OUTSOURCING AND INSOURCING CRIME: THE POLITICAL ECONOMY OF GLOBALIZED CRIMINAL ACTIVITY

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“If displacement is happening then I would say that's all the more reason why other areas should take on this model. Let's drive people out to Lincolnshire and into the sea.”

ABSTRACT

This Article presents a novel theory of the political economy of transnational crime control, answering three consecutive questions. First, why does crime travel across national borders? The Article demonstrates that in the globalized economy, profit-driven crime (e.g., money laundering, drug trafficking, gaming and the sex trade) responds – much like legitimate economic activity – to local regulation, by shifting to the territorial jurisdictions in which it incurs lower expected sanctions, making it most profitable for criminals. Second, how do governments react to the international

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1 City's Blitz is Pushing Crime into the County, NOTTINGHAM EVENING POST, July 3, 2007 at 10 (quoting Alan Given, chief executive of the Crime and Drugs Partnership).
mobility of criminal activity? The Article argues that the crime control policies adopted by individual states influence the global distribution of transnational crime, and that they subsequently impact upon the crime control policies adopted by other states. More specifically, it demonstrates how in a dynamic setting states engage in two types of regulatory crime control “races,” depending on differential national attitudes towards the activity involved. The first is the *outsourcing* race, in which increasingly strict policies cause crime to shift to other states. The second is the *insourcing* race, in which increasingly lenient policies attract crime to the state. In each of these races, states impose externalities upon each other, and inefficient levels of both enforcement and crime arise, in what may be seen as a global collective action problem. Finally, how should global crime control be designed to enhance global welfare? Building on theories of public choice and international relations, the Article offers a critique of existing policies in the area, and explores innovative crime control policies.
I. INTRODUCTION

Globalization is on the rise. The last few decades have marked the creation of an increasingly integrated global economy. This process has been driven by dramatic reductions in transaction costs that have helped bring together local markets. Technological advances such as wireless telecommunications and the Internet have connected buyers and sellers of goods and services across the planet through transactions that were not even feasible, let alone cost-effective, as little as a decade ago. No less importantly, economic globalization has been facilitated by the systematic removal of regulatory barriers to international trade. At the forefront of international economic liberalization, the creation of the World Trade Organization (WTO) in 1995 extended multilateral trading rules beyond trade in goods to the transnational provision of services, the protection of intellectual property rights, and technical and health-related standards. Hundreds of Regional Trade Agreements (RTAs) that reduce barriers to trade beyond the WTO now span the globe, complemented by an even greater number of international investment protection agreements (Bilateral Investment Treaties (BITs)).

In the shadow of these economic developments, however, the same period has also witnessed the rise of transnational crime (roughly defined as serious crime whose perpetration and effects...
occur in more than one state)\textsuperscript{6} as a source of grave concern around the globe.\textsuperscript{7} Drug smuggling, arms trading, human trafficking, illegal sex trade, money laundering, wholesale intellectual property rights’ infringement – these and other illicit activities\textsuperscript{8} have flourished due to the advances of technology and the freer movement of goods, services, money and people that characterizes the modern world, just as legal international business transactions have. There are no doubt direct links between technological progress and economic liberalization, on one hand, and the growth of transnational crime and the anxiety that comes with it, on the other hand. For example, illegal child pornography became easier to distribute via the

\textsuperscript{6} Art. 3(2) of the United Nations Convention Against Transnational Organized Crime, G.A. Res. 25, U.N. GAOR, 55\textsuperscript{th} Sess., Supp. No. 49, U.N. Doc. A/45/49 (adopted 15 November, 2000, entered into force 29 September, 2003) (the “CATOC”) defines an offense as “transnational” if: “(a) It is committed in more than one State; (b) It is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State; (c) It is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or (d) It is committed in one State but has substantial effects in another State”. The juridical significance of this definition is limited to the purpose of delimiting the CATOC’s scope of application; the relevance of its different elements to our analysis varies, but it is in any case a useful starting point.

\textsuperscript{7} As will be evident below we do not restrict our analysis to activities that are universally defined as criminal. Indeed, it is the very existence of different national approaches that enables the dynamic theory we present. Thus, it may be sufficient for a given profit-driven activity to be criminalized, or de-criminalized (either de jure or de facto), in a single national jurisdiction to trigger transnational crime shifting and the subsequent dynamic policy responses by other jurisdictions.

\textsuperscript{8} The CATOC does not list the types of crimes that may be regarded as “transnational”, generally applying to serious crimes “punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (art. 2(b) CATOC). The Fourth United Nations Survey of Crime Trends and Operations of Criminal Justice Systems (UN Doc. A/CONF.169/15/Add. 1, 4 April, 1995) listed the following categories of transnational crime: money laundering, terrorist activities, theft of art and cultural objects, theft of intellectual property, illicit trafficking in arms, aircraft hijacking, se piracy, land hijacking, insurance fraud, computer crime, environmental crime, trafficking in persons, trade in human body parts, illicit drug trafficking, fraudulent bankruptcy, infiltration of legal business, corruption and bribery of public officials or party officials and elected representatives, and other offenses committed by organized criminal groups.
Internet, and the removal of barriers to international trade in goods and the free flow of funds may have facilitated cross-border trafficking in illicit drugs.

As such, transnational crime is indeed “the dark side of globalization,” and it is not surprising that national governments and law enforcement agencies worldwide have increasingly turned to international law and cooperation in their efforts to curb it, considerably augmenting the international legal field of global crime control. Moreover, as leading transnational crime experts Andreas and Nadelmann note in a recent book, it is an all too common generalization to view “the growth of global crime control as simply a natural and predictable response to the explosive growth

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11 See Melvin Levitsky, The Dark Side of Globalization, 5 INT’L STUD. REV. 253 (2003). Arguably, there are other “dark sides” to globalization, such as the negative distributional effects of global trade liberalization; see Tomer Broude, The Rule(s) of Trade and the Rhetos of Development: Reflections on the Functional and Aspirational Legitimacy of the World Trade Organization, 45 COL. J. TRANS. L. 221 (2006).

12 Global crime control is not an entirely new area - the International Criminal Police Organization, better known as Interpol, dates back to 1923, but was ineffective during World War II when it fell under Nazi control, remaining moribund until its re-establishment in 1956 (see http://www.interpol.int/Public/icpo/governance/sg/history.asp). Moreover, international governmental activity in the field has gained considerable momentum since the 1990s, as attested by the young age of the UNCOTOC and other international arrangements such as the “40 Recommendations” of the Financial Action Task Force on Money Laundering (FATF), originally agreed upon in 1990, but significantly updated in 2003 and 2004 (see http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF. For an evaluation of the FATF, see Jackie Johnson & Y.C. Desmond Lim, Money Laundering: Has the Financial Action Task Force Made a Difference?, 10 J. FIN. CRIME 7 (2003).
of transnational crime.”  

The interaction between globalization, transnational crime and the emergence of global crime control is much more nuanced and complex in its historical, political and economic dimensions. For example, the rise of “transnational organized crime” as a major point on the international policy-making agenda in the 1990s has been attributed to the end of the Cold War and US efforts to exert its international hegemonic influence in areas of domestic concern. It has also been persuasively argued that contemporary global crime control is a continuation of historical trends evident, e.g., in international efforts to combat piracy and privateering in the eighteenth century and slavery in the nineteenth century, as well as a manifestation of “ambitious efforts by generations of Western powers to export their domestically derived definitions of crime.”

This article will elucidate some of this complexity by exploring the connection between globalization, crime and international crime control through the prism of political economy, providing a novel theoretical explanation for the dynamics of transnational crime and global crime control. In essence, we aim to answer three consecutive questions.

First, why does crime travel across national borders? Our initial argument is that much like other forms of economic activity, criminal activity travels across the globe to the places in which conducting it is most profitable for criminals. To be sure, we do not argue that all forms of crime will shift across international borders in this fashion. Rather, it is mostly crimes that are driven by

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13 See Peter Andreas & Martin Nadelmann, POLICING THE GLOBE: CRIMINALIZATION AND CRIME CONTROL IN INTERNATIONAL RELATIONS (2006), at v.


15 See Andreas & Nadelmann supra note 13, at 22 et seq.

16 Id., at vii.

17 The analogy between criminal and legal economic activity has its caveats (e.g., the use of violence against competitors is more common in the former), but in general, “illegal markets are governed by the normal economic forces”; see Pino Arlacchi, The Dynamics of Illegal Markets, in COMBATING TRANSNATIONAL CRIME: CONCEPTS, ACTIVITIES AND RESPONSES 7, 7 (Phil Williams & Dimitri Vlassis eds., 2001) (defining illegal markets and their nature in comparison with legal markets).
market-based profit that are expected to move in reaction to cost-imposing domestic regulation that makes crime less lucrative.¹⁸

Second, how do governments react to the international mobility of criminal activity? This is the innovative core of our theory, in which we distinguish between two types of transnational crimes, turning on different national approaches to the same activity. The first type consists of crimes that might be considered beneficial from the viewpoint of a local jurisdiction, in which case they become "desirable" crimes. These are crimes whose production process might carry economic benefits so that some national governments have an incentive to adopt lenient crime control policies towards them, attracting them to their territory - thus "insourcing" crime. This might especially be the case where the costs of crime "consumption" are severable from the benefits of crime "production." For instance, money laundering might carry economic benefits in one jurisdiction, but promote harmful crimes committed in other jurisdictions. On the other hand, there are crimes that national jurisdictions will perceive as harmful; these may be termed as "undesirable" crimes. These are crimes that carry a net cost for the state. With respect to these crimes, jurisdictions adopt harsher sanctions at the domestic level in order to shift and displace crime to other jurisdictions - thus "outsourcing" crime. For example, a jurisdiction might cause drug dealers to shift their harmful activity to neighboring jurisdictions by raising the expected sanction for drug crimes.¹⁹

¹⁸ This conforms to some extent to the strong (though non-exclusive) association of transnational crime with profit-based organized crime, although the theory presented in this article does not rest on such an association. The CATOC, for example, criminalizes agreements among people aimed at committing serious crimes "relating directly or indirectly to the obtaining of a financial or other material benefit" (art. 5(1)(a)(i)). Also, we should note that costs are not the only determinant of crime location; clearly, the potential for gain is also important. Profit-driven criminal activity will only occur where it can profit. When asked why he robbed banks, the famous 1930s bank robber “Slick” Willie Sutton replied “Because that's where the money is.” See Federal Bureau of Investigation, http://www.fbi.gov/libref/historic/famcases/sutton/sutton.htm; and WILLIE SUTTON AND EDWARD LINN, WHERE THE MONEY WAS (1976).

¹⁹ To be sure, the terms outsourcing and insourcing do not describe the phenomena we deal with perfectly since usually the term outsourcing refers to shifting production activity while consumption activity remains static. In our context the displacement of crime will in some cases shift both the production and the consumption activities. Nonetheless, we choose to use these terms in
What emerges is a complex pattern of criminal regulatory competition. Over time, the tendencies toward either lenient regulation or towards harsh regulation are expected, in tandem, to trigger a dynamic race between jurisdictions that will react to each others measures. For instance, jurisdictions might escalate their sanctions towards undesirable crimes in a type of “arms race” in order to try to become less attractive crime targets. Or, alternatively, they might lower the criminality of certain activities in order to attract it, and benefit from it in economic or other social ways.

Finally, the third question we address is how should global crime control be designed to enhance global welfare? On the backdrop of our positive theory, we argue that different crime control regimes and strategies are required, depending on the type of cooperation problem a certain transnational crime poses, hinging mainly on the extent to which states opt to engage in outsourcing or insourcing of crime. Thus, while in some situations international cooperation calls for setting global minimum criminal standards, in other situations our theory suggests that cooperation calls for the setting of maximum standards, or more sophisticated models of cooperation.

In order to develop our theory we draw on several bodies of literature that in our view have yet to be combined in a comprehensive manner in the realm of international crime control. The first is the crime displacement literature. This literature order to emphasize the connection between our framework and the vast literature dealing with the mobility of legal economic activities.


21 For early contributions to this literature see Thomas A. Repetto, Crime Prevention and the Displacement Phenomenon, 22 Crime & Delinquency 166 (1976); Simon Hakim et al., Interjurisdictional Spillover of Crime and Police Expenditures, 55 Land Econ. 200 (1979). For later reviews of the topic see, e.g., Crime Spillover (Simon Hakim and George F. Rengert eds., 1981); Crime Displacement (Robert P. McNamara ed., 1994); Rational Choice and
demonstrates that profit-driven criminals tend to shift their activity to the geographic location in which the expected payoff from crime is maximized. Thus, if the expected sanction in one jurisdiction rises, some crime from that jurisdiction will shift to areas in which the sanction is lower.

