

# PITFALLS OF THE CLASSICAL SCHOOL OF CRIME

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Economic analysis can be applied to the phenomenon of crime. In the present paper, we will deal with an approach to the economics of crime that is built on the foundations of neoclassical welfare theory. We will call the school of thought that has developed this approach the “classical school of crime” (CSC).<sup>1</sup> The contribution of the CSC model is to apply standard tools of economic analysis to a field that has been mostly reserved to psychologists and sociologists.<sup>2</sup> The CSC model is based on the assumption that criminals are rational and act according to the costs and gains of their actions. They maximize their utility, just as bakers and shoemakers maximize their utilities through purposeful actions (Pyle 1983). The conclusions that are derived from this approach have challenged the traditional psychological and sociological explanations of criminality. And they have led the CSC to make original proposals for government policy, based on the assumption that government authorities pursue the goal of maximizing the welfare of society by enacting laws.<sup>3</sup>

We will argue that the methodology on which the CSC relies entails several fallacies and contradictions. Our paper is organized as follows. First, we will argue that the CSC confuses crime and vice, on the one hand, and legislation and law, on the other hand. This confusion stems from an inadequate definition of crime. Second, we will argue that it is meaningless to define an

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<sup>1</sup>For information on the CSC, see, Ehrlich (1996, 1981, 1977, 1975, 1973, 1972), Ehrlich and Brower (1987), Sjosquist (1973), and (Becker 1968). For a review of this literature, see Palmer (1977).

<sup>2</sup>For a presentation of the different sociological theories, see Fillieule (2001).

<sup>3</sup>For a similar view, see Posner (1992, p. 23): “What we may call the efficiency theory of the common law is not that every common law doctrine and decision is efficient. . . . The theory is that the common law is best (not perfectly) explained as a system of maximizing the wealth of society.”

optimal level of crime in terms of some aggregate “value.” In the third section of our paper, we will discuss the contradictions of CSC’s attempt to construe analogies between the market process and criminal acts. Fourth, we will argue that the CSC model completely neglects individual protection efforts in order to focus exclusively on government intervention as a means for increasing welfare. In our conclusion, we will then stress the need for an alternative framework for the economic analysis of crime.

#### HOW TO DEFINE A CRIME?

The CSC searches for the optimal number of crimes for society (Becker 1968; Ehrlich, 1996). This optimal number is reached when the government authorities have minimized the social cost: the marginal cost equals the marginal revenue. It is supposed that the marginal cost for society of suffering the crime is the same as the cost to avoid it. For this optimal level of crime, the authorities, on behalf of society, define a level of tolerance. Society must tolerate this amount of crime to avoid waste. The CSC model supposes, in fact, a process of arbitration at the macro level between the costs society must *consent* to and the gains produced by the policy of detection and punishment (Becker 1968, p. 170).

The first pitfall here is the absence of a clear definition of crime. In the CSC model, the law is the product of the legislative process. Consequently, people only have the rights that the legislative process awards them. The people have no rights *per se*. “A law is an obligation backed by a state sanction” (Cooter and Ulen 1997, p. 3).

In the CSC model, authorities search for the maximization of wealth for society, so as to increase “the size of the pie.” This is the unique objective of judges to insure that the size of this pie will be as large as possible (Polinsky 1989). This has important consequences, because the law can protect property, and it can also destroy it. Since the legislative process can prohibit private property, it can lead to the highest level of destruction of the rights of private property owners. In the same vein, the law can impose and protect a general system of public property or the defense of a dictator’s property, even though it is the result of violent appropriation. Consequently, the CSC model has no ethical dimension (Block 2000, pp. 65–68) and represents only a mechanical process of allocation of resources, which is subordinate to a cost-benefit analysis (Alchian and Demsetz 1973; Demsetz, 1967, pp. 348, 350).

The Rothbardian position is radically different. Rothbard stresses that the individual has property rights in his own body (self-ownership), and in the good he produces (by mixing the “thing” with his labor), and in the goods he acquires through exchange (Rothbard 1991, pp. 45–59). Consequently, only the commission of acts, which physically violate these defined rights, can be considered a crime. In Rothbardian terms, the CSC model results in deception. Indeed, we can show that some activities are criminal but are not prohibited, while some are not criminal but are punishable (Block 1993; Spooner 1992). For instance, drug dealing or prostitution can be prohibited, although each is described as a simple

exchange between a supplier and a demander, which does not result in the violation of the rights of anyone (Thornton 1991). On the contrary, the prohibition of these activities is bad for the exchangers because it does not allow for the creation of a surplus. Maybe they can be considered vices, but vices are not crimes (Spooner 1992). Consequently, a law<sup>4</sup> can hurt some honest people.

