

The Police Administration's Support for Investigation

Analysis of Population Information Management

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Abstract—From the perspective of social governance, criminal case in the normative sense is often converted into crime as a social issue in public security work. Therefore, public security organs carry out crime investigations under the leadership of governance thought, rather than normative thought, and there is a staggering between investigation behavior and administrative behavior. From the perspective of investigation logic, the prevention and detection of criminal cases through the management of population information has obvious characteristics of “from person to case”. The relationship between population information management and criminal investigation shows that the relationship between the administrative power and investigative power of public security organs in practice is not independent of each other, but is intertwined as two aspects of the police power, and the administration activities of public security organs provide essential support for the achievement of investigation objectives.

Keywords—*criminal cases; social issues; administrative power; investigative power*

I. INTRODUCTION

According to the three standards: the appearance of power, the similarity of exercise results and the convenience of power exercise, we can divide the administrative actions that are intertwined and staggered with the investigation behavior of public security organs into administrative compulsory, administrative inspection and administrative management. In the investigation of criminal cases all the time, public security organs have often used investigative actions in combination with the above three types of administrative actions (hereinafter referred to as “stagger of crime and action”). Strictly speaking, the use of administrative actions does not comply with the provisions of the Criminal Procedure Law and related judicial interpretations, and there is some controversy in the legitimacy. There are two general viewpoints on the staggering phenomenon in the theoretical circle: the first is that the public security organs use the investigative action behavior alternately with the administrative action because they combine the criminal investigation power and the public security management power. Stagger of crime and action is caused by the abuse of power. Therefore, it is advocated to strictly distinguish between investigative action and

administrative action, or to exercise the two powers on different subjects;¹ Another viewpoint empirically summarizes and analyzes the current phenomenon of staggering crime and action by the public security organs from an empirical point of view, and believes that the reason for this phenomenon of “staggering crime and action” may not be because the power is too concentrated, but because the current criminal legal text cannot provide sufficient and reasonable power support for the public security organs, which causes the public security organs to seek help from outside the criminal measures system. The key to solving the problem lies not in the separation of powers but in the further rational improvement of the criminal power system.² I believe that although the second viewpoint is logically more comprehensive than the first one, it should also be seen that the second viewpoint focuses more on compulsory administrative actions such as administrative inspection and enforcement, etc., and it pays more attention to the analogy between investigative behavior and administrative behavior, but does not take care of the administrative action. Different from administrative inspection and administrative enforcement, the administrative management of public security organs is not directly mapped in the criminal investigation system, and the way in which it works is different from the former two, which provides basic help for the investigation work in a silent and quiet way. In administrative activities, the management of population information is the basis of all work; in addition, the management of population information is also one of the ways for public security organs to achieve social discipline. At the same time, it also plays a key role in the process of social governance.

¹ For specific study, see chief editor Fan Chongyi: *Towards Justice — Reform of Criminal Justice Reform and Criminal Procedure Law*, China University of Political Science and Law Press, 2011, P. 42; Zhu Qiaohong: *Study on the Feasibility of Shunt Function of Investigation Procedures*, *Legal System and Economy*, No. 4, 2008; Chen Xingliang: *Power Restraint and Decentralization: Police Power in the Vision of Criminal Rule of Law*, in *Science of Law*, No. 1, 2002, etc.

² For specific study, see Zuo Weimin: *Evading and Substituting - An Empirical Investigation of the Search Operation Mechanism*, in *China Legal Science*, No. 3, 2007; Liu Fangquan: “Two-in-One”: *Study on the Relationship between Public Security Administrative Power and Investigation Power — Function-Based Analysis*, in *Legal Forum*, 2008, No. 4; Ma Jinghua: *Study on the Implementation of the System of Investigation to Case in the Background of the New <Criminal Procedure Law>*, in *Contemporary Law Review*, No. 2, 2015, etc.

II. OUTSIDE OF INVESTIGATION: SOCIAL DISCIPLINE AND POLICE ADMINISTRATION

We find that although the management of population information is classified as a daily administrative behavior of public security organs in the positioning of attributes, the management of various population information (especially the key population) has no incomparably important to criminal investigation activities of the public security organs. Whether it is for criminal cases (retrospective investigation) that have occurred or foresight risk prevention (criminal governance investigations), the management of population information is the key. In addition, for police power, the significance of administrative activities goes far beyond providing basic information for the prevention and detection of criminal cases.