The second body of literature we draw from is the public choice literature. This literature predicts the decisions made by political agents using economic models that treat their decisions as such that promote a given set of preferences. More specifically we will utilize the insights of the literature highlighting the political economy of decentralized governments and that of criminal law. As for the former, starting from Tiebout’s seminal paper on the subject, legal scholars have modeled the effects of decentralization and jurisdictional competition on an array of legal topics. The general theme of these studies is that local jurisdictions aiming to maximize their own welfare compete among themselves in the legislative process in order to attract desirable

SITUATIONAL CRIME PREVENTION (Grame Newman, Ronald V. Clarke and S. Giora Shoham eds., 1997).
22 Note that following traditional models of deterrence and crime control, a rise in the expected sanction can be achieved either by raising the sanction attached to a crime, or by raising the probability of detection. See Gary S. Becker, Crime and Punishment: An Economic Approach, 76 J. Pol. Econ. 169 (1968).
activities and repel undesirable activities. Regarding the later, this emerging line of legal scholarship has explored how the different political forces surrounding criminal law affect the way in which it is structured.\(^{26}\)

The third theoretical scholarship we turn to is International Relations (IR) theory on international cooperation.\(^{27}\) Institutionalist or neo-liberal IR theories use rational choice methods to explain and model the emergence of different international cooperative regimes under the prevailing condition of anarchy, that is, the absence of centralized authority in international law and politics. They build on the rationality of states, and add layers of strategic thinking to state behavior through the use of game theory.\(^{28}\) This literature, and other streams of IR theory, will assist us both in explaining the existing patterns of cooperation we observe, and in evaluating the policy recommendations we put forward.

The paper is organized as follows: Part II sets out our positive theory of the political economy of global crime control, building particularly on the economic analysis of crime displacement, and on the public choice analysis of international regulatory competition. Part III relies on this positive theory, and explores its normative implications. We deal with an array of legal mechanisms that states have adopted both unilaterally and in cooperation with other states, and present their advantages and disadvantages in terms of efficiency and global welfare. In addition, we explore innovative legal regimes that could assist states reach


more efficient crime control policies. Finally, in Part IV we conclude.

II. GLOBALIZATION AND THE TRANSNATIONAL MOBILITY OF PROFIT-DRIVEN CRIME

In this Section we present a positive theory of the political economy of transnational crime and its movement across national borders in response to local crime control policies. We begin by describing the way technology and economic liberalization have internationalized the production and distribution patterns of legitimate goods and services, permitting lawful economic activity to travel to the locations in which it incurs lower costs and generates higher profits as a result of economic and regulatory differentials between jurisdictions. On this background, we turn to the core of our thesis and argue that profit-driven criminal activities behave similarly to legal economic activities, tending to shift, whenever possible, to the areas across the globe in which conducting them is most profitable for criminals. Since crime control policies constitute some of the major costs of committing crimes, crime is expected (other things equal) to travel across the globe to areas in which the cost of commission is relatively low. Thus, crime control policies adopted by states may influence the global distribution of criminal activity, and as a consequence, affect the level of crime and domestic policy responses thereto in other states as well.

1. Globalization and Shifts in Legitimate Economic Activity

One of the most salient characteristics of globalization and the growth in international trade is the shifting of economic activity to locations around the globe in which it can be conducted most efficiently. In gross terms, over the last few decades significant segments of manufacturing have shifted from developed states to the developing world. Geographical transfers of economic activity have also occurred within the industrialized world itself, as evidenced by the decrease in the US share in global output, the uneven growth of European economies, and the rise of Japan as an

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29 See Peter Dicken, Global Shift: Transforming the World Economy 27 (1998).
economic power; and also within the developing world. As the size of the global economy grows, production associated with a certain place gradually shifts to more efficient locales (and vice versa), while the original activities are replaced with more sophisticated and profitable ones. For example, the textiles industry with its various stages – fiber production, yarn preparation, fabric manufacture, cutting, sewing and distribution – has proven especially mobile, with its economic loci shifting from Europe to the Americas to different Asian and African locations continuously.

These geographical movements of business activity are outcomes of systemic changes that allow Smith’s “invisible hand” and Ricardo’s principle of comparative advantage to act on the international plane. The combination of advanced technology, labor-cost differentials, trade liberalization and cross-border investment protection has led to increasingly complex transnational patterns of production. Today, the simplest of consumer products is likely the aggregate outcome of productive economic processes that take place in a number of continents. Dialing a customer-service telephone number in North America may connect to a call-center in India, where many other services activities, such as software development, have also shifted to over the last decade. Indeed, as the last example demonstrates, economic shifting is not restricted to the manufacturing sectors but is widely evident in service sectors whose importance in the global economy has grown tremendously. Many services such as telecommunications, financial services, 

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30 Id. at 28-29.
31 See Dicken, supra note 29 at 283-315.
33 See DAVID RICARDO, ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION Ch. 7 (1817).
34 For an engaging account of transnational production and distribution chains see PIETRA RIVOLI, THE TRAVELS OF A T-SHIRT IN THE GLOBAL ECONOMY (2005) (analyzing the inter-related cotton, textile, retail and second-hand clothing sectors that span the globe).
entertainment services and so on are particularly prone to economic expansion due to the increase in service input mobility and other transnational locational impacts of technological changes.

In a world considerably ‘flattened’ by technological advances and international economic liberalization, the global distribution of economic activity is affected most fundamentally by objective economic differences between locations, roughly tracing the range of relevant “factor endowments” such as labor, land and capital, determining local comparative advantage. Where physical trade is concerned (in goods, or in services requiring proximity), geographical distances to markets that raise transportation costs may also figure highly in decisions on production and supply locations, at times potentially more important than considerations of the costs of production itself. However, no less important than

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37 On the importance of input mobility in the growth of international trade, see RONALD W. JONES, GLOBALIZATION AND THE THEORY OF INPUT TRADE (2000).

38 Technological advances have been key in increasing international trade in services, perhaps even more than legal deregulation. For a prescient analysis of the potential geographical effects of technological change in international services provision, see D.G. PRICE & A.M. BLAIR, THE CHANGING GEOGRAPHY OF THE SERVICE SECTOR Chs. 6 and 8 (1989).


40 We allude to the Heckscher-Ohlin “Factor-proportions hypothesis”, whereby states will tend to export products that use factors of production in which they are abundant, and import products that use factors in which they are poor. For the original formulations of the Hekcscher-Ohlin theorem from 1919 and 1924, see ELI F. HECKSCHER & BERTIL OHLIN, HECKSCHER-OHLIN TRADE THEORY (Harry Flam & M. June Flanders eds. and trans., 1991).

41 The literature on location and transportation costs is vast and highly sector-specific. For basic generalized discussions, see Maurice Fulton & L. Clinton Hoch, TRANSPORTATION FACTORS AFFECTING LOCATIONAL COSTS, 35 Econ. Geography 51 (1959); Aneel Karnani, THE TRADE-OFF BETWEEN PRODUCTION AND
these are legal and regulatory differences between jurisdictions that can make or break the international economic viability of an enterprise in its location of choice.

Perhaps the most obvious such regulatory factor is taxation. Corporate, capital, sales and income tax rates and policies among different locations may vary considerably, and these impact on business plans regarding international investment, incorporation and physical location of production or supply. Such differences have resulted in vigorous international tax competition, in which states compete over which has the lowest tax rate in order to attract multi-million dollar manufacturing and assembly plants that may have significant effects on economic growth and the livelihood of thousands of workers. A famous example is the role of low taxes in the reinvention of the Republic of Ireland (Éire) as the ‘Celtic Tiger,’ attracting strategic investments from corporations such as Intel, Bell Labs and Dell. Other regulatory factors might include, but are not limited to, bureaucracy, labor, environmental, health and safety regulation, consumer protection rules and subsidies.

This shifting of production and distribution has been encouraged by transnational corporate conglomeration in the business sector. Multinational corporations (MNCs) have emerged as major economic players who have both the incentives and the resources needed to take optimal advantage of economic and regulatory differences between jurisdictions, and to channel each part of their activity to the most efficient location through geographically-sensitive trade and investment. This entails

44 See Brian Roach, A Primer on Multinational Corporations, in LEVIATHANS: MULTINATIONAL CORPORATIONS AND THE NEW GLOBAL HISTORY (Alfred D.
globalizing at all levels of business activity – R&D, manufacturing, product development, quality control, finance, purchasing and procurement, inventory management, marketing and advertising, distribution, sales and service, administration and more.\(^{45}\)

These are not, of course, the only factors that have contributed to the international locational shifting in the production of legitimate goods and services, but they are important ones. What is significant for present purposes is that regulatory differences between jurisdictions are a major consideration in business decisions relating to location of business activities such as production and supply. At this point we turn to explore what we consider to be the analogous effects of globalization on the locational aspects of transnational criminal activity.

2. Globalization and Decentralized Crime Control

The economic model of crime control treats potential criminals as rational individuals who choose to participate in criminal activity in order to promote their personal well being.\(^{46}\) According to this model criminals weigh the costs and benefits associated with criminal activity, and choose to commit a crime if, and only if, its benefits outweigh its costs. Our focus in this study is not on the decision criminals make as to whether to commit a crime. Rather, we focus on the decision they must make as to where to commit a crime. Just as the producer of a T-shirt needs to decide what is the location that will maximize the profits of production, a criminal needs to figure out which location will maximize his profits of crime. As in legal markets, the profits of crime can differ between states due to an array of reasons ranging from the distance to consumer markets to the technological infrastructure of the state.

An additional factor that can affect the profits of crime is law. The expected sanction (composed of the probability of


\(^{46}\) See, e.g., Becker, supra note 22 at 176-79 (presenting an analysis of the supply of crime); and Isaac Ehrlich, Crime, Punishment, and the Market for Offenses, 10 J. ECON. PERSP. 43 (1996).
detection and the actual sanction inflicted) is a cost criminals must bear when deciding where to commit their crimes. Indeed, “the cost of doing business within the illegal economy is much higher than in the legal economy” because of the additional cost of minimizing exposure to sanctions, suggesting that differences in these costs may weigh heavily in the determination by criminal enterprises of their locus. When crime control is governed by a decentralized political structure, such as in the international arena, sanction arbitrages may emerge. In such situations, if everything else is equal, criminal activity is expected to shift to those states in which the expected sanction is lowest.

Building on this theoretical framework, economists have modeled different aspects of the geography of criminal activity and the precautions taken by crime victims. At the same time, criminologists have studied the effects of measures taken by both public and private actors aimed at lowering the expected payoffs of crime by “hardening” potential crime targets. Examples of such measures include police patrols, fences, street lighting, and the like. These studies demonstrate that in many cases such measures result in the displacement of crime to areas where these measures are not used. Concrete examples of such crime displacement can be found

47 See Arlacchi supra note 17 at 8.

48 Significant criticism has been brought against the traditional economic model of crime control. See, e.g., Paul H. Robinson & John M. Darley, Does Criminal Law Deter? A Behavioral Science Investigation, 24 OXFORD J. LEGAL STUD. 173 (2004); Gross, supra note 20. In a nutshell, these criticisms view crime as a complex social phenomenon, and argue that criminals do not behave in the way economic models predict. While this literature makes legitimate criticisms, we find it less relevant to our project since our analysis deals mostly with transnational profit driven crimes.


50 See generally sources cited in note 21 supra.
with respect to burglary, robbery, sales of illegal narcotics, growing of illegal narcotics, and prostitution.

One can point to several examples of sanction arbitrages that have brought about intra-state crime displacement. In a federal state, such as the United States, the constituent states control most criminal sanctions. This power has spawned local initiatives that caused crime to travel across state lines. For example, ‘three strike’ laws caused criminals who already have two convictions to shift their activity to non-three strike states, since the sanction they faced in those states was significantly lower than the one they faced in three strike states. In unitary states local jurisdictions cannot control the size of the sanction since the central government holds the exclusive power to legislate criminal law. Nonetheless, even in such settings one can point out initiatives of local governments that caused crime displacement. In Israel, for instance, municipalities have used private security companies in order to deal with local

56 Teichman, supra note 20 at 1847-48.
crime problems. This, in turn, caused criminals to shift their activity to municipalities that did not employ such companies.\footnote{57}

To be sure, several qualifications should be made to the displacement hypothesis set forth above. First, in the realm of domestic law one can see actual displacement of criminals from one area to another. Namely, as the cost of committing crimes in one jurisdiction rises, criminals leave that jurisdiction and move to other jurisdictions in which the cost of committing crimes is lower.\footnote{58}

While one cannot rule out such displacement in the international arena, a much more plausible form of displacement in that context is of the activity itself. In other words, lowering the cost of crime in one part of the globe may not attract the physical relocation of foreign criminals, but instead will grant local criminals a competitive advantage with respect to committing crime, causing more local residents to engage in criminal activity, and lowering the amount of people in other jurisdictions engaged in crime.\footnote{59}

Just as the actual people engaged in T-shirt production do not necessarily travel from one state to another as a result of changing costs, the producers of illegal narcotics are not expected to travel as well.

