

Rational choice and deterrence theory



Since Marchese Beccaria who, as one of the first mentioned that the real purpose of punishment is “ is no other than to prevent the criminal from doing further injury to society, and prevent others from committing the like offense” (Baccaria 1764), many researchers as well as general community have begun to concentrate on the notion of personal choice when explaining what pushes offenders to commit crimes. Rational Choice Theory became one of the most popular concepts which support the deterrence philosophy. Although, the association between those two theories was welcomed by many, it also had its critiques and opponents. In this paper, I will explain how and to what degree, Rational Choice Theory supports the concept of deterrence. I will also discuss some of the contradictory theories and criminal behaviors that do not support Rational Choice Theory and state my opinion on consequences that this study may embrace on “ guilty mind” concept which is, according to the criminal law, one of the necessary elements of the crime.

The concept of Rational Choice Theory is rooted in the analysis of human behavior that was established by Italian scholar named Marchese Beccaria. The main point of his examination describes the human being as a rational actor who calculates rationality using ends and means formula. According to Beccaria “ People (freely) choose all behavior, both conforming and deviant, based on their rational calculations, the central element of calculation involves a cost benefit analysis: Pleasure versus Pain,” (Beccaria 1764). In his line of reasoning, Beccaria determined that in order to prevent the criminal or wrongdoing behavior, the form of punishment equivalent to the severity of crime committed should be implemented. The concept of

punishing criminals in accordance to the crime they have committed in order not only to prevent the criminal from committing the similar act in the future (special deterrence), but also to warn the general public of the possible consequences of such behavior (general deterrence), became known as Deterrence Theory. In today's world of criminal justice, it is still seen as one of the most important aspect in the whole idea of punishment.

Due to the failure of rehabilitative theories and major increase in crime rates in 1970's and 1980's, the concept of free, rational choice, based on the calculation of cost and benefits began to interest criminologist and researchers across the country. Examination of illegal decision making process began to be perceived as the key to understanding the real purpose of crime and what motivates it. During those years, Modern Rational Choice Theory emerged. Contemporary criminologist began to rely on the idea which claimed that threat of punishment tends to deter the individual from wrongdoing just as rewards tend to encourage pleasing behavior. Because of this new trend of thinking, many laws that increased mandatory sentences for numerous crimes, mainly those drug-related have been passed and executed. Did wide use of deterrence as the tool of discouraging people from committing crimes accomplished its initial goal? The answer is double sided. Violent crime rates began to indeed, drop in mid-1990's as well as did drug offences. It was however, also due to changes in many other aspects like increase police recruitment across the country, good economic prosperity that discourages criminal behavior as well as change in mentality of people that had been subjects to violent behaviors. On the negative side, because of the fact that mandatory sentences for non-violent, drug related offences

were increased significantly, the prison population also augmented significantly burdening the pockets of taxpayers. As this happened, more and more researchers began to criticize the method of punishment supported by Rational Choice Theory.

Does fear of severe punishment really discourage criminals from committing crimes? Wasn't it only the philosophy of Rational Choice Theory of punishment that put the concept of deterrence in such an advantaged position in our criminal justice system and which still has such a massive impact on current crime control policy? Without any doubt, the strong connections between these two makes both theories stand out and seem very balanced and reasonable. However, as the frustration caused by some of the negative effects of their usage increased, contradictory theories began to emerge. Moreover, some criminal behaviors such as rapes and even in some cases, murders seem not to be positively affected by increased punishment as the form of deterrence for these crimes.

Rational Choice Theory differs from many other criminal theories mainly because of its main principal that defines crime as a solely individual choice. The concept does not focus on other, crucial factors like individual traits, criminal associations and inner strains that may also play a huge role in pushing an individual to committing certain crimes. One of the most known models that oppose the Rational Choice Theory is Classical Theory introduced by Clarke and Cornish. Both authors agree that, while committing the crime, people are not perfectly rational and in some cases they are completely unreasonable. Moreover, they touch upon the costs and benefits of crime very broadly including only official and unperturbed permissions.

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According to their views, “ A range of factors influence and individuals’ estimates of costs and benefits of crime: self-control, moral beliefs, strains, emotional state, association with delinquent peers.”(Clarke and Cornish, 1986). In addition, many researchers have also found that the severity of punishment is far less important for potential criminal as oppose to certainty of that punishment. Some extreme opponents of Rational Choice Theory even believe that, “ People are not usually aware of certainty and severity of punishment for the area in which they live, therefore increasing certainty of punishment may reduce crime, but the effect will be short-lived and localized.”(Class PPT). This opinion creates another argument which indeed questions and doubts the entire purpose of severe punishment as a successful method of deterrence and it is valid to a large extent. Besides the theoretical aspects that oppose the Rational Choice Theory, there are many practical ones that are against it as well.

According to numerous scholars, individuals are much less likely to be affected by initial benefits of certain crime when they are intoxicated or mentally disturbed. Many people that commit crime are very low in self-control and often perceive the crime as simply “ not wrong”. These individual however, are more likely to be discouraged from doing something illegal by the threat of punishment. Another study suggest that, the more severe the punishment is for a certain crime, the less likely it is for jury to execute a specific sentence; therefore it seems that as severity of the crime increases, certainty of harsh sentence decreases. If one would want to push the rational choice model to its extent, he or she may even argue that more severe and direct the punishment for the crime is in combination with negative

experiences with law enforcement may actually increase the likelihood of subsequent crime.

