

CRIMES AGAINST PROPERTY UNDER THE CRIMINAL CODE OF UKRAINE AND SOME OTHER COUNTRIES: A COMPARATIVE ANALYSIS

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Formulation of the problem. Crimes against property are known from very early times. Due to the psychological nature of man, his ability to negative emotional expressions, such as envy and greed, the need to regulate human behavior in general, and in particular the prohibition of committing acts of this kind occurred simultaneously with the appearance of the first sights rights and religious sources. One of the Biblical commandment declares: do not steal. One of the factors that contribute to the development of this type of crime is impact by the media that say about the importance of owning certain things. Names of television programs which speak for themselves: “Luxury Lifestyle” “High Life,” “Star of Life” and more. Young people growing in relentless observation of the luxurious life in which expensive cars, watches and other things are the most important. The effect on consciousness creates confidence and a strong goal of life – some material possessions.

In terms of action in the Criminal Code of Ukraine in the new edition from 2001 is still much disputed, conflicting and controversial issues in the science of criminal law and their practical application. In particular, the ongoing debate regarding the form and content of criminal law protection of property in Ukraine and some countries.

Analysis of recent research and publications. The study is based on the works of V. Alexandrov, P. Andrushko, N. Bazhanov, P. Levin, G. Tymeyko, E. Rokh, M. Radmanesh and others.

The aim of the article is an analysis of crimes against property under the Criminal Code of Ukraine and some foreign countries.

Key research findings. The starting point of modern economic study of crime is often seen in the pioneering seminal article by Becker (1968). The Beckerian model has individuals comparing expected returns from criminal activity to the returns from participating in the labor market. This framework still forms a base for many econometric studies. In effect it is a one-period model of decision under uncertainty, where illegal activities are considered as risky projects. The risk inherent in crimes is modeled as a possible monetary fine or imprisonment. At the very heart of the classical economic approach is the thought that criminals respond to incentives like all other economic agents. An adequate change in social conditions will thus change the tradeoff sufficiently for agents at the margin to either induce or inhibit criminal behavior. Most of the classical economic models allow for heterogeneity between agents in terms of income-earning abilities, risk preference, respect for law (Ehrlich, 1973), inclination for violence or other characteristics.

While theorists following Becker's example work with a supply of offenses functions, others have modeled a police expenditure function or resource allocation and punishment setting through collective decision-making. For example, in Benoit & Osborne's model society chooses the levels of punishment by optimizing the utility of each member of the society.

This model predicts that factors such as income inequality have an effect on the severity of punishment for different offenses. (Beinoit & Osborne, 1995)

Another typical variation is a portfolio choice setting, where agents allocate resources between risky criminal projects and non-risky work. A popular and simple example of such an approach is a tax evasion case, where a choice is made concerning the optimal amount of income to report to the authorities. At the margin, a decrease in reported income reduces tax costs while increasing the risk of punishment. Eide offers a long list of authors who have modeled a similar situation (Eide, 1994). Extensions of Becker's framework differ in formulation of the decision but many also include dynamics or relaxing some assumptions on rationality (see for example Eide, 1994; Garoupa, 2003). Allowing for bounded rationality is a step towards non-economic theories of crime, many of which see personal characteristics as being a cause of criminal behavior. Criminals are frequently claimed to be more inclined to act on impulses, be myopic or overconfident about the risk of apprehension (Vir n, 2000). Several authors suggest that bounded rationality is often a more fitting representation of criminal behavior than rational choice theory (see for example Shover & Honaker, 2009; Nagin & Paternoster, 1993).