Second, shifting criminal activity from one place to another is a costly endeavor that is expected to create some rigidity in the crime market, and prevent some criminal activity from moving to more profitable areas. Costs such as setting up production lines, contacts with local enforcement officials, and contacts with other criminals in the region, are all state specific and therefore must be treated as a sunk cost for criminals.\footnote{60} In addition, ethnic and language differences might cause difficulties for crime displacement. For instance, if a certain narcotic is distributed in the United States by members of criminal groups that migrated from its traditional place of production,\footnote{61} then shifting production to other

\footnote{57}Doron Teichman, The Geography of Crime (Unpublished Manuscript on File with Authors).

\footnote{58}See Teichman, supra note 20 at 1843-47 (describing how auto thieves migrated between states).

\footnote{59}In the regulatory competition literature this phenomenon is known as “market share competition.” See DALE D. MURPHY, THE STRUCTURE OF REGULATORY COMPETITION 7 (2004).

\footnote{60}For examples of barriers to displacement on the local level see, e.g., Repetto, supra note 21, at 175; René Hesseling, Theft from Cars: Reduced or Displaced?, 3 EURO. J. ON CRIM. POL’Y & RES. 79, 87-8.

\footnote{61}See, e.g., William J. Stuntz, Local Policing After the Terror, 111 YALE L.J. 2137, 2178-79 (2002) (pointing out the role of ethnic ties in crime organizations).
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parts of the globe that have different ethnic composition, and hence, cannot build on pre-existing social networks, might be difficult.\footnote{One could view the argument in the text as a form of informal vertical integration that creates barriers to entry into the market. See generally R. Blair & D. Kaserman, Law and Economics of Vertical Integration and Control (1983).} Thus, some criminal activity might remain in regions in which the costs of crime have risen over time.

Finally, we would like to emphasize the scope of our claims in this Article. Our theory deals mainly with profit-driven criminal activity that will tend to behave in a rational manner: crimes like money laundering, drug trafficking and gambling. Clearly, many (perhaps even most) crimes do not fit this characterization, and tend to be committed on a local and spontaneous basis, notwithstanding the potential sanction arbitrage if committed in other areas. For instance, crimes driven by emotions such as inter-marital crimes are probably not susceptible to geographic substitution.\footnote{See, e.g., John P. McIver, Criminal Mobility, in Crime Spillover 20, 36 (Simon Hakim & George F. Rengert eds., 1981) (pointing out that crimes of passion tend not to be displaced).}

3. The Political Economy of International Crime Control

Our theory is built from the bottom up. In other words, we describe the incentives of decision makers on a national level, and from that we draw a global picture of crime control. As we shall see in detail below, domestic politicians and decision-makers may have an incentive to either attract crime (crime ‘insourcing’), or repel it (crime ‘outsourcing’). The precise structure of incentives will depend on the nature of the activity involved and the nature of the regime, economy and society of each state.

(a) International Crime Outsourcing

We begin by describing the outsourcing of crime since it reflects the basic intuitions of crime control. The general tendency is to view crime as a negative social phenomenon that involves many harms. First and foremost are the direct harms of crime such as loss of lives, bodily injuries, and destroyed property. In the United States alone a 1988 study estimated the costs of crime to
victims at $92.6 Billion. These direct harms translate into popular demand for crime reduction, which, in turn, translate into incentives for elected politicians to adopt policies that will in fact reduce crime. Another harm associated with crime is its effect on international investment. Local communities have an incentive to attract capital that can bring about employment and economic prosperity. Crime rates are considered to deter foreign investors and impair economic growth, and hence, states have an incentive to reduce their crime rate. For instance, President Mbeki of South Africa has reportedly adopted an array of social programs aimed at reducing crime rates in order to attract international investors. Finally, the types of profit-driven crime we deal with in this study often involve sophisticated criminal organizations. As these organizations gain power and influence, they can pose a threat to the stability of the political system of a state. The United Nation’s General Assembly has noted its concern with “the impact of transnational organized crime on the political, social and economic

stability and development of societies.\textsuperscript{67} Thus, if the political establishment wishes to maintain its independence from criminal forces, it has an incentive to adopt policies that will combat this threat.

The forces described above give politicians and decision-makers incentives to reduce local crime as it is committed among their constituencies and spheres of political influence, even if this entails displacing crime to other states – producing the outsourcing of crime. In our framework of analysis, this goal can be achieved by raising expected sanctions and harshening other types of regulation that affect crime so that the state becomes a relatively less attractive environment (or target) for criminals. In other words, when states design their crime control policies they take into account the policies of other states. In a dynamic setting, in which these conditions apply, many states interested in outsourcing crime will adopt a similar national strategy towards crime, and one can expect to see a “race towards strictness” of ever-increasing sanctions towards these crimes. Thus, much like the arms race states were engaged in during the cold war, one might observe an ‘arms race’ between states in their war on crime.

To be sure, we do not argue that jurisdictions necessarily engage in deliberate efforts to displace crime from one to another. A nation could adopt a certain crime control measure for an array of political reasons that have little to do with crime displacement.\textsuperscript{68} Nonetheless, once a nation adopts a measure for whatever reason, the impacts of this policy might be felt in other states, driving them to adopt it. For instance, three strike laws were not enacted in order to deliberately displace crime to other jurisdictions.\textsuperscript{69} Yet once they were enacted displacement was a factor in their dissemination.\textsuperscript{70}

\textsuperscript{68} For an analysis of the political forces driving criminal legislation in the United States see Barkow, \textit{supra} note 20 at 1720-23.
\textsuperscript{69} \textsc{Office of the Atty. Gen., Cal. Dep’t. of Justice}, “\textit{Three-strikes and You’re Out}: It’s Implications on the California Criminal Justice System After Four Years” 10 (1998) (describing the displacement caused by the local three strike law as an “unintended but positive consequence”).
(b) International Crime Insourcing

The dynamics of outsourcing crime are, however, only one part of the story. We now turn to explore the political economy of insourcing crime. While some types of criminal activity pose threats to national political actors and decision makers, other crimes might actually be seen by them as “desirable.” We identify three main forces (at times overlapping) that might turn crime into a desirable activity from the perspective of policy makers of a given state. First, crimes (or activity that contributes to crime) might be perceived as conferring benefits on the general public. Conceptually, this might be the case when communities in different jurisdictions differ with respect to the definition of undesirable activity. For example, a community might view the production or use of a certain substance (such as alcohol, or marijuana) as a crime worthy of severe punishment, while other communities will see it as legitimate behavior that is not a crime, or at least as behavior that although formally illegal, is not to be subjected to strict sanctions because it is not understood to cause social problems.71

The general benefits of crime, however, may be indirect as well, such as when activity considered criminal in some jurisdictions is tolerated domestically elsewhere not because of any inherent value but simply because it supports local employment, economic growth, and government revenue. Legal casino gambling in places like Macao or Monte Carlo are examples. In Macao, the local population does not see the freedom to gamble as a value worth protecting in itself - in fact, there is considerable local concern about its negative social effects – but at the same time it is understood that the local economy is highly dependent on the provision of gambling services, which are tolerated for the sake of their indirect effects.72 These trends can explain the emergence of

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71 For example, the liberal policy towards drug use in the Netherlands has been explained as the outcome of a general liberal and non-paternalistic Dutch approach to law-enforcement known as ‘Gedogen’, whereby only social cost-imposing law violations are repressed through law enforcement; see Justus Uitermark, The Origins and Future of the Dutch Approach Towards Drugs, 34 J. DRUG ISSUES 511 (2004).
72 See Fanny Vong Chuk Kwan, Gambling Attitudes and Gambling Behavior of Residents of Macao: The Monte Carlo of the Orient, 42(3) J. TRAVEL RES. 271 (2004) (noting that 50% of Macao’s tax revenue in the 1990s came from gambling and discussing the future of Macao’s economy in the face of local ambivalence towards gambling practices).
criminal activity even when it is internationally recognized as illegal, like narcotics farming and production that for all its negative effects in source (and target) states, supports their economies and the livelihood of the farmers.73

Second, harmful crimes might confer benefits to specific interest groups. These interest groups may include actors from the legitimate economy, such as the tourism sector and financial institutions that derive profits from it; or shadier forces from organized crime, who act as criminal entrepreneurs. These interest groups, in turn, can influence politicians (elected or otherwise) to view these crimes as desirable, or at least to turn a blind eye to them, through direct or indirect election funding, political sponsoring (activities which might themselves be legal practices), vote-buying, bribery and other incentives.

Finally, crimes can directly serve the personal interests of politicians and decision-makers. This is the case with decrepit regimes in which political leaders concurrently function as heads of criminal organizations or maintain close relations with them through corrupt practices. In such situations politicians can pocket the profits of crime for themselves, and have an interest in insourcing its production, regardless of who bears the costs.

The political forces that lead to the insourcing of crime suggest a dynamic that is the mirror-image of the process previously described with respect to crime outsourcing. Over time, one can expect to observe a ‘race towards leniency,’ in which some states try to situate themselves as a place that is attractive as possible to commit certain crimes or crime-related acts.74 This can be the case both with respect to the regulation itself, and with respect to enforcement mechanisms. In extreme cases, one might even expect to observe governments that become directly involved in international criminal activity.

(c) Complex Scenarios: Concurrent Insourcing and Outsourcing


74 To be more precise, this is the case with respect to crimes that serve interest groups or the regime itself. Crimes that are not regulated only because of diverse beliefs about wrongfulness are not expected to generate a race towards leniency.
In addition to pure examples of ‘insourcing races’ or ‘outsourcing races,’ more complex patterns of international criminal regulatory competition are likely to emerge. In a given area of transnationally mobile illicit activity, some jurisdictions might consider the activity, on balance, to be undesirable and attempt to outsource it, while other jurisdictions may consider the activity, on balance, to be desirable and attempt to insource it. Thus, at the same time we might see the emergence of policy heterogeneity, with a “race towards strictness” taking place in some jurisdictions and a “race towards leniency” taking place in others.

However, this does not mean that the relationship between crime outsourcing states and crime insourcing states is complementary or symbiotic. Crime-attracting states can produce transnational harmful effects that are felt in crime-detering states, making the latter’s efforts at combating the undesired activity ineffective. This might even be a deliberate policy, as states seek to capture the benefits of a criminal activity, while externalizing some or all of its costs. Paradoxically, the combination of crime deterrence and crime encouragement may prove so effective and mutually supportive that both sides of the equation lose out. For example, the U.S. has pursued aggressive deportation and repatriation policies to ‘export’ (or rather, to re-export) dangerous criminal gang members to their source states. These states may have, in the past, generally considered gang activity (especially in its ‘exported’ form) as desirable or tolerable. However, in many cases these states were not prepared for the repatriation of gang members hardened in the tough realities of U.S. inner cities. As a result, gang activity has intensified in the source states, in which their activities are no longer considered desirable by any standard, while the same gang members use there reclaimed homelands as bases for advanced criminal activity in the U.S.75 Even more complex are situations in which cross crime effects are felt. The legality of the sale of guns in the US results in a flow of weapons to Mexico; these are then used on the Mexican side by drug dealers targeting the US market for illegal narcotics.76

OUTSOURCING AND INSOURCING GLOBAL CRIME

In each of these three scenarios – insourcing race, outsourcing race, and heterogeneity – states (and the international community) are faced with different sorts of cooperation problems. As we will discuss in section III, the diversity of relationship between and among crime outsourcing states and crime insourcing states – as well as the optimal form of regulating these relations – hinges on the understanding of the externalities that each type of state inflicts on the other in the global environment. Now, however, we turn to a number of examples that will serve to substantiate the ways in which our theory plays out in practice.

4. Examples

In this subsection we turn to present a few concrete examples of crime outsourcing and insourcing. Viewing these examples will allow us to substantiate our theory, and explore how it plays out in practice.

(a) Drugs

An obvious first example is the area of drug production and trafficking. Actors in the international market for illicit drugs function much like for-profit corporations, aiming to maximize their revenues and minimize their costs. Interestingly, one can point out how some states attempt to insource these crimes, while others attempt to outsource them.

Insourcing states do so for a variety of reasons. For example, the ruling political elite in those states can reap the benefits of the crime. An extreme example of such a situation can be found in the case of North Korea, in which the central government is reportedly actively engaged in the production and exportation of illicit drugs. A second example can be found in Guinea Bissau, where cooperation between the local military and

77 The size of the worldwide retail-level market for illicit drugs in 2003 was estimated at $321.6 Billion; see UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2005 WORLD DRUG REPORT 17 (2006). The latest UN report does not include an updated figure of this estimate; see UNITED NATIONS OFFICE ON DRUGS AND CRIME, 2007 WORLD DRUG REPORT 170 (2007) [hereinafter: 2007 UN Drug Report].