As a manifestation of the will of the state power, the police power has its political attributes, but we should more emphasize the political dominance of this political attribute,³ and the goal of all rulers is to pursue the “order people.”⁴ Therefore, in what way can such pursuit be achieved? First of all, we need to determine the concept of “order people”. Understanding from the literary content, the “order people” is a social group that emphasizes order, more precisely, it is a social group that emphasizes “the order given by the ruling power”, that is, they adjust their pace according to the unified “drumbeat”. So how do the police play their own political ruling role and how to keep all social groups at the same pace? If the negative effects and feasibility are not considered, continuous monitoring is a good recipe, but “any society cannot include all social members into the scope of continuous monitoring, but should adopt more exquisite ways, such as monitoring through the automation and non-personalization of power.”⁵ This more subtle, automated and non-personalized monitoring put forward by Foucault has actually gone beyond the original meaning and become a social discipline.

As mentioned above, such “monitoring” has actually become a social disciplinary mode of the police. Perhaps there is a view that the population information management of public security organs has little to do with social discipline because the core of “discipline” must be “instruction”, but population information management has nothing to do with the two, so call it the discipline? I believe that this viewpoint has its rationality, but the defect lies in the bias of the key. That is, for the term “discipline”, we must emphasize “instruction” and should more emphasize “regulation” - at least the two shall be equally important. Disciplinary models led by different powers have different manifestations, but whether it is administrative enforcement, administrative inspection or criminal investigation, the focus is more on

“instruction”, which is the core, while “regulation” is ignored. “Instruction” emphasizes the shocking effect brought by “lessons”⁶, while “regulation” means “rules” or “orders”. In general, the shock brought about by disciplinary action can also produce the effect of order. However, the shocking effect is based on the imposition of certain penalties. For example, after a penalty is imposed on the defendant, people will fear the power to impose penalties, and thus dare not to implement the same or similar behavior that may lead to the same consequences. However, the scope of the shocking effect is limited to this, that is, the target of the shock caused by a certain penalty is limited to a certain behavior that is punished, and cannot be extended to other acts that may be taken by social individuals. We can assume a situation in which a person is sentenced to death for intentional homicide, and the shock brought about by death penalty as a penalty for such a criminal act is only to teach other social individuals that they should not commit murder, but cannot control all other criminal acts except murder that may be implemented.

The difference is that the power discipline in the true sense is to let the social individuals form certain surrender to the ruling power, so they can correct their own behavior according to the social order that the rulers hope to establish. However, this effect cannot be fully achieved by the investigations of public security organs or the judicial activities of judicial organs. I believe that it is precisely the administrative actions of public security organs that can truly achieve power discipline to the greatest extent. Foucault believes that power takes use of inspection not to emit symbols that expresses its might, nor does it impose its own signals on objects, but to control them in a mechanism that objectifies the objects.⁶ In line with Foucault's viewpoint, in the process of population information management, public security organs cannot, or do not, express their own power, and they cannot impose their own signals on the subjects, either. The management of population information is to objectify the managed objects in a silent way, and then use this mechanism to control the managed objects. What I want to explain is that the public security organs' management of population information implies that the police power is all over our lives, including all administrative activities such as population information management. The ruling power uses the public security administrative management in police power function as a mark of the existence of its own power. From a broader perspective, most of the contents we encounter in our daily lives are branded with such marks, such as surveillance cameras, community police rooms, and even public security banners and advertisements, which all portray a picture in which the power is everywhere to people in a silent or non-silent way. In such context where the power is visible but cannot be known⁷, people will feel an invisible pressure that urges them to correct all behaviors. Just like teaching a fish to swim, what is really worth paying attention to is not whether we have taught the fish to swim, but the fish is going to learn how to swim.⁸

³ Li Jianhe: On the Attributes and Categories of Police Power in China — One of the Special Studies on Police Power, in *Journal of the Chinese People's Public Security University (Social Science Edition)*, No. 3, 2007.

⁴ Gong Zhigang: Study on the Structure of Social Order, in *Journal of Chinese People's Public Security University*, No.6, 2005.

⁵ [French] Michel Foucault: *Discipline and Punishment*, translated by Liu Beicheng, Yang Yuanying, Sanlian Bookstore, 4th edition, 2012, P. 226.