In other situations, legislation *forces* decisions or activities, thus constituting a violation of the property rights of some persons. For example, seizure of a piece of land whose legal owner refuses to sell, definition of a special rate of nicotine for cigarettes, prohibition of smoking Cuban cigars, etc. (Rothbard 1970). In these different cases, although there are flagrant violations of property rights, the legislation does not qualify them as constituting crimes. In fact, the CSC considers property rights as conditional, in the sense that we can be deprived of those rights whenever the legislator decides.

The CSC model offers a mechanical model to apply a legislative disposition without taking into account its legitimacy. In fact, it is a bureaucratic activity of deterring and of punishing (Mises 1983). All the laws can be partially respected by trading-off between the costs of enforcement and those borne by its nonapplication. In this way, the notion of victim disappears. More accurately, it becomes meaningless, because a victim is considered as such if the legislation decides it. In fact, there is no theory of justice in the CSC model (Rothbard 2000).

#### THE ERRONEOUS ANALYSIS IN TERMS OF VALUE

To determine an optimal level of crime means that it is possible to assign an objective value for the goods and the services and to derive a normative plan to reach it. The CSC contains the framework for determining and defining the gains and the costs from this plan. Indeed to minimize social cost the authorities need this information. Without these data, it is impossible to initiate the calculation process.

The first criticism pertains to available information. Hayek showed it is impossible for a central planner to dispose of all the relevant information because of his limited abilities to grasp and to deal with the different elements (Hayek 1937). How to take the personal and the informal information of some people? How to interpret the different data? Can we give a price to a human life? Are the different indicators of crime unbiased?

A more radical criticism is given by Mises: to proceed to such a calculation is impossible because the relevant information does not exist (Mises 1990). There is no price for a human life, because there is no market for that. How can one price

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<sup>4</sup>You must distinguish the law, which protects the property rights clearly established and the legislation, which is the outcome of a political process (Hayek 1968). Henceforth we will use in the text the term legislation for the rules defined by the political process. The confusion comes also from the fact that the authorities enforce their own legislation, legislation they created *and* the true property rights, because of their monopoly.

the suffering? The decisions of judges or the compensation paid by the insurance companies represent some approximations, but they are not the true valuation of the suffering tied to the commission of a crime. A true valuation can only come from a voluntary agreement.

When the authorities dispose of relevant information can we accept the verdict? For the CSC, there are no practical problems. Indeed, these different utilitarian models rest on implicit hypotheses (risk neutrality, reasoning in terms of revenue, objective value of monetary units) so that it is possible to compare different individual utility and to make some trade-off (Cooter and Ulen 1997; Shavell 1991, 1987a, 1987b, 1985).<sup>5</sup> Consequently, the value of money is considered as being the same for everyone. One dollar has the same value for the criminal as for the victim.

Rothbard shows that this procedure is erroneous (Rothbard 1993, pp. 14-15). Although price is a monetary expression used to help individuals to choose between alternatives when purchasing goods, the costs and the gains are always subjective. Consequently, the impossibility of comparing the different utilities demonstrates the impossibility of quantifying different interpersonal valuations. So to proceed with such a calculation is meaningless (Block 2000, 1995).

More fundamental is the importance of determining legitimate property rights and of distinguishing them from the rights granted by government coercion. Because the criminal is an *illegitimate holder* of the good he stole, we must deduce he has *no right* to it. And because he has *no right* to it, he can *not* proclaim it has a *legal* value. Indeed, only the *legal owner* can proclaim the good has a *legal* value for himself (Rothbard 2000, pp. 93-94; Block 1999, p. 24). The criminal commits the crime only if he expects some net gain from his efforts (Becker 1968; Ehrlich, 1973). The value he attaches to the good can explain his behavior but it cannot be legally recognized. He is only an *illegitimate* owner of the good, and because he does not own a *legal* title of property, he can not claim a *legal* value on the good. Consequently, the gains from the criminal act should not be integrated as part of the calculation if it is to be meaningful.

Such a calculation can be rejected logically. If we consider that only voluntary exchanges on the market determine the price of goods and services, then it would be impossible to put a value on the good acquired by violence. Because there is no market for illegal acts,<sup>6</sup> there is no price and no value. So it is impossible to determine the gains for the criminals, and it is also not feasible to determine the cost for the victims.<sup>7</sup> Consequently, the analysis in

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<sup>5</sup>See Dnes (1996). The author stresses the difficulties inherent in such a calculation. Unfortunately, he adopts this system.

<sup>6</sup>A murder market for instance. So to interpret this, it must be an exchange between a professional hit man and a person desiring to acquire his services.

<sup>7</sup>In fact, the term of suffering is more appropriate. Indeed, the use of the term "cost" means a possible evaluation in monetary terms.

terms of value must be limited to market phenomena where both parties exchange with consent.