South American drug cartels has created an ideal transit point for drugs into Europe\textsuperscript{79} – demonstrating that every link in the criminal production chain can be displaced, and is therefore subject to regulatory competition. Another prominent example of a drug-production insourcing state is Afghanistan, which has experienced an “opium boom” since the 1990’s due to a confluence of factors.\textsuperscript{80} Under international pressure, traditional opium-producing states such as Iran, Pakistan and Turkey, gradually managed to eradicate their opium farming, leaving global demand unsatisfied. During the same period, central governance collapsed in Afghanistan due to the 1979 Soviet invasion and its aftermath. This presented a tremendous economic opportunity for Afghanistan’s impoverished farmers: “in many ways [opium] is a miracle crop for Afghanistan’s battered rural economy – a durable commodity commanding a high price, with a guaranteed market outlet, easy to transport, and non-perishable.”\textsuperscript{81} Thus, the lack of law-enforcement allowed global market forces to work, turning the illicit production of opium into a ‘desirable’ crime in Afghanistan. Furthermore, Opium production was sheltered by ‘governmental’ protection, when Afghan warlords became involved in production and trafficking, reportedly giving allegiance to the Taliban “in return for a promise to keep the opium profit.”\textsuperscript{82}

On the other hand, states that wish to fight the drug trade, find themselves in a battle not only with drug traders, but also in criminal regulatory competition with other states that enact tough drug laws that drive international drug activity in their direction, prompting a race-to-strictness, or outsourcing race. Take for example Canada, a state bordering the United States (which is known as one of the toughest states in the world with respect to drug crimes). This situation has brought law enforcement agents in Canada to demand larger budgets and higher sanctions in order to fight drug activity coming from the United States. For instance, a Canadian drug enforcement official was quoted saying “Organized crime groups laugh at us in Canada. We are an easy mark.”


\textsuperscript{81} \textit{Id.} at 17.

\textsuperscript{82} \textit{Id.}

Similarly, the United States has managed to displace to Mexico a significant part of the production of the synthetic drug Methamphetamine (“Meth”),\footnote{2007 UN Drug Report, \textit{supra} note 77 at 123.} by adopting a regulatory scheme that made buying the chemicals from which it is produced more difficult.\footnote{See 21 U.S.C.A. § 830 (creating an array of limitations on the sale of pseudoephedrine, the active ingredient in Meth).} Interestingly, American legislatures were aware of the possibility that Meth production would shift to Mexico, but leave consumption unchanged – a classic case of outsourcing of production, even if the costs of consumption remains unwanted.\footnote{See Sam Hananel, \textit{Congress Moves Closer to Passing Anti-Meth Law}, \textsc{AP}, Feb. 16, 2006.} Nonetheless, given the danger Meth production creates to law enforcement agents and to surrounding communities, they were content with only displacing production. As Senator Talent, who co-sponsored the bill, put it: “Even if it doesn't reduce the number of meth addicts by even one, stopping the labs is a huge plus.”\footnote{\textit{Id}.} Following these developments Mexico has reportedly adopted similar measures, thus displacing some of its Meth related activity to Central America and even Africa.\footnote{2007 UN Drug Report, \textit{supra} note 77 at 123.}

\textbf{(b) Gambling}

Gambling is another telling example of illicit activity shifting from one national jurisdiction to another, being both outsourced and insourced in response to differential domestic

\footnote{\textit{Id}.}
regulation. Gambling makes an interesting case for present purposes for a number of reasons. First, in economic terms, gambling services are relatively unfettered by objective criteria establishing competitive advantages, such as climate, land, labor or skills. Absent regulatory intervention, gambling services could be provided or consumed virtually anywhere. Geographical movements of gambling activity can therefore largely be attributed to regulatory differences between jurisdictions. This is evident not only on the interstate level but transnationally as well. For example, since the early 1990’s, the Government of Ontario, Canada, has invested heavily in the legal casino it owns in Windsor, Ontario – just across the river from Detroit, Michigan. This development – reportedly causing Michigan a capital loss of $1 Million a day in 1994 - prompted Michigan voters to approve various proposals legalizing casinos, subject to regulation, throughout the state, overcoming previous objections to gaming operations.

Second, the (im)morality of gambling is relative and evidently pliable, to the point that gaming lends itself easily to a spectrum of incremental degrees of criminalization, from absolute bans, through discreet regulation or guarded tolerance, to government monopolization and even full liberalization. This allows governments to set the desired level of formal gambling activity in their territory relatively flexibly, either discouraging or encouraging it as the case may be.

Third, where in the past gambling operations would rely on the physical mobility of patrons and their relative geographical

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89 In the US, for example, casino gaming that was originally pursued in only a few locales, has considerably expanded in geographic terms over the last few decades due to economic competition. The number of states licensing casinos has increased from only one in the 1970’s to 27 states in 1999. See William R. Eadington, The Economics of Casino Gambling, 13 J. ECON. PERSP. 173 (1999).
93 Allegedly, even evangelist Rev. Billy Graham found Las Vegas to be “a nice place to visit”, pointing out that “while he did not gamble himself, the Bible said nothing definitive against the practice.” See JOHN M. FINDLAY, PEOPLE OF CHANCE: GAMBLING IN AMERICAN SOCIETY FROM JAMESTOWN TO LAS VEGAS (1986).
proximity (e.g., Monte Carlo in Western Europe, Las Vegas in the western United States, Atlantic City in the eastern United States, and Macao in east Asia), contemporary gaming services have proven particularly adaptive to Internet technology. Much of the modern gambling economy is online, permitting remote transboundary provision of gaming services, with gamblers virtually indifferent to the physical location of providers. Moreover, it is notable that this situation has resulted in the complication of the ability of national authorities to independently regulate gambling within their jurisdiction, turning it into a distinctly international issue.

Fourth, the relative criminalization of gambling is often considered in cost-benefit terms, taking into account government profits, tax revenues, increased employment and peripheral gains such as income from tourism (on the one hand); and moral considerations as well as social and incidental costs caused by violence and prostitution (on the other hand).

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94 The economic affluence and continued political independence of the principality of Monaco have to large extent been based on the legendary success of Monte Carlo’s luxury casino in the 19th century – a direct result of regulatory lenience aimed at insourcing activity that was considered illegal elsewhere. The Principality’s income from gambling permitted it to engage in another form of regulatory competition when it abolished all individual taxes in 1869, creating a tax haven that has drawn millionaires from all over the world to shift their domicile to Monaco; see Russell T. Barnhart, *The Legal Future of Monte Carlo, the World’s Oldest Gambling Casino* 1 GAMING L. REV. 371 (1997).

95 Legalized casino gambling was introduced in Atlantic City, NJ, in 1976, in an effort to revitalize the east coast resort. This is another example of a jurisdiction’s attempt to decriminalize a certain activity for economic gains. However, interfering planning and political factors severely impeded the anticipated success of this move; see Paul Teske & Bela Sur, *Winners and Losers: Politics, Casino Gambling, and Development in Atlantic City*, 10 REV. POL. RES. 130 (1991).

96 See references in fn. 72 supra.

97 See I. Nelson Rose & Martin D. Owens, Jr., *Internet Gaming Law* (2005), 53 et seq. (discussing the proliferation of gambling in light of technological change).

98 See I. Nelson Rose, *Should Antigua Sue China?*, 11 GAMING L. REV. 645, 645 (2007), (noting that “[g]ambling has almost always been a local issue […] The introduction of internet gaming into interstate and intercommercial commerce has turned the control of gambling on its head”).

On this backdrop, it is interesting to focus on the dynamics of the contemporary online gambling industry, and the transnational insourcing-outsourcing trends that it has produced over the last few years. At the advent of online gambling in the 1990s, because remote gaming was generally outlawed in the US, internet firms targeting the US market for gaming sought to establish their operations – in both corporate and operational terms - outside the US, in order to avoid criminal liability and its costs. US laws thus resulted in crime outsourcing, with the production of criminal shifting abroad, aimed at home consumption. Concurrently, in a classical case of crime insourcing, a number of non-US national jurisdictions rose to the challenge and provided attractive taxation and regulatory packages to investors in gaming enterprises, facilitating the establishment and licensing of internet gambling providers. This is a phenomenon that continues today, with many jurisdictions competing over the insourcing of internet gaming providers.

The tension between the US as a gaming-outsourcing jurisdiction, in this case, and other states as gaming-insourcing jurisdictions, is acute. Indeed, to the extent that internet technology enables a state to reap the economic benefits of gaming while minimizing its costs, there is a strong incentive to insource

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100 See Joel Michael Schwartz, The Internet Gambling Fallacy Craps Out, 14 BERKELEY TECH. L.J. 1021 (1999) (positing a forceful argument that internet gambling is illegal in the US, even if servers are based offshore); and Gregory Manter, The Pending Determination of the Legality of Internet Gambling in the United States 2003 DUKE L. & TECH REV. 16 (2003) (discussing legality of internet gambling in the US with respect to judicial and legislative subsequent developments).

101 Such jurisdictions include, but are not limited to, the United Kingdom, Canada, Costa Rica, Gibraltar, Antigua and Barbuda, and recently – the seemingly unlikely state of Papua New Guinea. See Edward A. Morse, The Internet Gambling Conundrum: Extraterritorial Impacts of Domestic Regulation, in CYBERLAW, SECURITY AND PRIVACY 267, 268 (Sylvia M. Kierkegaard, ed., 2007). For an example of undisguised publicity aimed at attracting internet gambling businesses to establish (in this case) on the Isle of Man, see Isle of Man: Nice Place for your Online Gambling Business!, VIADEN MEDIA, Apr. 16, 2007 (http://casinoblog.viaden.com/2007/03/15/isle-of-man-nice-place-for-your-online-gambling-business/) (interviewing Tim Craine, e-business minister of the Isle of Man and explaining tax and other benefits).

102 This is an example of heterogeneity, a complex model of inter-jurisdictional competition, as explained in section II.3(c) supra. Its policy implications will be discussed in section III infra.
gambling services for export purposes; but at the same time, “a state that exports gambling services may also be exporting social costs that other governments may have to address without the benefit of the tax revenues traditionally generated by land-based gambling enterprises.” Morse, a gaming law expert, observes that many of the states that export internet gambling services have “relatively low percentages of internet penetration in their own markets.” This means that the otherwise illicit activity can be insourced with very small negative impact on local society – indeed, production and its benefits are internalized, while the service is exported its costs are externalized. In contrast, governments of export-market states have to choose between joining the insourcing race by permitting internet gambling in order to generate taxes that might cover social costs, on one hand (that is, to enjoy the benefits of production, not only suffer the costs of consumption), and pursuing even more aggressive crime outsourcing policies in order to try and deflect the impact of foreign-based activity, on the other hand.

The US response to this policy dilemma has resulted in an interesting confluence of the international rules regulating the globalization of legitimate economic activity, and the globalization of illicit activity. Due to aggressive enforcement policies aimed at deterring foreign-based gaming services, US Federal and state gambling legislation has for a number of years stood at the center of an important trade dispute at the WTO initiated by Antigua and Barbuda, a major gaming insourcing state. In this international litigation, the US has been found to be in violations of its obligations under the WTO GATS. While currently facing the prospect of authorized retaliation by Antigua of over $20 Million a year, until its legislation is WTO-compliant, the US has preempted similar future WTO complaints by negotiating a withdrawal of US gaming-related GATS commitments towards

103 Morse, supra note 101 at 269.
104 Id.
105 See section III.b infra.
other interested parties, such as the EU.\footnote{108} The US has also enacted legislation that aims to prevent internet gambling in the US, not by criminalizing gambling patrons and gaming services but by making it illegal for providers of credit card and online payment services, to accept and process transactions that they suspect to be online wagers,\footnote{109} with clear detrimental effects on gaming ‘insourcers.’\footnote{110}

This is not, however, the end of the transnational gaming story. Having been frustrated by US policy in the attempt to use foreign jurisdictions as offshore bases targeting the lucrative US market for gambling, online gaming enterprises are now reversing their strategy: the latest trend is the establishment of gaming operations based (at least at the corporate level) in the US, but targeting patrons in other jurisdictions – all the while complying with US criminal law, including the UIGEA. For example, US-based Yahoo! Has launched \textit{Yahoo Poker},\footnote{111} reportedly based on UK and Ireland property, but blocked by Yahoo! itself in the US and Gibraltar. Here we see that a crime ‘outsourcing’ policy based on strict legislation and domestic enforcement can co-exist with an ‘insourcing’ policy, by separating the costs and benefits of transnational illicit activity. Furthermore, one sees that regulatory policy has not only shifted locus of the illicit activity of providing gaming services, but also that it has contributed to the displacement of gambling itself: gaming firms that have abandoned the US market are reporting significant growth in their revenues from wagers placed in non-US jurisdictions.\footnote{112}

\begin{flushright}
\footnotesize
\begin{enumerate}
\item See http://yahoopoker.stenodoc.com/yahoopoker/poker/home/index.html.
\item See Morse, \textit{supra} note 110, 269.
\end{enumerate}
\end{flushright}
(c) Money Laundering

An additional example of the way transnational crime displacement and attraction play out in local politics can be found in the realm of money laundering. Money laundering is “the process by which one conceals the existence, illegal source, or illegal application of income, and disguises that income to make it appear legitimate.”\textsuperscript{113} This process is conducted by an array of transactions involving different financial institutions at the end of which cash generated by criminal activity (e.g. drug sales) is transformed into funds in a private bank account that can be legitimately used for personal consumption, at best, or for other anti-social activities (e.g., funding terrorism), at worst.\textsuperscript{114} Money laundering can therefore be viewed as a derivative crime: the criminality of the financial transactions involved in laundering depends on the criminality of the source of the funds being laundered. On this basis these transactions abuse bank secrecy and other aspects of financial regulation in order to erase the criminal origins of the funds.\textsuperscript{115} As part of an effort to fight crime, states have adopted international agreements and national laws that both prohibit different aspects of money laundering is:

\begin{quote}
“(i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.”;
\end{quote}

\textsuperscript{113} See President’s Commission on Organized Crime, Interim Report to the President and Attorney General, The Cash Connection: Organized Crime, Financial Institutions, and Money Laundering 7 (1984); on the international level, see similarly, article 6(1)(a) UNCATOC, whereby money laundering is:

\begin{quote}
“(i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime.”;
\end{quote}

\textsuperscript{114} For a description of money laundering see, e.g., Mariano-Florentino Cuéllar, The Tenuous Relationship Between the Fight Against Money Laundering and the Disruption of Criminal Finance, 93 J. CRIM. L. & CRIMINOLOGY 311, 326-38 (2003).

