

Law and Economics
Session 10
Criminal Law 1

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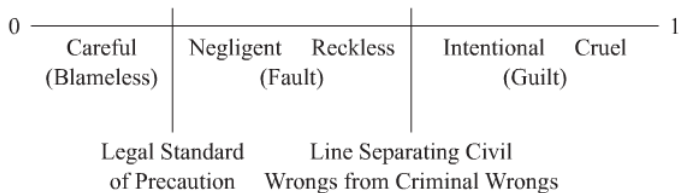
- Criminal Law 1 (Today):
 - Criminal Law Background
 - The Becker theory of the decision to commit a crime.
 - Implications of the theory for criminal justice system policy.
- Criminal Law 2 (June 23)
 - Empirical evidence regarding the rational choice theory of crime.
 - Other topics

- Traditionally, criminal law was distinguished from civil law from the following characteristics:
 - ① The criminal intended the wrong, whereas civil wrongs were accidental.
 - ② Harm done by the criminal was public as well as private.
 - ③ Plaintiff is the state rather than an individual.
 - ④ Higher standard of proof in criminal trials.
 - ⑤ If defendant is guilty, there is punishment (rather than compensation).

Examples of crimes

- Theft
- Assault
- Murder
- Tax evasion
- Counterfeiting
- Speeding
- Drug possession
- Prostitution

Criminal Intent



- In law, the distinction between accidental and intentional harms is extremely important.
- In economic models it's difficult to make this distinction.

Public Harm versus Private Harm

- Crimes are thought of as harming the public as a whole.
 - Tax evasion, for example.
- This justifies using taxpayer money to fund the state's case against the defendant.
- Could be “victimless” crimes: gambling, prostitution, illegal drugs.
- Allows punishment of attempted crimes that didn't actually cause harm.

- Punishment is the infliction of disutility on the convicted criminal:
 - Probation (e.g. curfew)
 - Community Service
 - Fines
 - Prison
 - Death
- In civil law, compensation is victim-focused: designed to make him/her whole. In criminal law, punishment is injurer-focused: designed to deter the activity.
- For example, for intentional torts like assault, the person may be punished as well as have to pay civil compensation.

Inadequacy of Tort Law

- Decentralized harm: e.g. tax evasion
- Punishment is often necessary for deterrence.
 - Example: Thief steals \$1000 TV set; 50% chance of being detected and found guilty/liable. With tort liability, expected value of theft is \$500. Need punishment of at least \$2000 to deter theft.
 - Another example: Steal a \$1000 TV set from my neighbor; I hate my neighbor so I get \$2000 worth of utility from upsetting him with the theft. Even with perfect enforcement, tort liability is insufficient.

Inadequacy of monetary disincentives

- Another reason that tort law doesn't work is because many people don't have enough assets to be deterred through monetary disincentives.
- This is called judgement-proofness: if someone has no assets, then deterring them requires imprisonment or some other non-monetary disincentive.
- TV example: If I only have \$100 in assets, then with monetary incentives the most I could be punished is \$-100.

The goals of criminal law

- In the economic model of crime, we have two social costs:
 - The net harm caused by crime
 - The cost of resources in preventing crime
- The optimal criminal law should minimize the sum of these costs.

Crime and Deterrence: Two Hypotheses

- Our standard assumption in economics is rational decision-making that responds to incentives.
- But there is still a great debate about the decision to commit crime and the possibility of deterrence:
 - Hypothesis I: Crime is the result of socio-economic factors. Deterrence is unlikely to be an effective means of reducing crime. Better to improve the socio-economic conditions that induce crime.
 - Hypothesis II: People respond to incentives. Crime occurs because criminals believe that the benefits of crime exceed the costs. They can be deterred by raising the costs of committing a crime.

- Nobel Laureate Gary Becker is best known for introducing a rational-choice theory of crime and deterrence:
 - Criminal compares the expected costs and expected benefits of a crime.
 - Expected costs include the probability of detection, arrest, and conviction times the value of the sanction imposed.
 - Expected benefits include the monetary value of the crime plus any non-monetary satisfaction the criminal receives.

Rational-Choice Crime Model

- A rational potential criminal:
 - if $\mathbb{E}(B) > \mathbb{E}(C)$, then commit the crime;
 - if $\mathbb{E}(B) < \mathbb{E}(C)$, then refrain from crime.
- Society can reduce crime by raising the expected costs of crime:
 - Raise the probability of detection, arrest, and conviction
 - Increase the criminal sanction
 - Increase the opportunity cost of crime.

- More police and more surveillance increase the probability of detecting criminals.
 - But having a lot of police and security cameras around might also interfere with non-crime activity, and may invade privacy
- Laws that increase the probability of conviction given detection would also increase the expected cost of crime.
 - But reduced thresholds for conviction would also result in more wrongful convictions.
 - It might also increase the frequency of prosecutorial abuse.

Increasing Sanctions

- Increasing the harshness of punishment for crimes directly increases the expected cost of those crimes.
 - Increasing prison time, for example, or increasing size of fines
 - But increasing prison time is costly to the taxpayer.
 - And many people don't have enough assets to pay fines anyway.
- Punishments inflict disutility on the criminal which must be included in the welfare calculation.
- Harsher punishments against wrongfully convicted people also reduces welfare.

- Another way that governments can reduce crime is by making non-crime activities more attractive.
 - Targeted subsidies for groups prone to crime, for example.
- But remember Levitt's evidence that a good economy doesn't reduce crime very much.

- The problem with criminal punishment is that oftentimes the criminal's non-crime options are reduced.
 - Criminal records are available on the internet and ex-convicts have trouble finding employment.
 - This makes them more prone to crime after their sentence is over.
- One policy option to deal with this is to rehabilitate prisoners and to give them skills training.
- This strikes some people as unfair because it may function as a reward for crime.

- Another cost associated with crime is the cost of private security measures.
 - Locks, security alarms, concealed weapons, etc.
- The optimal crime policy must account for these costs and try to replace them with public security measures.
 - E.g., streetlights.