⁶ Same as Annotation 5 above, P. 211.

⁷ Same as Annotation 5 above, P. 226.

⁸ Feng Xiang: *Political and Legal Notes*, Peking University Press, 2012, p. 106.

III. DIVERSIFICATION OF CRIMINAL GOVERNANCE MEASURES: SOCIAL GOVERNANCE AND POLICE ADMINISTRATION

As emphasized in the title of this paper, I focus on the police administration and investigation from the perspective of social governance, and the previous discussion of social discipline is more of a kind of prelude and premise for the analysis of the staggered role of crime and action in social governance. In the process of social governance, the solution to crime problems has undoubtedly become the key, but we seem to have a misunderstanding of the premise for the solution of this problem, that is, crime seems to be only a “case” rather than an “issue”. Distinguishing between the two is not only of great significance to our understanding of the importance of crime, but more importantly, different understandings will determine the difference in the means by which we solve crimes.

A. *Crime: from Case to Social Issue*

What is “crime” in criminal governance? View of Crime is an overall view and evaluation of people on crimes, and the basic assumption and knowledge framework when people recognize and treat crime problems. The specific concept of crime will affect the objectivity of our analysis of the causes of crime, the scientificity of our criminal countermeasures and its practical effects in practice, so the concept of crime can be further divided into the concept of criminal ontology and the concept of criminal countermeasures.⁹The concept of criminal ontology mainly focuses on the concept of crime, the causes and conditions of crime and the law of the occurrence of crime, while the latter pays more attention to our handling attitude and the strategy selected in the face of crime.¹⁰In essence, crime prevention, crime control and prevention and control are like crime governance, which belong to criminal countermeasures in the current theories and practice.¹¹However, there is a certain difference between the concept of crime in criminal governance and them. Taking crime control as an example, some scholars believe that the differences between crime governance and crime control are mainly as follows: in terms of guiding concept, criminal governance considers why there is a crime and thereby eliminates the negative impact of the crime, while crime control pays attention to how criminals commit crimes and how to deal with crimes; in terms of the structural system, criminal governance is more diverse than

criminal control structures, and can mobilize more abundant social resources, explore broader social scope, and the operational mechanism is more complicated, etc.¹²

Although there are still many differences between crime governance and other criminal countermeasures, and we can find and discuss this difference from more aspects, I believe that the most fundamental and important point of crime governance and other criminal countermeasures is that in criminal governance, crime is a social problem, while in other concepts of crime, crime is only a certain case. After I put forward this argument, what follows is a question that we need to answer: Why is crime in criminal governance a social problem?

We need to recognize that crime and social issues are mutually causal. Some people think that in terms of how to better carry out crime governance, it is necessary to increase investment in education, especially basic education, reduce uneven social distribution, increase help and care for urban floating population, strengthen the governance of gathering area of poor people in the city and increase their income, etc.¹³ That is to say, social problems such as low education level, uneven social distribution, floating population and poor people are the root causes of crime problems. This viewpoint accords with the values we hold, but that doesn't mean it is correct, because it is the result of a one-dimensional perspective, that is, it only sees the role of a series of social problems in driving crimes, but fails to see that crime has actually become the fundamental source of all these social problems. Therefore, some scholars point out that crime is the root of all social problems, and all social problems can be solved through criminal problems. The various crises in China's current society are actually the unhealthy phenomena reflected in various crime problems.¹⁴ For example, in a society, if criminal cases occur frequently and the crime rate is high, the cost of the ruling class for crime control will inevitably rise sharply, and in the case of relatively fixed social wealth, the investment in crime governance will increase rapidly, which leads to cuts in other inputs, and causes corresponding social problems.¹⁵

¹² Shi Suo: Criminal Governance: Deconstruction of a Basic Theory, in Proceedings of the Annual Meeting of the Chinese Society of Criminology (2014), China Procuratorate Press 2014, p. 132.

¹³ Chen Lili: Strategic Coordination in Crime Governance: An Analysis Based on Empirical Documents, in Criminal Science, No. 9, 2011.

¹⁴ Chief editor Wu Pengsen: Criminal and Governance under the New Economic Normal, Sanlian Bookstore 2017 Edition, p. 26.