\textsuperscript{115} Id.
the laundering process, and require financial institutions to report suspicious transactions.

Once criminalized, money laundering is an activity that typifies the model we describe in this article. Money launderers engage in a business-like activity, which is purely motivated by financial gain. In addition, the activity itself is highly mobile worldwide. Unlike past years, when criminals had to carry suitcases filled with cash to near-by states, current technology allows for swift and inexpensive money transfers around the globe that enable launderers to pick and choose the jurisdiction in which they will commit at least some segments of the laundering.

Viewing the political economy of money laundering, the interesting players for present purposes are the financial institutions. Financial institutions have two incentives to ease money laundering regulation. First, such regulation creates significant direct costs due to the vast reporting requirements. Second, and more importantly from our perspective, the displacement of laundering to jurisdictions with lenient regulation can cause significant revenue losses for domestic financial institutions.116 Thus, one can see several examples of lobbying conducted by the financial sector in order to ease or prevent money laundering regulation. These examples include small and relatively undeveloped economies in which the banking industry contributes a relatively large part of the GDP, and larger developed economies.117 Even in the United States, until the attacks of September 11, 2001, and the connection increasingly drawn as a result between terrorism

116 For instance, it has been reported that the Bank of New York made as much as $240 million in fees from laundering. See Kathleen A. Lacey & Barbara Crutchfield George, Crackdown on Money Laundering: A Comparative Analysis of the Feasibility and Effectiveness of Domestic and Multilateral Policy Reforms, 23 NW. J. INT’L L. & BUS. 263, 274 (2003).

(d) Sex Crimes

Finally, we would like to point out that the argument presented here can be extended even to the area of sex crimes and the illicit sex trade. While sex crimes tend to be perceived as having much to do with passion and urges, and little to do with rationality, in some cases sex offenders – and those who are susceptible to the satisfaction of their demands - exhibit behavior that is completely in line with the rational-choice model.\footnote{For a comprehensive analysis of an array of policy issues relating to sexual activity from a rational choice perspective see RICHARD A. POSNER, *SEX AND REASON* (1992).} The emerging international “sex tourism” market serves as an example for this type of phenomenon. In the last few years lower travel costs coupled with the reduced search costs brought about by the Internet, have enabled people from developed states interested in engaging in commercial sexual activity that would not be deemed normative in their home states, including pedophiles, to travel around the globe to developing states in which the expected sanction for their acts is significantly lower than in their home states. As one Kenyan observer puts it simply, “[m]en who would never visit brothels in their home states for example, will end up doing so in a foreign state where there is a negligible chance of detection and (or) penalty”.\footnote{See Rose Kisia Omondi, *Gender and the Political Economy of Sex Tourism in Kenya’s Coastal Resorts* 9 (Africa Regional Sexuality Resource Centre, Working Paper, 2003) available at http://www.arsrc.org/downloads/features/omondi.pdf.}

That is to say that equal opportunities exist in western states, but the social and legal sanctions, and chances of detection, are much higher there.
This type of crime displacement has brought about political pressure on national legislatures and law enforcement agencies to align their policies with other states in order not to become a sex tourism attraction. For example, after the British rocker Gary Glitter was sentenced to three years in jail for molesting two girls in Vietnam, local experts reacted by noting that “[s]uch an outcome could reinforce a perception of lax laws in Southeast Asia and attract foreign child molesters who face tougher penalties at home.”\textsuperscript{121} Similarly commentators in Thailand have raised concerns that weak law enforcement and the low probability of detection is drawing sex offenders to the state.\textsuperscript{122} The fear of sex tourism has brought Southeastern Asian states to be aware that differences in policies amongst themselves can also affect the destination of choice of sex offenders. For instance, Tjokorda Bagus of Indonesia's Committee Against Sexual Abuse has noted that “[s]ince Thailand has become more stern in their law enforcement, more pedophiles are coming to Indonesia.”\textsuperscript{123} One should note that given the touristic nature of these crimes, the effects of legal reforms can be global and not regional. A policy change in Southeast Asia can simply cause a “sex tourist” to get on a flight to another part of the globe. Indeed, a Kenyan government report recently pointed out that sex tourism has moved to that African state from Asia as a result of the differential legal situation.\textsuperscript{124}

It should be noted, though, that the phenomenon described here is not limited to developing economies as the case of the recent increase in the age of consent for sex in Canada demonstrates. For years Canada set the age of consent at 14. This relatively low age caused Americans who wanted to engage in sexual acts with young teens to search for partners in Canada. For example, Michael H. Torchia, \textit{Child Sex Tourism Continues in Southeast Asia Despite Legal Efforts}, (March 12, 2006).

Craig Simons, JonBen\textsuperscript{e}t case arrest highlights scope of overseas sex trade Hundreds of thousands of girls and boys believed to work in Asia, which is considered a haven for pedophiles (August 20, 2006).

Torchia, supra note 121. \textit{See also Thailand Under a Familiar Glare}, BANGKOK POST, Aug. 27, 2006 (pointing out that “child sex tourists are more likely to go to Cambodia, Vietnam, the Philippines, or Indonesia, where law enforcement is less strong.”); \textit{Summary of the News: From Jan 19 to Jan 25, 2003}, BANGKOK POST, Jan. 26, 2003 (policymakers aware of sex crimes shifting from Thailand to Cambodia and Bali as a result of new legislation).

Patrick Mayoyo, \textit{Tour Firms 'In Child Sex War'}, Nov. 4, 2004.
Simonson, a 51-year-old man from the United States reportedly traveled to Canada in order to have sex with a 15-year-old girl he met online. Interestingly, a search on his computer revealed extensive research into Canada’s age of consent, pointing out just how rational sex offenders might be. Furthermore, as our theory suggests, the legal arbitrage between the United States and Canada played a role in the Canadian political debate over raising the age of consent. As one Canadian supporter of a bill raising the age of consent noted “[w]e have sex tourism laws for Cambodia and Thailand, when in fact we are becoming a sex tourism destination for America because of our low age of consent laws.” While another supporter of the Bill was quoted saying “Canada has to send internationally a strong message that it is no longer legal to have sex with 14 year-olds.”

III. OPTIMAL INTERNATIONAL CRIME CONTROL

Thus far we have demonstrated that the crime control policies adopted by individual states influence the global distribution of transnational crime, and that they subsequently impact upon the crime control policies adopted by other states. We now turn to explore the normative and prescriptive implications of these findings. We will set out a framework for analyzing the efficiency of crime control measures adopted by states acting in a globalized environment, employing theories of regulatory competition and international cooperation. Although there are many advantages associated with the currently decentralized system of crime control that is generally based on sovereign domestic policies, the mobility of transnational crime and the increasing

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125 Wash State Man Sentenced to 10 Years for Soliciting Teen Online, AP Alert – ID, October 25, 2006.
126 Age of Consent Should be 16, COLLINGWOOD CONNECTION, Nov. 25, 2005, at A1 (quoting Member of Parliament Vic Toews). See also, Salvation Army Applauds Federal Bill to Raise Age of Consent, STONEY CREEK NEWS, July 28, 2006, at 9 (expressing support for the bill because it will “prevent Canada from being a destination for sex tourism”); and Nancy Turley, Age of Consent Should Protect Kids, CAMBRIDGE TIMES (ONTARIO), July 4, 2006 (noting that “Because Canada’s age of consent is only 14, Canada has become a preferred destination for predators to prey on innocent children”).
127 Tory Government to Raise Age of Consent to 16 to Target Sex Predators, AP ALERT - BUS., Feb 8, 2006.
interdependence of national policies require an evaluation of the relative efficiencies of a broad array of international policy instruments. These instruments range from aggressive unilateralism and self-help, through informal and formal intergovernmental cooperation, to more innovative legal regimes such as international criminal standard-setting and the establishment of international state responsibility for harms caused by transnational crime. Moreover, different types of transnational crime represent distinct sets of problems that require different international solutions. Our characterization of international crime control races involving either crime insourcing, crime outsourcing or a heterogeneous combination of both, serves as a systematic reference point for identifying the form of international crime regulation that would be optimal in each case.

1. The Normative Framework: Regulatory Competition and International Cooperation and Regimes

When should states maintain full autonomy over the regulation of criminal activity in their territory, and when – and how – should they cooperate with other states? No less importantly, when will states opt for either of these courses of action? In essence, these are questions that can be framed in the complementary terms of both the general theory of regulatory competition, and institutional theories of international cooperation.

(a) Regulatory Competition

There is a longstanding debate on the efficiency of regulatory competition.\(^{128}\) The core question in this debate is to what degree policy decisions should be allocated to regional or otherwise subordinate political units and to what extent should they be centralized. On one hand, competition is viewed by some as a desirable means to promote the efficient supply of public goods by governments.\(^{129}\) Much like in other market settings, regulatory competition functions as a check on the monopoly power of central

\(^{128}\) For an updated introduction to the topic see Cooter, supra note 23 at 127-48.

\(^{129}\) See Tiebout supra note 24. For an example of a later optimistic view on regulatory competition in the area of environmental regulation see Revesz, supra note 25 at 1233-44.
authority, and helps promote individual welfare. The normative conclusion stemming from this line of thought is that the competitive regulatory market, much like other markets, should be left unregulated. On the international level, this approach agitates against international harmonization and centralization, towards the preservation of national decision-making autonomy, with states acting as competitive agents.

On the other side of the debate lie those who argue that regulatory competition is inefficient. These scholars point out that agents making regulatory decisions within their jurisdiction

130 See Cooter, supra note 23 at 127-29.
131 See Tiebout supra note 24 at 422 (“Just as the consumer may be visualized as walking to a private market to buy his goods, the prices of which are set, we place him in the position of walking to a community where prices (taxes) of community services are set”).
132 To be sure, scholars who have applied the theory of regulatory competition to international affairs are not opposed to international harmonization of substantive norms as such, but rather examine the optimal balance between harmonization and competition on an issue-specific basis. See various contributions in REGULATORY COMPETITION AND ECONOMIC INTEGRATION (Daniel C. Esty & Damien Geradin eds., 2001). Moreover, a strong case for international regulatory competition based on the allocation of horizontal (i.e., inter-state) regulatory jurisdiction is made by Trachtman. See Joel P. Trachtman, International Regulatory Competition, Externalization, and Jurisdiction, 34 HARV. INT’L L. J. 47 (1993); and Joel P. Trachtman, Regulatory Competition and Regulatory Jurisdiction in International Securities Regulation, in Esty & Geradin, Id. at 289.
might be facing collective action problems caused by strategic interdependence with the effects of policies made in other jurisdictions.\textsuperscript{134} In these situations, often modeled as non-cooperative games such as the prisoners’ dilemma, the agents might have preferred to reach a cooperative solution, yet each agent's individual interest is to defect, leading the group to an inefficient equilibrium in which all its members defect.\textsuperscript{135} Thus, some type of limitation on the ability of jurisdictions to compete among themselves can be justified from an efficiency perspective.