With the different impossibilities we have stressed, it becomes logically impossible to determine an optimal level of crime as the CSC model pretends to do (Friedman 1996). Moreover, the subordination of justice to a mechanical calculation and the absence of an ethical position creates very difficult situations for the CSC: does there exist an optimal level of crime for the rapes of young babies, for instance? Some gimmicks can be used in weighting the gains of the criminal according to the gravity of the act, but the problem is no nearer solution (Shavell 1985).<sup>8</sup>

#### A SEMANTIC CONFUSION BETWEEN THE MARKET PROCESS AND CRIMINAL ACTIVITIES

After reaching the wealth maximization of the society, the CSC model deals explicitly with the allocation of resources among the population, i.e., criminals and victims. The market process and criminal activities are then seen as heads and tails of the same coin. This leads to unfortunate confusions. Indeed, the CSC model supposes that the market process and the criminal activities can be put on the same line and that the essence of both processes are similar.

Tullock (1967) considers criminal activity as a transfer of physical goods. If Jones steals a car from Paul at no cost, there is no social cost for society. There is only a physical transfer of Paul's car to Jones. At the *societal* level, there is always a car whose owner is different. For the proponents of the CSC model, the *distribution* of goods does not matter. The most important criterion is the total amount of goods available to the population.

Tullock's arguments in justifying the fight against criminal activities are based on the unproductive spending. The potential victim spends money on protective devices (alarms, handguns, etc.) while the criminal spends resources to buy some tools, to master the techniques of neutralizing alarms. All these resources are unproductive<sup>9</sup> and they constitute waste for society, because they do not produce more available goods.

However this analysis is a dead end. The protective devices available are inefficient in such a framework, because they increase the social cost. Consequently, one conclusion of Tullock's analysis must be to prohibit the spending in protection (a simultaneous decrease of victim and criminal expenditures). At the

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<sup>8</sup>The mechanism of weighting allows for reduction of the gains by the criminals so that they are sufficiently lower than the costs. So the optimal level of rapes for young babies is nil. But it raises some new difficult questions. Who determines the value of the coefficient and how?

<sup>9</sup>Can we logically accept that some individuals spend a part of their resources for nothing in exchange? This position is a contradictory one. If the man acts purposely, it is because he expects more by doing this action than by not undertaking it.

society level, the waste disappears and only transfers can be noted. What results from this strange recommendation is to facilitate criminal activity!

This perspective is not satisfactory. Indeed, it is not goods that are exchanged but the legal titles of property on them (Rothbard 2000, 1974). We can admit that in both situations the good physically moves. However, unlike the case for the violent appropriation, the market exchanges are characterized by a *voluntary* transfer of *legal* property rights. Because the CSC approach does not establish a clear distinction between a *legal* owner and a *current* holder of the good, it cannot distinguish between the two radically different processes.

Although Ehrlich made significant contributions from the CSC point of view, he made a significant mistake by defining a market for offenses and for crimes.<sup>10</sup> Indeed, this proposition is contradictory. A market means *voluntary* exchanges of a good or a service. Consequently, it is impossible to define a market for *violent* transfers. Moreover, there is no market and no price for such activities, because it is impossible to determine a demand and supply curve. Ehrlich wants to specify a production function for the criminal which combines specific skilled labor and capital. But the criminal cannot sell his production because there is no demand. Though some people pay to protect themselves by buying protective devices or services, we cannot conclude the existence of a demand for crime. There is only a demand for protection. Moreover, we do not grant that a sanction is a price (Gneezy and Rustichini 2000; Cooter 1984). Obviously, both are incentives to modify the behavior of the different actors. But the comparison stops here. A price results from the plans of the different buyers and sellers on the market, whereas the government authorities *determine* the sanction according to the harm done.

This semantic confusion is prejudicial, because it considers the market process and the criminal activities to be complementary systems in the allocation of resources. But then how does the CSC differentiate between the realm of market and that of violent activities? The answer is, that the market process is inefficient when transaction costs are so high that exchanges are impossible to make (McChesnay 1993; Posner 1985). Consequently, the criminal activities are explained by the lower transaction costs than those implied by the market exchanges. We note that by defining their own policies (high performance protective device or few policemen for patrolling the different areas), the authorities can influence the limits of market exchange and that of the violent transfer by manipulating the transaction costs.

We can refute this spurious argument on two points. First, the violation of property rights means that the legal owner disagrees with the criminal about the exchange of his good. In that way, the criminal act is inefficient (according to terms of the CSC model) because the legal owner values the use of the good more than the criminal does. In the case where the criminal does

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<sup>10</sup>See Ehrlich (1996, 1981, 1977, 1975, 1973, 1972).

not ask how much it would cost to obtain the good from the legal owner, it is impossible to claim the criminal values the good more than the legal owner, because there is no information about the price at which he would be ready to sell. Moreover, the criminal activity cannot reduce the transaction costs, because there is no agreement to actually make the transaction. Consequently, it is a contradictory in terms.

