance, if you don’t know ritual, you will become wild and have no rules. It is simply a moral issue and you are not a good person. For an official who is responsible for local order, the ideal means of maintaining order is cunning, not judging cases. Therefore, in the traditional ritual-governed society, litigation is a shameful thing, as it represents insufficient education. Not only is it the father’s fault if the child is not educated, but it is also the responsibility of the local officials. Although China has entered a modern industrial and commercial society, the idea of non-litigation still exists in traditional culture, and the value pursuit of “harmony is the most precious” is still the Chinese thinking logic and way of thinking, just as General Secretary Xi pointed out at the Central Conference on Comprehensively Governing the Country According to Law: “The Chinese legal system embodies the spirit and command of the Chinese nation... the value pursuit of no litigation and harmony... demonstrates the wisdom of China’s excellent traditional legal culture.” However, the premise of moral sanctions is not the establishment of a crime. Criminal law determines whether an actor has committed a crime based on legal facts, while morality is based on objective facts. If the behavior of the perpetrator constitutes a crime in objective facts, especially a natural crime, and it is confirmed that the perpetrator committed the crime, regardless of whether the evidence is conclusive or not, mainstream public opinion will inevitably make a negative social evaluation of the perpetrator and even “label” him or her in social life.

Conclusion

Deterrence and rational choice-based crime theories have developed over centuries and have become an important ideological foundation of the criminal justice system. However, globalization has changed the cost structure of criminal behavior, but deterrence theory has not made much effort in this area. Deterrence theory can no longer effectively deal with the rising crime rate and the problem of crime substitution between countries. This article introduces criminological theory into deterrence theory and revises the current deterrence theory, hoping to provide useful suggestions for policy reform.

First, this paper proposes the substitution cost that is ignored by deterrence theory when solving crime substitution, and points out that crime substitution is not a simple, costless event, but a costly process. This article introduces the concept of sunk costs in economics and preliminarily lists the internalized costs of professional knowledge, social opinions and norms required for crime substitution.

Secondly, it would introduce criminological research into deterrence theory, expand the list of crime costs, and identify more intervention points for the state to curb crime. In terms of deterrence policy, decision makers can enhance deterrence and the attractiveness of legal behavior by increasing the costs of specific nodes of criminal substitution behaviors.

Finally, deterrence theory is a theory of crime that assumes that humans are rational enough to consider the consequences of their actions and be affected by those consequences. As self-interested and relatively free subjects, human criminal behavior is influenced by “cost-benefit”. Costs include not only legal sanctions but also social sanctions. We have sufficient reason to believe that social sanctions should be included in the cost considerations of deterrence theory.

As one of the important theories of crime prevention, deterrence theory aims to reduce crime in absolute terms and to think about the issues of crime and crime prevention on a global scale, rather than transferring crime to other countries. Crime substitution between countries is only one form of crime in the era of globalization. There are also emerging crimes such as terrorist crimes and cyber crimes, whose costs and benefits are difficult to calculate. These all require innovations in deterrence theory to play their deterrent role in preventing crime.

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