In practice, both of these extreme positions must be qualified, and the optimal structure of regulation or competition depends on the specific circumstances. The regulatory market can function as an efficient method to supply public goods, as long as a series of conditions are satisfied. Importantly for our purposes, one of the necessary conditions for the market to reach an efficient outcome is the lack of externalities.\textsuperscript{136} Thus, the focus of the discussion shifts to the existence of externalities.\textsuperscript{137} If externalities exist in the area of crime control, they will undermine the efficiency of the regulatory market, and there might be a need to adopt policies that will assist states to deal with them.

There are two main groups of advantages that can be attributed to a regulatory market for crime control. First, the competitive pressures created by a decentralized international market for crime control can increase the efficiency of domestic crime control policies. States that do not develop a well functioning and effective law enforcement system will be driven to adopt efficient crime control policies as their crime rate increases because of incoming displacement. Furthermore, competitive forces will drive states over time to innovate and develop new ways in which

\textsuperscript{134} Bednar & Eskridge, \textit{id.} at 1470-75
\textsuperscript{135} \textit{Id.}
\textsuperscript{136} In his model of regulatory competition Tiebout explicitly assumed away all externalities. \textit{See} Tiebout, \textit{supra} note 24 at 419. A transnational externality emerges when "actions by one state create an uncompensated interdependency for other nations; \textit{see} TODD SANDLER, GLOBAL COLLECTIVE ACTION 69 (2004).\textsuperscript{137} For a similar framework evaluating the efficiency of regulatory competition with respect to corporate law see Lucian A. Bebchuk, \textit{Federalism and the Corporation: The Desirable Limits on State Competition in Corporate Law}, 105 \textit{Harv. L. Rev.} 1435, 1455-58 (1992).
to combat crime. In such a setting each state can function as a “laboratory” in which new crime control policies are tested and later adopted by other states if they succeed.

A second group of advantages of international decentralization is that it permits governments to adopt policies that are tailored towards the preferences of their specific constituencies. This is desirable not only from the perspective of efficiency (since preferences are better satisfied) but also from the viewpoint of democratic legitimacy. Moral diversity and distinct social norms might lead different states to different legal regulation of the same activities. Decentralizing the control over criminal justice allows communities that have different views on issues such as prostitution and the definition of illicit drugs to design regulation that best fits their preferences. Similarly, communities can differ as to the manner and magnitude of appropriate punishment due to non-consequentialist reasons. For example, while one state might view the death penalty as morally repugnant and avoid utilizing it, another might see it as the appropriate way to punish criminals.

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139 In the American context the concept of the states as “experimental laboratories” for public policy has been a powerful justification for federalism. The term was originally coined by Justice Brandeis in New State Ice Co. v. Liebman, 285 U.S. 262, 311 (1932) (Brandeis, J., diss.).

140 This is the central argument in favor of subsidiarity in international regulation as a principle whereby decisions should be taken at the lowest, and most specialized, possible level. “The more local and the more specialized an international norm is, the better its legitimacy, or its ‘compliance pull’” (see Andreas L. Paulus, Subsidiarity, Fragmentation and Democracy: Towards the Demise of General International Law?, in The Shifting Allocation of Authority in International Law: Considering Sovereignty, Supremacy and Subsidiarity (Tomer Broude & Yuval Shany, eds., 2008 (forthcoming)).

141 Interestingly, there is actually a lot of convergence regarding how communities judge different crimes. See Paul H. Robinson & John M. Darley, Intuitions of Justice: Implications for Criminal Law and Justice Policy, 81 S. Cal. L. Rev. 1, 8-12 (2007) (reviewing studies on the matter).

142 Note that the non-consequentialist views with respect to sanctioning may have consequentialist implications to the extent that people’s welfare is affected by the appropriateness of the sanctions assessed to criminals. For a connection between non-consequentialist views and welfare economics see Louis Kaplow & Steven Shavell, Fairness Versus Welfare 21-23 (2002) (presenting the concept of a taste for fairness).
Decentralizing the control over these decisions allows more communities to adopt what they see as the appropriate sanction.

Yet decentralizing crime control also has significant drawbacks, which stem from some of the pathologies of markets. The central insight of our positive analysis is that crime control policies adopted by states do in fact create externalities. There are two types of externalities that states can create in this respect. First, some crimes committed in states create harm in other states. This is the case, for instance, when an illicit drug is manufactured in one state and consumed in another. In such cases, crime control efforts of the states in which crime originates create positive externalities by reducing harm in other states; and vice-versa - crime control failures of such states create negative externalities by raising harm in other states.\(^\text{143}\) Second, as we have seen, crime control efforts in one state will cause criminal activity to be displaced to other states. In such events, the crime control efforts of one state cause a negative externality in other states. This is the case, for example, when the production and possible consumption of an illicit drug moves to another state as a result of tough regulation.

Importantly, from a normative perspective, these externalities can lead states acting in a dynamic globalized setting to equilibria in which they adopt sub-optimal crime control policies that do not maximize aggregate welfare. Indeed, these are precisely the situations we have described above as outsourcing races and insourcing races, as will be explained in further detail below.

Finally, our analysis of the efficiency of decentralization cannot be complete without referring to its distributional aspects. The regulatory market - much like other competitive markets - measures the agents’ willingness to pay given their initial endowment, and not their actual expected welfare gain.\(^\text{144}\) For instance, the fact that in an organ market a rich person will be willing to pay more than a poor person to acquire a heart that can save both their lives, only reflects her higher ability to pay, and does not represent a higher valuation of the heart. A large body of

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\(^{143}\) This claim is tied to a long line of criminological studies that point out the positive diffusion of law enforcement efforts from one area to another. See generally, Ronald V. Clarke & David Weisburd, *Diffusion of Crime Control Benefits: Observations on the Reverse of Displacement*, 2 CRIME PREVENTION STUD. 165 (1994).

public finance literature has analyzed the fiscal disparities associated with decentralization.\(^{145}\) In general, this literature points out that decentralization can bring about inequalities, which benefit wealthier groups. In the area of crime control, poor states might suffer tremendously from the adverse affects of cross-border crime being displaced into them, but not invest the necessary resources in order to keep up with other states simply because they cannot afford to do so. Suffice it to note that it is quite clear that most states in the world simply cannot afford to indulge in the per capita incarceration rate that the United States currently maintains, if they wished to use this dimension in order to increase expected sanctions in their territory.\(^{146}\) Indeed, it is not surprising that less developed states are in many cases the most prone to suffer from crime outsourcing – as the examples of Meth production and sex tourism have shown.\(^{147}\)

**(b) International Cooperation and Regime Theory**

The above analysis suggests that in many cases of transnational criminal activity, enforcement-related externalities and inefficiencies will result from the absence of centralized international crime control. Had these conclusions been related to crime insourcing and outsourcing among political units of a federal state, rather than among states, our general prescriptive recommendation would likely have been to consolidate federal crime control policy as asserted by the federal government, at least to the extent necessary to remove inefficiencies. However, here we are discussing international crime control. In contrast to the federal environment, the international political system is characterized by anarchy, that is, by the absence of central authority,\(^ {148}\) and full

\(^{145}\) See James M. Buchanan, *Federalism and Fiscal Equity*, 40 AM. ECON. REV. 583 (1950). In the American context this issue has manifested itself through the debate over the desirability of federal grants to the states. See, e.g., Ilya Somin, *Closing the Pandora’s Box of Federalism: The Case for Judicial Restrictions of Federal Subsidies to State Governments*, 90 GEO. L.J. 461 (2002).

\(^{146}\) The United States currently has the highest per capita incarceration rate in the world. See Robert Batey, *The Cost of Judicial Restraint: Forgone Opportunities to Limit America’s Imprisonment Binge*, 33 NEW ENG. J. ON CRIM. & CIV. CONFINEMENT 29, 29 (2007) (citing data from the sentencing project).

\(^{147}\) See supra notes 84-88; 119-127 and accompanying text.

\(^{148}\) In articulating the “security dilemma” pervasive among nuclear powers, John Herz referred to “anarchic society” as “a fundamental social constellation, one where a plurality of otherwise interconnected groups constitute ultimate units of
regulatory centralization as such, let alone formal crime control centralization, is clearly not a viable option in the contemporary international environment in which state sovereignty still holds sway as a fundamental principle. The negation of externalities and the removal of inefficiencies in the regulation of transnational crime must therefore be sought through other means. We now take our analysis a step further, into IR theory, in order to examine what efficient alternatives may exist to formally centralized crime control, focusing on the effects of unilateral policies, on one hand, and on international cooperative regimes, on the other.

Roughly stated, IR theory has three streams of thought: Realism, Neo-Liberalism, and Constructivism. Each of these streams explains the emergence of international regimes in its own terms. Realists see the state as the primary actor in international relations, framing it as a rational, self-interested and welfare-maximizing unitary actor; the Realist’s state is interested in relative gain, and operates in a competitive, power-based international environment. Realists are skeptical about international cooperation, preferring to explain the emergence of international regimes in the power-based terms of theories such as ‘hegemonic stability,’ in which the dominance of a great power allows it to political life, that is, where groups live alongside each other without being organized into a higher unity.” John Herz, *Idealist Internationalism and the Security Dilemma*, 2 WORLD POLITICS 157, 157 (1950). See also Hedley Bull, *The Anarchical Society: A Study of Order in World Politics* (1977).

149 In considering the prospects for international harmonization of rules regarding domestic regulatory subsidies, Trachtman (supra note 122) notes that “[w]e can assume that international society is unprepared for such an effort toward “essential harmonization” on any comprehensive basis”; this is a fortiori true in the even more sensitive areas of criminal regulation. Sandler notes that “autonomy has great sway over nation-states, particularly when it comes to law enforcement.” See Sandler supra note 136 at 161.

150 According to Krasner’s classic definition, international regimes are “implicit or explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations. Stephen Krasner, *Structural Causes and Regime Consequences: Regimes as Intervening Variables, in International Regimes* 1 (Stephen Krasner ed., 1983). For discussion of the definition of international regimes, see Andreas Hasenclever, Peter Mayer & Volker Rittberger, *Theories of International Regimes* 8-22 (1997).

151 See Abbott supra note 27 at 348-351; and Slaughter supra note 27 at 722.
provide the regime as a collective good to the international community, either benevolently or coercively.

Neo-liberals, or liberal institutionalists, share the Realists’ view of the state as a rational egoist; however, they do not consider the state to be driven by a quest for power and relative gain in comparison to other states. Crucially, where Realists see international regimes as based on power structures, Neo-liberals consider regimes to be predicated on the interests of all participating actors in the creation and maintenance of the regime. On this basis Neo-liberalism then models the strategic constellations of state interests in particular issue-areas in order to explain the structure of cooperation that might emerge. Primarily based on prisoner’s dilemma models, Neo-liberal, institutionalist explanations of international cooperative regimes extend to a broader set of game-theoretic models.

Constructivists are dissatisfied with the assumptions of state rationality that guide both the Realist tradition and the Neo-liberalist approach, stressing instead the role of causal and shared normative beliefs in shaping state behavior. As a result they emphasize the role of knowledge and learning, arguing that “epistemic communities” or transnational expert networks with shared values shape the perceptions of political actors that guide state behavior in ways that are at times inconsistent with the rational choice framework of the other streams of IR.

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154 See Keohane, supra note 152 at 67.

155 Id. at 27. See also Hasenclever, Mayer and Rittberger supra note 150 at 26.

156 See Keohane, supra note 152 at 26-27.

157 Id. at 68.

158 For an overview of game theoretic applications to IR, see Duncan Snidal, *The Game Theory of International Politics*, in Oye supra note 28, at 25.

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Each of these approaches has implications for the study of transnational crime and the design of international crime control. For example, the Realist mindset is most evident in Andreas and Nadelmann’s assertion that global crime control is in essence a hegemonic program pursued through mainly benevolent methods. Alternative explanations express constructivist tendencies, such as Löwenheim’s sophisticated approach towards “persistent agents of transnational harm” (e.g., pirates, drug traffickers and terrorists), themselves viewed as transnational non-state actors who trigger fierce sovereign reaction when they threaten the moral authority of the state.

To our mind the normative framework we have set out above clearly best correlates with the Neo-liberal institutionalist approach. In our analysis, national crime control policies are formulated by each state mainly in consideration of its (self-defined) interests. The negative externalities states impose on one another through their crime control policies are not, in the main, deliberately intended to inflict transnational harm or to achieve some advantage in purely Realist terms of power (at least we have not seen any indication of such attitudes in our cases studies of drugs, money laundering, gambling, and the sex trade). The Realist framework is therefore less relevant to a general understanding of international crime in our view. And while a Constructivist frame would no doubt highlight elements of internationally shared norms regarding crime as well as elements of an epistemic community of law enforcement (perhaps typified by Interpol), we are actually most interested in those cases in which there in fact exists international normative diversity, and crime control remains very much a matter for domestic authorities to consider and pursue.