In today's world, where the access to illegal substances and alcohol is still fairly easy and domestic violent rates are still high, one could assume, without a big doubt, that offenders often commit crimes on an impulse, while intoxicated or under some emotional or mental pressure caused by, for example bad financial situation or difficult, inner family condition. What many call "crime overload" is certainly another problem. As crime rates increase, police forces are strained and the certainty of possible arrest decreases. As crime rates decline, police activity usually strengthens and certainty of arrest increases. The fundamental apparatus is what should be examined here. Does certainty of possible arrest daunts individual from committing a crime or does the small level of crime increase certainty?

According to researchers like Marcus Felson, Stephan Pfohl and Alan Liska, some crimes and deviant behaviors, especially those considered capital offences like murder or rape with additional bodily harm are not affected by more severe punishment. The above mentioned scholars argue that capital punishment shows that anticipated, overall deterrent effect may not be present. As Pfohl claims, "There appears to be little, if any, difference in rates of capital offenses between states which impose the death penalty and those that do not. In fact, an inverse correlation has been documented; when states abolish the death penalty a corresponding drop in capital crimes is reported (Pfohl, , 1994). Finally, issue regarding the effectiveness of deterrent policies and particularly the suitability of incapacitation and revenge bring up moral and official worries. How far do we really want to go

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in punishing criminals? Is incapacitation the most concrete use of common capitals? Looking at the widespread understanding among criminologists that considers “aging out” as one of the most important elements of crime process, increasing mandatory sentences for all crimes that are believed to have been committed by perfectly rational individuals who have accurately weighted out all the costs and benefits of the crime they wished to commit, the incapacitation alone seems merely impractical. Without proper rehabilitation these individuals are very likely to commit these crimes again in the future.

Great example of the modern use of punishment in accordance with Rational Choice Theory is present in the files from Atkins vs. Virginia Court Case that took place in the year 2000. Despite the fact that Atkins was diagnosed as “mildly-retarded” with a full IQ of 59, he was sentenced to death for committing crimes of armed robbery and murder. The case was particularly controversial because many believed that under 8th amendment which prohibits “Cruel Punishment”, Atkins shouldn’t be sentenced to death but rather to long imprisonment. After the verdict was released, many scholars, lawyers and policy makers began to ask themselves what is the real role of 8th amendment after all? It seemed as in our country, pressure of public opinion and swiftness of prosecutors may push some cases above the “supreme law” of our land.

I believe that the criminal research that evaluates the deterrence with the connection to the Rational Choice Theory may hold many consequences for one of the most important and valued standards in criminal law-mens rea, or in other words “guilty mind”. The main concept of “guilty mind” standard <https://assignbuster.com/rational-choice-and-deterrence-theory/>

requires that a person cannot be convicted of a crime unless that person intended to commit that crime. Unfortunately, when looking at the case described above, I am wretched to admit that mens rea isn't always executed and respected. The study assessed in this paper, proves that a big portion of all crimes is committed by individuals that aren't fully aware of their actions, as in the case when they are intoxicated or under tremendous mental strain. Moreover, many mentally disturbed and/or retarded criminals, even though conscious about the fact that they are taking part in criminal act, are often influenced by others who are often "brains" of entire process of wrongdoing. Atkins involvement in the murder for which he was sentenced to death is a great example of such situation.

The measure of someone's guilt is perhaps the most important factor in determining the appropriate sentence for crime that has been committed. How do we measure someone's guilt? It is the moment that the principal of mens rea comes into play. Mens rea represents the amount of intend that an individual had while committing his offence. If we took Rational Choice Theory and traditional Mens rea concept and combine them together, we would get one of the most sophisticated and perfectly formulated theories that deal with understanding of criminal behavior. It could be written as follows, " Since the criminal is a perfectly rational human being who, while committing the crime is fully aware of what he/she is doing and decides that benefits that will come from the crime outweigh the costs associated with punishment for this crime, than this person is guilty without the smallest doubt, intend is 100% in all the cases". As much as I would wish this theory was correct, it only reflects a utopian dream in which all crimes and

consequential punishments for them are perfectly clear and comprehensible. Reality however, is totally different and much more complex. To understand the importance of theories such as Rational Choice Theory one must often think “ outside the box”. While the theory itself is quiet practical and compelling, without taking into consideration other aspects of crime and criminal behavior mentioned earlier in this paper, it becomes completely useless and invalid.

It is because of the principal of mens rea that we need so many people in our courtrooms today, beginning with prosecutors, judges and jury, ending with psychologist, forensic scientists and psychiatrists in order to solve cases, especially those that involve murder. It is often very difficult to measure someone’s guilt and intend to commit such offence as murder looking solely on the crime itself and basing the explanation for it on Rational Choice Theory. Concurring with other critiques of the Rational Choice Theory I believe that the theory alone is quite misleading and all those who support it fully should consider studying it with comparison to mens rea or compare it to other counter theories like Classical Theory. If we want to respect principals of our criminal law which mens rea is a great example of, we should definitely stop the ongoing process of generalization and simplification of our legal norms and standards and apply and more ethical and just standards of practicing law in our courtrooms.