¹⁵ Some scholars believe that the relationship between economic development and crime is not a simple simultaneous growth or inverse relation. It must be combined with other factors such as social system, social management system, cultural tradition, population status, social defense force, etc. Yang Jing: Criminal Governance - Classics of Criminology and Study on China's Crime Problems, Xiamen University Press, 2013 edition, p. 94. However, some scholars cite an example: there are significant differences in the real estate prices in areas with high crime rates and areas with low crime rates. Generally speaking, the housing prices in places with high crime rates are generally lower, and buyers usually consider the risk level of becoming a victim of crime when making the decision of purchase. For details, see Chen Shuo: Economic Interpretation of Crime Issues in China during Transition: Behavior Analysis and Governance Policy, China Social Sciences Press, 2015, p. 7. The scholar's viewpoint can be seen to some extent as an example of the inverse relation

⁹ Lu Jianping: Research Report on China's Crime Governance, Tsinghua University Press, 2015 edition, Introduction, P. 1-2.

¹⁰ Since the concept of criminal ontology is not too much related to this paper, only the concept of criminal strategy is discussed here. The concept of crime referred to below is used to refer to the concept of criminal countermeasures unless otherwise specified.

¹¹ According to scholars' study, in China, the concept of criminal countermeasures presents different patterns at different stages. In the early stage of the founding of the country, the criminal countermeasures were mainly criminal suppression. During the period of reform and opening up, crimes were mainly punished, in the development and improvement period of the socialist market economy, it was mainly crime control and crime prevention, and now it has developed to criminal governance that introduces modern governance concepts, see Annotation 11 above, Introduction, P15.

*B. Investigation: from Investigation and Evidence
Collection to Social Governance*

After discussing the proposition that “crime in crime governance is a social issue” above, we do not seem to find that the proposition is very closely connected with the subject of this paper. In short, even if crime is a social issue, it still seems difficult to link with the stagger of police’s investigative and administrative behaviors. However, in general, only when we realize that crime is not just a criminal case, but a social issue, and that we have to rely on criminal governance to solve this social issue, can we see the essence of stagger of crime and action, that is, the stagger of crime and action is basically a diversified treatment of criminal governance methods. It is after taking the comprehensive management of social security as a criminal policy that it creates a realistic demand and existence space for the stagger of crime and action.

According to the development trend of the concept of crime in China, some scholars summarize the evolution of the basic position of crime into the process of ¹⁶“combat against the enemy, retribution, compositive strategy, and scientific path”. In the two stages of “combat against the enemy and retribution”, the crime issue is more endowed with a political meaning. Crime seems to be a “political error”, and fighting crime and dealing with crime become political tasks, naturally, in terms of the selection of means, it is solved by means of struggle; in the stage of “compositive strategy”, the concept of criminal countermeasures is often reflected in the “control” awareness of crime, and focuses on criminal means to “prevent” and “control” criminal acts. It can be said that although the criminal countermeasure concept of “compositive strategy” reflects the “compositive” awareness, but it lacks basic means for “composition”, that is, such “composition” is often to combine the existing criminal means, or to strengthen a certain function and power of the criminal investigation subject for criminal investigation and evidence collection. In essence, the stage of “compositive strategy” only adjusts the using order or manner of the means in the sense of criminal law. There is not too much innovation, and the choice of subject and means is relatively simple, so it is difficult to say “diversification”; in the stage of “scientific path”, crime is no longer simply regarded as a criminal case, because when we regard comprehensive governance of social security as the current criminal policy, and crime governance as a part of social comprehensive governance, we will find the social factors hidden under the surface of crime issue, and that we should abandon the previous thinking that “cases are cases, society is society”, to treat crime in a broader perspective. Naturally, to this point, we will find that the previous means of taking investigation and evidence collection as the only way to solve crime issue is

between economic development and crime, with a certain difference from the viewpoints of the above scholars. However, all of the viewpoints consider that the relation between economic development and crime cannot be simply treated in one way, that is, the relation between the two is not simply that social problems due to insufficient economic development cause crimes.

¹⁶ Same as Annotation 11 above, p. 15.

far from meeting the needs of comprehensive social governance. The reason why the “scientific path” is “scientific” is that the vision is more open, the thinking system is more abundant and perfect, which means that we “think more”, and after we “think more”, we “need more”. Therefore, investigation activities need to integrate administrative actions, and the investigation activities after integration cannot be simply understood as a process of investigation and evidence collection in concept and in practice, but an activity of governing social issues.