Hence, in evaluating existing and proposed solutions to the inefficiencies of international decentralized crime control in the different circumstances already explained, we will combine the insights of regulatory competition theory and of IR theory. On this

160 See Andreas & Nadelmann supra note 13 at 243: “it would not be an exaggeration to say that much of the internationalization of crime control has in practice meant Americanization […] for the United States, exercising policing hegemony through international institutions enhances legitimacy, is easier and less costly than the raw exercise of power.”


162 See supra note 12.
basis, we will evaluate the efficiency and effectiveness of different solutions.

2. Evaluating Existing and Suggested Solutions

(a) Outsourcing Races

In outsourcing races, or ‘races to strictness,’ interacting states are interested in reducing the amount of local crime production in question. As a result they will tend to adopt crime control policies that are harsher than those they would have adopted had they operated in isolation from one another. The resultant crime displacement can create an international crime control ‘arms race’. Domestically, this may lead to the inefficiencies associated with over-enforcement. For example, states might invest inefficiently high resources in funding their police forces in an attempt to raise the probability of crime detection, and not in other public goods (e.g., health care, education, etc.) that do not create negative externalities in other states. In the game-theoretic terms of international regime theory, such states are in a prisoner’s dilemma situation. No such ‘outsourcing’ state can afford to unilaterally relax its domestic enforcement efforts, because it might then face crime displacement from counterpart states that enact high levels of enforcement. A more centralized international crime control regime would have prevented this inefficient form of regulatory competition, while possibly achieving a comparable degree of crime control.

The prisoner’s dilemma faced by crime-outsourcing states is not, however, unresolvable. Game theory and its international

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163 For those unaccustomed to the economic perspective on crime control the key point in this regard is that there is an efficient (usually positive) level of crime in society, and that investing resources in order to reduce crime beyond this point is socially wasteful. For the development of this idea see Becker, supra note 22 at 180-85 (deriving the optimal level of crime).

164 For a succinct explanation of the prisoner’s dilemma, see Sandler supra note 136 at 20-25. Sandler briefly presents the phenomenon analyzed here as an example of an international collective action problem. Id. at 160.

165 There is a wealth of literature on this subject. The pathbreaker in the field was Robert Axelrod & William D. Hamilton, *The Evolution of Cooperation*, 211 SCIENCE 1390 (1981), that focused on reciprocal “tit-for-tat” strategies. See also Robert Axelrod, *The Emergence of Cooperation among Egoists*, 75 AM. POL.
regime applications predict that the chances for the emergence of international cooperation are improved when the ‘game’ is an iterated one, and when certain additional circumstantial and institutional conditions exist. Clearly, crime control policies are not a one-time policy decision and states are therefore repeat players. Thus, the potential long-term benefits associated with cooperation can cause states to adopt policies that are mutually beneficial despite the short-term tendency to defect.

Cooperative policies might emerge spontaneously, without formal agreement; Just like the neighbors in Shasta County, states can also achieve cooperation without the use of formal legal mechanisms. Such policies would have the advantage of retaining the semblance of sovereignty and independent decision-making. They would, however, be difficult to detect. Alternatively, under the right conditions, states could opt for more formal coordination and cooperation. Cooperation in crime outsourcing races is thus a possibility; we must therefore ask what would constitute the substance of such cooperation for it to be efficient.

The first-best policy recommendation that emerges from our analysis of crime outsourcing races is, in our view, straightforward: states should agree upon a set of maximum criminal standards that they would not be permitted to exceed. These standards could relate to definitions of offences (i.e., the threshold of criminalization), the severity of criminal sanctions, and also to levels of enforcement. Such agreements would allow states to maintain predefined optimal levels of crime and crime control in different issue-areas, without imposing externalities on each other, and without wasting enforcement resources that could be redirected to other social ends.

In realistic terms, however, we must acknowledge that there are several reasons that such a recommendation would not be

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outsourcing and insourcing global crime

adopted by states. First, the concept of inefficiently excessive crime control measures runs against the basic intuition of most people who view crime as inherently bad, and any measure adopted against it as necessarily good. Consider, by analogy, that many private crime control measures adopted by individuals are potentially inefficient since they are observable and only bring about crime displacement. Nonetheless, authorities are usually reluctant to regulate such private crime-control measures, and do not prevent people from protecting their private sphere in the way they might see fit. It would seem that if that is the situation in the state-citizen constellation, in which the authority of the state is mostly uncontested, the possibility of regulating the efforts of states to reduce their own crime rates by a cooperative, maximum standard setting international mechanism would *a fortiori* be slim at least at this point in time.

Second, even if there were an international consensus (global or regional) on the legitimacy of setting maximum crime control standards, as a practical matter such an exercise would be a daunting task. As we have seen, criminals are sensitive to an array of policy variables that determine the expected costs of crime. Thus, international maximum standards would have to account for an assortment of issues such as the probability of detection, the probability of conviction and the level of sanctions. Regulating all of these dimensions of public policy on the international level is clearly a significant challenge.

These problems have led to the current situation in which there are to our knowledge no existing examples of international maximal standards established in the area of criminal law. Instead, international efforts aimed at cooperation in the area of crime

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169 Note that even easily comparable measures such as average prison terms might be difficult to compare once you take into account that different prison conditions might create different deterrence levels. See Lawrence Katz, Steve Levitt & Ellen Shustorovich, *Prison Conditions, Capital Punishment, and Deterrence*, 5 AM. L. & ECON. REV. 318 (2003) (exploring the deterrence value of harsh prison conditions).
control focus on setting minimal standards. While the use of minimal standards might be justified in order to deal with problems created by insourcing and the resultant ‘races to leniency’ (as we discuss below), ignoring the diametrically symmetric problem associated with outsourcing crime is difficult to justify.

Given the impractical nature of setting maximum criminal standards we turn to explore second-best alternatives that in the long-term could be more achievable as international normative regimes aimed at increasing the efficiency of crime control. One option that might be more palatable to policymakers is the establishment of internationally agreed maximum criminal enforcement standards that states are allowed to stray from in certain circumstances. Two models from international trade regulation – safeguards and Sanitary and Phytosanitary (“SPS”) measures - might serve as useful models in this respect.

First, according to WTO law, states agree to set maximum levels of import protection, but under the ‘escape clause’ they are allowed to impose safeguard measures, temporarily raising trade barriers in the case of an unforeseen increase of imports of any product which is causing, or which is likely to cause, serious injury to their industry. Analogously, states could agree upon a maximum penalty for a drug offense as an international standard. This would generally reduce negative externalities and prevent inefficient over-enforcement. However, if faced with unforeseen increased rates of this offense within their jurisdiction, they would be permitted to temporarily increase the penalty and the level of enforcement. Just as the trade safeguards clause was instrumental in encouraging decision-makers to lower trade protection, so might

170 See infra subsection III 2. (b).
173 See Article XIX GATT.
a ‘crime control safeguard’ permit decision-makers to agree on maximum levels of criminal enforcement.

Second, under the SPS Agreement, WTO members privilege non-binding international public health standards set by expert groups. However, states retain the right to set higher standards, provided that they are based on scientific risk assessment. In crime control, one could envision an international group of crime experts setting an optimal standard of enforcement and sanction. States would then commit to either follow this standard, or provide sufficient evidence that this standard is insufficient within their jurisdiction. In any case, such a standard would provide states with a benchmark for international coordination.

An alternative path that could be explored, for the sake of optimizing international crime control where races to strictness emerge, would not set an international enforcement standard at all. Rather, states would agree to a liability rule (or establish it on international customary law) whereby they would compensate each other where it could be proved that an excessively high level of criminal enforcement had caused transnational harm by displacing crime to another national jurisdiction. This is analogous to the acknowledgement by the international community of the legal consequences of transnational environmental harm in the 1930s. Conceptually, negative crime enforcement externalities are similar to the exportation of environmental costs, even if they are the result of over-enforcement. We are not oblivious to the procedural and

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175 The SPS preamble and Article 3.4 SPS refer to international expert groups such as “the Codex Alimentarius Commission, the International Office of Epizootics, and the relevant international and regional organizations operating within the framework of the International Plant Protection Convention”. Article 3.2 SPS establishes a presumption that SPS measures conforming to international standards are SPS consistent; but Article 3.3 SPS permits WTO Members to introduce higher standards of protection if it is scientifically justified. Article 5 SPS sets out the rules for scientific risk assessment that might justify such higher standards. For detailed commentary of the SPS agreement and its WTO case law, see Joanne Scott, THE WTO AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES: A COMMENTARY (2007).

176 For a similar proposal in the context of local governments see Amnon Lehavi, Intergovernmental Liability Rules, 92 VA. L. REV. 929 (2006).

177 We refer to the famous Trail Smelter arbitration; see Trail Smelter Arbitral Decision, 33 AM. J. INT’L L. 182 (1939); and Trail Smelter Arbitral Decision, 35 AM. J. INT’L L. 684 (1941). For contemporary analysis, see Transboundary Harm in International Law (Rebecca M. Bratspies & Russel A. Miller eds., 2006).
probatory problems that such a legal regime would raise, but in the absence of agreement on maximum criminal standards, consider this idea worthy of further exploration.

Finally, some aspects of crime outsourcing can be dealt with through the unilateral broadening of the criminal jurisdiction of outsourcing states. In general, international law recognizes five distinct justifications for the assertion of a state’s national criminal jurisdiction: (1) territorial; (2) nationality of the perpetrator; (3) nationality of the victim; (4) protective; and (5) universal. Nonetheless, traditionally, Anglo-American criminal law has tended to minimize the use of extraterritorial jurisdiction, and has focused on crimes committed within the jurisdiction. This tradition has been neglected in recent years as the US and other states have prosecuted those of their nationals who have committed crimes outside of their home jurisdiction, even if these crimes have little consequences within that jurisdiction. The most prominent example of this trend relies upon laws enacted by several states that criminalize illicit sexual conduct practiced extraterritorially, outside of the national jurisdiction. These new laws, aimed at fighting the growing sex tourism industry, function under the assumption that several developing countries simply cannot generate sufficient deterrence in order to combat these crimes. Thus, developed countries from which sex tourists originate, attempt to provide additional deterrence by sanctioning offenders at their end. Once

178 It has been argued that the Trail Smelter ‘polluter pays’ principle cannot be extended to the effects of drug trafficking, because its transnational harms are more complex, diffuse and causally attenuated than environmental harm; see Judith Wise & Eric L. Jensen, International Drug Pollution? Reflections on Trail Smelter and Latin American Drug Trafficking, in Bratspies & Miller, Id., 281. However, we do not consider this analysis definitive; similar arguments could have been raised against international environmental accountability at the time of its establishment. In any case, Wise and Jensen address problems cause by under-enforcement, not over-enforcement.


sex offenders are sanctioned in their home country, the dynamics associated with competition between target states is diminished.

(b) Insourcing Races

While in the case of outsourcing the normative analysis is relatively straightforward, since by definition states are not interested in hosting the regulated activity, insourcing poses more difficult normative problems. In insourcing races, or “races to leniency,” states are interested in attracting elements of transnational criminal activity that they perceive as desirable – usually the production of crime, but not its consumption. In these cases, the value of different policies depends on the scope of externalities they create on one hand, and the benefits they generate on the other. If negative externalities are relatively small then one might view regulatory competition as a positive means to achieve legislative diversity. This may be the case with respect to consumption activities that take place within the producing jurisdiction itself (e.g., local drug consumption, gambling in physical casinos, etc.). If, on the other hand, negative externalities imposed on other states are significant, then competition will drive states to an inefficient outcome in which the level of crime is excessive. For example, this might be the case with respect to unregulated online gambling where the vast majority of states might actually want to outlaw the practice, yet given the competitive nature of regulation they realize they will suffer from the harms associated with the activity in any event, and therefore might as well reap its benefits as well. The consequence is a reduction of aggregate welfare that a more centralized international system could have avoided.

The combination of local benefits from crime and negative externalities created by it may trigger an insourcing race, risking the emergence of excessive crime rates. Such situations, in game-theoretic terms are assurance games or stag hunts, not a prisoner’s dilemma: the pay-offs of mutual cooperation (e.g., in the form of minimum standard setting) are greater than the maximum payoff of unilateral defection; and still, the actors reach an equilibrium in which all of them have defected rationally – leading to an even lower payoff in the shape of higher – and costlier - crime rates.  

\[\text{182} \]

\[\text{On the 'assurance' or 'stag hunt' game, see Hasenclever, Mayer and Rittberger supra note 150 at 49.}\]
In such situations, institutional IR theory would call for international cooperation that creates incentives for states to raise sanctions and enhance enforcement in order to lower crime rates. Unlike the outsourcing race, however, there are less political barriers to setting minimal standards with respect to crime control since the political economy of local crime control policies tends to foster support for almost any initiative that raises sanctions. Thus, we find several salient examples for such international cooperation already in existence.