The direct monetary gains from crime vary with opportunities for crime, individual's criminal skill and the secondary market for stolen goods. In an economic model that also incorporates psychological benefits, agents engage in criminal activity in part because they receive direct utility from criminal activity. This is often called the "taste for crime". Siegel notes that the thrill of "getting away with it" often acts as a motivation for crime. Siegel goes on to suggest that even murder can have an emotional payoff (Siegel, 2003, p 192). Eide (1999) gives a list of additional psychic benefits of crime such as the thrill of danger, retribution and peer approval. The expected cost of committing a crime on the other hand consists of the probability and severity of punishment as well as reputational and psychological costs. The expected punishment of crime has been focus of Becker and many subsequent authors who have made the effect of deterrence variables on criminal activity a central part of their work. Punishment in the form of incarceration bears a greater cost to those with higher potential for legal income since this opportunity is forgone during the time spent in a prison. Deterrence variables are discussed in-depth in chapter 4.2.3. Convicted and even suspected criminals face reputational costs in the job market as well as amongst their social contacts. The labor market reputation cost is directly correlated with the agent's skill level. Sala-i-Martin (1995) also notes that jobs requiring trust tend to have higher wages. The psychological costs as well as benefits are generally seen as having great importance for criminal decisions. Furthermore it is typically assumed that these costs vary 5 intensely between individuals, but remain constant across periods. This assumption may be challenged by introducing norm formation.

The Becker model and its extensions can easily be seen as insufficient in light of empirical evidence. Different theoretical frameworks are used by even practitioners trying to answer similar research questions. This points to lack of a strong theoretical base for econometric research. The various theory of crime models are very specific in terms of the situational factors that they can be applied in. Violent crimes and property crimes are often examined with a similar framework, yet the empirical results are contradicting. For example, in the American setting drugs, gangs and racial issues often dominate the discussion and research on crime. These issues weigh much less in a Nordic context.

Economic models have received critique for being inadequate in explaining violent crime (see for example Kelly, 2000) but also – and perhaps more importantly – juvenile crime. In many models labor market opportunities are given great importance in explaining crime, and yet they have little relevance to teenagers. Young people participate in crime long before they participate in the labor market. Paternoster (1989) found deterrence variables to have virtually no effect on adolescent decisions concerning crime. These kinds of observations are critical considering the fact that criminal patterns emerge at a very young age and are very persistent. The strongest critique against the economic model is the one made against the assumptions the model is built on. Authors such as Garoupa (2003) see it evident that there is a “gap between the rational theory and actual behavior of criminals”. The assumptions of amorality, perfect information, and unbounded willpower are amongst the many that Garoupa finds too strong to describe criminal behavior. If criminals were in fact acting as profit maximizing agents, we would not witness criminal remorse. According to Eide (1999) it may also be unrealistic to assume correct beliefs about the punishment variables. The rational choice framework nevertheless expects behavior to reflect marginal changes on the probability of conviction and severity of punishments [1].

There are a lot of crimes against property in Criminal Code of Ukraine and other states. All types of criminal offences against property are found in Chapter VI of Criminal Code of Ukraine. Criminal law of Ukraine distinguishes these crimes: theft, robbery, brigandism, extortion, fraud, stealing of power networks, cable communications lines, and related equipment by dismantling or otherwise and others [2].

In Articles 185-198 of the Criminal Code of Ukraine provides accountability for crimes against property of various types. Among the crimes of this system can identify a group of crimes that are committed intentionally by a person convicted of unlawful inversion of another's property for their own benefit or for the benefit of another person. The purpose and motive of such crimes selfish. The difference between these crimes are mainly due to different ways of committing a specific crime.

Criminal law of USA knows burglary. Burglary – often just called breaking and entering – is a crime related to theft. It typically involves someone breaking into a house with intent to commit a crime. To carry out a burglary is to burgle (British English) or burglarize (US English). In Canada, burglary is labeled as “Breaking and Entering” under section 348 of the Criminal Code and is a hybrid offence. The provision of Breaking and Entering consists of “breaking or entering”

into or out of a place and either intends to or actually commits an indictable offence [2].

In most jurisdictions in the United States, burglary is a felony and involves trespassing, or entering a building with intent to commit any crime, not necessarily a felony or theft. Thus, a conviction for burglary may qualify as a conviction under a three strikes law or habitual criminal statute, even though only something of low value or nothing at all was stolen. As with all legal definitions in the U.S., the foregoing description may not be applicable in every jurisdiction since there are 51 separate criminal codes in force.