Second, very high transaction costs do not constitute a proof of the victim's willingness to exchange. Moreover it is impossible to know the consent of the victim, because the costs of identifying this person are too high. Again this proposition is contradictory. So the argument in terms of transaction costs is an illogical and contradictory one and must be rejected.

#### AN INTERVENTIONIST APPROACH

It is not the goal of this paper to deal with a society that does not have governmental enforcement of its laws (Hoppe 1999-1998; Benson 1998; Rothbard 1970). Since the central actor of the CSC model is the government, it acts on behalf of society and for its welfare. It must allocate the resources to define the levels of surveillance, the severity of punishment, and for all the control levels of intervention (safety measure, in medicine, education, etc.).

The largest part of Becker's (1968) analysis stresses the possibilities for governmental intervention and the effects associated to the elasticities of crimes to levels of surveillance and severity of punishment. The government behaves as a central planner by calculating the gains and the costs. There is no room for private actions.

How does one take into account the private decisions of protection? Different studies have shown the importance of private behavior (Benson 1998; Shearing and Stenning 1983; Clarke 1980; Sykes and Matza 1957). The supervision of neighborhood, the committee of vigilance to control the suspect people in a quiet area . . . can deter the criminals from committing their crime. Private investment in technology devices can create some barriers for the thieves by increasing the time to enter a house or to open the door of a car. . . . Bearing a firearm can also deter some rapes or some homicides from being accomplished. All these dimensions are forbidden in the CSC model (Ehrlich 1973).<sup>11</sup> All of these considerations are stipulated as given in the model. The model considers specific situations in which the authorities implement their policies and denies the importance of private efforts in security. However, private police forces are more numerous than that of public agencies.

Some firms hire private security companies to insure against intrusion into their buildings, as well as, security software to protect computer data.

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<sup>11</sup>We must concede Ehrlich made some efforts to integrate the private component. Unfortunately, he considers this one very quickly as not being a central question.

These private firms use the latest technology and highly trained people. The private services are more efficient than public services and they depend on the satisfaction of consumers. If they are satisfied, they continue their patronage. If they are not, the contract is not renewed and the firm can be driven out of the market. If the private company hires private security services, this means it increases its net advantages. It shows also that actual public services are not sufficient and not efficient.

It is surprising that these analyzes do not take into account this private component of the general surveillance level. Indeed, the turning point came in the sixties, when the number of private services surpassed the public ones. This analysis also neglects social or community punishment, and social disapproval at having committed a crime. The bad reputation, the exclusion from some (family, community, religious, trade, etc.) relationships are effective punishment to deter some behaviors (Posner 2000). Maybe this bias in the analysis can be explained by ideological premises about who has to be in charge of enforcing the law.

We have here the last stone of the entire CSC construction. First, the government decides which act has to be prohibited or legalized. Second, it decides the level of enforcement and the severity of punishment. In fact, the authorities mostly decide the existence of a *so-called market*. The *so-called demand* curve is determined by the resources the government is ready to spend to enforce the law, which depend on the *so-called supply curve*, which is controlled by the level of surveillance and the severity of punishment. All the curves are supposed to be mastered by the authorities. In fact, there are only public actions to prohibit or to authorize some private plans (independently they constitute violations of property rights). There is really no market. The use of the market terminology is just an illusion which is summed up as a market phenomenon.

## CONCLUSION

The CSC methodology has strong implications for everyday life. It considers that the protection of property rights is a question of contingency, subordinate to wealth maximization. This is paradoxical because it puts the welfare of the criminal and that of the victim on the same line, while the goal is to reduce the opportunities for the criminal. In fact, the CSC model is amoral, because the gains and the pains are taken into account without deference to the persons concerned. It is also immoral in that it supposes no difference between a good owned in a legal way or a good obtained by violence. Is it not contradictory to want to fight the crime if there is no fundamental difference between the appropriation by consent and by violence?



The analogy between the market process and criminal action is misleading. It introduces an unfortunate confusion. If the unhampered exchanges and the criminals acts are the same, in that they constitute a physical transfer, if the fine is a kind of price, then there is no difference between both actions. Consequently, an ingenious rhetorician could assert the market process is simply a theft and the market price is a tax. We have shown how this position is erroneous.

Although the CSC model brought some improvements in how to analyze criminal behavior by using the tools of economic analysis, it was not accomplished with a satisfactory methodology. These errors constitute different pitfalls and point to the necessity of finding an alternative approach.

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