The European case is perhaps the most developed, indeed satisfying many of the theoretical conditions for cooperation, particularly the selectivity of group membership, the structure of the population, and the existence of a tested institutional structure for cooperation. In Europe, not only have the member states of the European Union ("EU") developed and established an agreed central criminal intelligence agency, the Europol, but also a specialized agency for inter-judicial and prosecutorial cooperation, the Eurojust. Furthermore, under the EU’s ‘second pillar’ of Justice and Home Affairs ("JHA"), EU member states have undertaken legislative projects aimed at harmonizing and/or approximating national crime-control and related policies in several areas, such as organized crime, drugs, money laundering, cybercrime and trafficking in firearms. The rationale of these efforts follows the logic of our theory, aiming at the reduction of externalities caused by differential national policies, leading to the creation of a more efficient joint crime control policy.

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183 See Stuntz, supra note 26.
184 See Axelrod & Keohane supra note 167.
exists EU legislation that establishes minimal provisions for criminal penalties related to drug offenses. Note, however, that while such cooperative policies might overcome the crime control arbitrage associated with insourcing problems, they would be counter-productive if states are actually facing an outsourcing problem. The European model does not appear to be sensitive enough to this possibility.

On the multilateral international level, cooperation in crime control is less developed than in the European space, but similarly focuses on issues associated with insourcing crime. Most formal international criminal cooperation is a reciprocal exercise in enabling states to impose their sovereign authority in areas of criminal enforcement, such as extradition, legal assistance, mutual recognition and transfers of convicted persons. Where there are attempts to set international crime control standards, they tend to be of the nature of minimum standards. A central example is the UN CATOC, the main international instrument aimed at combating organized crime. The CATOC establishes an obligation upon signatory states to criminalize participation in organized criminal groups (article 5(1)), and then requires states to make the relevant functioning of the European judicial area could be undermined by differences between national criminal legislation. Approximation of legislation is needed to avoid criminals using differences between national legislations to operate from one EU country toward others’); and Council of the European Union, EU Drugs Strategy (2005-2012), 15074/04, Brussels, 22 November, 2004 at 5 (“Member States should consider the impact of their national strategies on other Member States, the ways national strategies of different Member States can be mutually supportive”).

191 Which is, no doubt, part of the crime control problem in drugs in Europe, which is in part an outsourcing race, in part a heterogeneous race; see Caroline Chatwin, Drug Policy Developments within the European Union: The Destabilizing Effects of Dutch and Swedish Policies, 43 BRIT. J. CRIM. 567 (2003) (discussing the effects of divisions in policy styles between EU member states).
193 See note 6 supra.
194 The CATOC also criminalizes money-laundering and certain forms of corruption; however, this would appear to be consistent with the view that states
offenses “liable to sanctions that take into account the gravity of the offense” (article 11(1)). This would seem to leave states with a good deal of crime control discretion. However, article 11(2) requires states party to the CATOC to “endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered […] are exercised to maximize the effectiveness of law enforcement measure.”

Although the real effect of this provision is questionable, being somewhat of a soft ‘best efforts’ obligation, it clearly encourages states to increase their enforcement measures. The CATOC and similarly worded international treaties thus focus mainly on insourcing and do not restrain the tendency of outsourcing states to over-enforcement but rather legitimize it.

The cooperational problems associated with insourcing crime can also result in the strategic use of policy tools aimed at structuring the incentives of insourcing states. In the domestic sphere, a common legal response to individuals who create negative externalities is the use of penalties in order to alter their incentives. Tools such as tort law, criminal law, and taxation set prices that can structure people’s behavior in an efficient way. In the area of

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195 Emphasis added. McClean points out that this provision is virtually identical to article 3(6) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, opened for signature Dec. 19, 1988, 28 I.L.M. 493. See David McClean, Transnational Organized Crime: A Commentary on the UN Convention and Its Protocols (2007) 133. Importantly for our purposes, McClean notes that “the authors of the provision were concerned that withdrawal of charges, or plea bargains as to the level of offence or the likely sanction might be secured by improper means” (Id.).

international cooperation, by extension, the use of such incentives can be difficult, since generally, the international community has limited abilities to legitimately enforce sanctions on states. Thus, in the international context we can observe a unique use of both negative incentives – sticks, and positive ones – carrots, in order to achieve the desired outcome.

A concrete example of a non-unilateral regime that is based mostly on carrots can be found in the context of the Organization of Economic Co-Operation and Development (OECD). The OECD is a compact and essentially elite international organization whose members are the developed global economies. While membership in the organization might have little direct payoffs, it is seen as a stamp of approval or accreditation for emerging economies and carries an array of indirect benefits. Thus, states have an incentive to comply with the requirements expected by the organization in order to be admitted. This, in turn, enables the OECD to cause states to adopt policies that may run against the narrow interest of the acceding state. For example, Israel has recently adopted serious reforms in areas such as IP protection and money laundering in order to comply with the OECD requirements. These reforms led the OECD to open a formal discussion on accession with Israel in May of 2007.\textsuperscript{197} Notably, several of the standards that OECD members are expected to adhere to relate to transnational criminal issues such as money laundering and bribery.\textsuperscript{198}

Additionally, in a more Realist ‘hegemonic’ vein, incentives for cooperation on crime control matters can be generated unilaterally by powerful states that have the ability to create an array of carrots and sticks in order to incentivize insourcing states to adopt minimal crime control efforts. These measures can be of an economic nature, if the reduction of transnational criminal activity is tied to financial aid or international market access. In addition, unilateral acts can attempt to make use of the normative power of powerful states, and focus on shaming countries who behave in a


way that creates negative externalities.\textsuperscript{199} For example, there are several blacklists and watch lists, operated by the United States that contain the names and identities of all countries engaging in the illicit behavior. A concrete example of such a unilateral policy can be found in the US policies regarding illicit drugs. According to the Foreign Relations Authorization Act ("FRAA") the president must submit to the Congress an annual report identifying states that serve as major centers for the production or distribution of illicit drugs.\textsuperscript{200} States included in this list can, as a result, lose fifty percent of the financial support they receive from the United States.\textsuperscript{201} In addition, according to the Act the United States Executive Director of each multilateral development bank must vote against any loan or other utilization of the funds of their respective institution to any listed state.\textsuperscript{202} Another example is the EU's former Generalized System of Preferences ("GSP") which granted trade preferences to states that pursued policies aimed at combating drug production.\textsuperscript{203}

Unilateral policies such as the FRAA have both advantages and disadvantages. The clearest advantage is their effectiveness. Unilateral enforcement creates a clear decision making process that can lead to substantial sanctions on nations that do not comply. Thus, one can point out several examples of states that reformed their policies as a direct result of the threat unilateral enforcement. In the area of human trafficking, for example, Israel has amended its criminal code and begun to enforce this legislation as a result of its inclusion in the State Department report.\textsuperscript{204} This move can be


\textsuperscript{200} See 22 U.S.C.A. § 2291h. Updated information on the application of the Act can be found at the website of the State Department. See http://www.state.gov/p/inl/c11766.htm (last visited July 3, 2007).

\textsuperscript{201} See 22 U.S.C.A. § 2291j (a)(1).

\textsuperscript{202} See 22 U.S.C.A. § 2291j (a)(2).


\textsuperscript{204} In 2006 Israel was put on a watch list prior to being categorized as a Tier 3 country in the State Department’s report on human trafficking. See TRAFFICKING IN PERSONS REPORT 46 (2006) available at
explained by the threat on the American aid to Israel and by the
shaming effect caused by the inclusion in an official list of the state
department.

On the other hand, unilateral enforcement suffers from
several drawbacks that stem from the fact that it is conducted in
order to serve the (hegemonic) interests of the state initiating it, and
therefore will not necessarily serve the interests of aggregate global
welfare. First, in many cases the issues unilateral enforcement
focuses on are those that are of interest to the initiating states. These
could be economic interest, as is the case with the strong emphasis
the United States puts on enforcing intellectual property rights, or
other political interests, as is the case with the pressure the United
States puts on other states with respect to illicit drugs. Yet a
unilateral mechanism might circumvent this balancing and force a
solution that is not necessarily welfare maximizing. Second, within
the issues that are enforced unilaterally, enforcement will be subject
to the political interest of the enforcing state. For example, the
FRAA subjects the sanctioning regime of the Act to the national
interests of the United States. The President has routinely used
this authority to sustain American financial aid to countries listed as
major centers of drug production and trafficking, in order to
promote other interests such as the war against communism in the
past and the war against terror in the present. An additional
drawback of unilateral policy-making has to do with its
consequences on the domestic political landscape of the states being
pressured. Concepts such as sovereignty and senses of national
independence might in themselves drive people to oppose policies
that are adopted as a result of external pressure. Thus, policies that
could have been adopted voluntarily or multilaterally might run into
opposition if they are imposed by acts of other countries. For
instance, U.S. attempts to force the Colombian government to
change its laws so that they would prohibit narcotics smuggling.

http://www.state.gov/documents/organization/66086.pdf. Following this Israel
amended its legislation on the matter and appointed a special coordinating
prosecutor in order to improve enforcement. See Ruth Eglash, Israel Still Falls
See 22 U.S.C.A. § 2291j (b)(1)(B) (creating a “vital national interest”
exception to the certification process).

See Jimmy Gurul, The 1998 U.N. Convention Against Illicit Traffic in
Narcotic Drugs and Psychotropic Substance – A Ten Year Perspective: Is
International Cooperation Merely Illusionary?, 22 FORDHAM INT’L L.J. 74, 86-7
through various unilateral sanctions, achieved the exact opposite goal from that which the U.S. attempted to achieve. Not only did the American sanctions go unnoticed in Colombia, but they served to weaken the Colombian government’s authoritativeness in the eyes of citizens in general, and in the eyes of the drug traffickers in particular.

Finally, states also deal with insourcing problems unilaterally by broadening their own criminal jurisdiction in order to regulate cross-border criminal activity. In this regard one can see a growing tendency among jurisdictions to prosecute individuals who operate in other countries because of the consequences of their acts within the jurisdiction. For example, US authorities, either concerned about the corruptive effect of online gambling on US gaming patrons and their environment, or alternatively about the protection of land-based and other gaming services in the US, have pursued aggressive extra-territorial prosecutorial policies against principals of off-shore gambling enterprises who catered to US customers. These included the celebrated arrest, prosecution and extended jailing of Jay Cohen, an executive of an Antigua-based internet sports-betting company;\textsuperscript{208} the arrest of Peter Dicks, a British director of Sportingbet, an offshore internet sports betting company, while visiting the US\textsuperscript{209} - a law-enforcement act that resulted in the closure of Sportingbet’s online gaming activities in the US;\textsuperscript{210} and the arrest of a David Carruthers, chief executive of Betonsports, another online gaming website,\textsuperscript{211} leading to a settlement essentially abolishing this corporation’s commercial operations from the US, from 2007 onwards.\textsuperscript{212}

\textsuperscript{207} See Morgan, supra note 199 at 779-80.
\textsuperscript{208} See United States v Cohen, 206 F. 3d 68 (2d Cir. 2001), cert, denied, 536 U.S. 922 (2002).
\textsuperscript{210} See Dominic Walsh, Sportingbet Pays $400,000 to Call it Quits, THE TIMES, Mar. 22, 2007.
\textsuperscript{211} See James Quinn, You Bet: Dallas Arrest Spoils the Party, THE TELEGRAPH, Jul. 21, 2006.
\textsuperscript{212} See Andrew Ross Sorkin & Stephanie Saul, Gambling Subpoenas on Wall St., NY TIMES, Jan. 22, 2007.
IV. CONCLUSION

In this Article we presented a novel theory describing the political economy of transnational crime control. The story we told was one of growing global integration, which gives rise to different types of externalities between nations. More specifically, we pointed out how different countries might engage in both outsourcing and insourcing of certain types of criminal activities, depending on their political structure and the payoffs created by the crimes at hand. Thus, we argued that the local crime control policies are not designed and executed in a vacuum. Rather, the policies adopted by one country (be they relatively harsh or relatively lenient) may affect the policies adopted by other countries.

The core of our positive analysis, namely, that crime control policies of one country have spillover effects in other countries led us to evaluate the current state transnational crime control. In this regard, our analysis justified current practices aimed at regulating insourcing countries that create harm in other countries in the form of setting international minimal standards. Yet our analysis pointed towards a less intuitive (and currently non-existent) set of policies that should be adopted in order to deal with the symmetric problem of outsourcing crime. In this regard we pointed out that the international community should set out maximal standards that will limit the ability of nations to displace crime. While we remain tentative with respect to specific policy recommendations, and leave those details for future research, the clear conclusion that can be drawn from our analysis is that concepts of complete sovereignty of countries over their criminal justice system will have to make way for new concepts of international cooperation in the area.