The state of Massachusetts is somewhat unique in that it does not formally use the term “burglary;” instead, the acts of breaking and entering and any theft that occurs coincident with such entry are treated as separate offenses, with the former being officially denoted “breaking and entering in the nighttime (or daytime, as applicable) with intent to commit a felony (or misdemeanor, as applicable),” and the latter “(grand or petit) larceny from a building,” if any property was indeed stolen. Thus if the perpetrator’s intended act after entering the burglarized premises was not a felony, the result can be two different misdemeanor charges rather than a felony count.

In England and Wales, burglary is dealt with in the Theft Act 1968 under section 9. Subsection (1)(a) says that any person who enters any building, part of a building, inhabited vehicle or vessel with the intent to steal, cause grievous bodily harm, criminally damage or commit rape will be guilty of the offence of burglary.

Subsection (1) (b) provides for a different type of burglary, where any person having entered any building, part of a building, inhabited vehicle or vessel commits a theft or inflicts gross bodily harm. It is a necessary component, however, that in either eventuality that the perpetrator must be trespassing at the time of the offence.

There is also an offence of Aggravated Burglary under Section 10 of the Act. A burglary becomes aggravated when a burglar has with him at the time a weapon of offence, imitation firearm, firearm or explosive. (There is no requirement that any of these items are used in the commission of the offence merely that they are in the possession of the burglar at the time). Maximum sentences for Section 9 offences are 10 years for a non-dwelling and 14 years for a dwelling. Section 10 offences carry a maximum of life imprisonment. Burglary is triable either summarily (before a Magistrate) or on indictment in the Crown Court.

DEFINITIONS OF PROPERTY
 (1) “In the course of committing theft” means conduct that occurs in an attempt to commit, during the commission or in immediate flight after the attempt or commission of theft.

(2) “Property” means: (A) Tangible or intangible personal property including anything severed from land; or (B) A document, including money that represents or embodies.

ROBBERY

(a) A person commits an offense if, in the course of committing theft as defined in Chapter 31 and with intent to obtain or maintain control of the property, he: (1) Intentionally, knowingly, or recklessly causes bodily injury to another; or (2)

Intentionally or knowingly threatens or places another in fear of imminent bodily injury or death.

(b) An offense under this section is a felony of the second degree [3].

According to the definition of theft in the Malaysian Penal Code; Section 378 of the Penal Code provides: "Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, move that property in order to such taking, is said to commit theft [4, p. 20]."

Larceny is a common law crime involving stealing. Under common law, larceny is the trespasser taking and asportation of the (tangible) personal property of another with the intent to deprive him or her of it permanently.

• Trespass limits the crime to acts which involve a violation of the right of possession--that is, lawful possession prior to the act negates trespass (see embezzlement). Even if the prior owner did not have possession (as in, lost or misplaced), then he is deemed to still have constructive possession. Therefore, if a finder knew or could determine who the owner was, and at the time he found it intended to keep it, then the finder has committed trespass. Generally, however, the law cannot convict a finder unless the property bore some indication it belonged to somebody, and the finder intended to keep it at the time of the finding. (Model Penal Code sec. 223.5)

Conclusion. Thus, a comparative analysis of property crimes showed the presence of some controversy. As a conclusion, the study of foreign experience is important for the development of logical legal structures of crimes against property.

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Soloviova Alina. Crimes against property under the Criminal Code of Ukraine and some other countries: a comparative analysis

Article examines some property crimes under the Criminal Code of Ukraine and some foreign countries.

Keywords: *criminal law, crimes against property, theft, robbery.*

Соловійова А. Злочини проти власності за Кримінальним кодексом України та деяких інших країн: порівняльний аналіз

У статті аналізуються деякі злочини проти власності за Кримінальним кодексом України та деяких зарубіжних держав.

Ключові слова: *кримінальне право, злочини проти власності, крадіжка, грабіж.*

Соловьева А. Преступления против собственности по Уголовному кодексу Украины и некоторых других стран: сравнительный анализ

В статье анализируются некоторые преступления против собственности по Уголовному кодексу Украины и некоторых зарубежных государств.

Ключевые слова: уголовное право, преступления против собственности, кража, грабеж.

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