In the above, I have repeatedly emphasized the concept of “diversification” and further divided it into subject diversification and means diversification. It can be said that investigation has changed from simple investigation and evidence collection to social governance, which is exactly because it meets the requirements of subject diversification and means diversification. Specifically, subject diversification means that in the governance of the social issue of crime, subject should not be limited to public security organs, and the power system of all aspects of society should be used, to pool the wisdom and efforts of everyone; means diversification means that simple criminal investigation activities can solve criminal cases, but it is difficult to solve social issues, so it is necessary to resort to more means that can play different roles and belong to different natures.

At this point, we seem to have raised another noteworthy issue that should be answered: Since diversification refers to the subject diversification and means diversification, why do we not focus on subject diversification, but want to prove the legitimacy and rationality of the stagger of crime and action through means diversification? That is to say, we seem to be able to abandon the criminal governance, which is a concept of criminal countermeasures, and continue to adopt the “prevention and control” strategy. The investigation activities of public security organs should still maintain the “purity” of criminal investigations - the stagger of crime and action is still unreasonable, unjustified and illegal, we only need to pay more attention to and develop the diversification of social governance subjects to replace means diversification. Similar to this viewpoint, some scholars point out that crime governance is an important aspect of social governance. The theory of “multi-center governance” and “citizen governance”¹⁷ has certain implications for criminal governance, which implies that criminal governance, as part of social governance, should naturally exert the power of more subjects in society to achieve even better results. It is difficult for public security organs to meet the needs alone.

To answer the question, what we need first is not to further promote the diversification of the subjects of criminal governance, but to review and reflect: Do other subjects in the society have the ability, resources, and willingness to help the public security organs complete the task of social

¹⁷ Feng Weiguo: Seeking More Effective Crime Governance — Towards the Cooperation between the State and the Society, in Proceedings of the Annual Meeting of the Chinese Society of Criminology (2014), China Procuratorate Press 2014 edition, p. 64.

governance? I believe that although we emphasize that the core of “governance” lies in the diversification of subjects and means, for the diversification of subjects, only a single subject of the public security organs ultimately play a role in most cases in crime governance and completing social governance tasks, and the reasons are mainly as follows: First, social subjects other than public security organs have few means. In terms of means, the administrative power and investigative power of the public security organs cannot be owned by any social entity and even in terms of information and intelligence acquisition, the ability of social subjects cannot be compared with that of the public security organs. Some people believe that one of the biggest drawbacks that make the traditional social security prevention and control system difficult to adapt to China's current social development is the lack of comprehensive, accurate, lively and standardized information and intelligence support.¹⁸ Obviously, general social subjects cannot have such strong information acquisition ability. At least, in this respect, the social subjects obviously cannot play more roles. Secondly, the most important is that the social subjects do not have the enthusiasm and willingness of getting more involved in criminal governance. If can be known from practical experience that general social subjects, whether citizens or groups, are often reluctant to increase trouble for themselves when not infringing on a specific right or interest. For example, according to a national survey in 2011, when the respondents were asked about “the reaction when seeing crimes occurring outside the housing window”, 79.9% chose “to call the police”, but only 12.7% chose “to go outside to intervene and stop”, and 6.7% of respondents chose “to do no alarm”.¹⁹ Therefore, unlike general social subjects, the public security organs represent not their own interests, but exist as the guardian of social orders. The social subjects pay more attention to and only pay attention to their own interests and different role positioning decides that in the case of the damage of interests, the enthusiasm and initiative are completely opposite.

I am not denying the role of social subjects in crime governance, and what I want to explain is: For China's current level of social development, although we also pay attention to the diversification of subjects and means, we have to admit that we still highly lack the diversity of subjects, and still only the public security organs can play a role in criminal governance. Therefore, when lacking the diversity of subjects, we should seek a way to mitigate, that is, we should emphasize more on the diversification of means at present. Specifically, for the important aspect of criminal governance as social governance, the public security organs should be allowed to stagger investigative behaviors with administrative behaviors, so as to achieve the diversified development of means under the condition that the subject is relatively single.

¹⁸ Rong Yue: The Construction of a New Social Security Prevention and Control System under the Vision of Big Data, in the Proceedings of the Annual Meeting of the Chinese Society of Criminology (2017), China Procuratorate Press, 2017, p. 83.

¹⁹ Zhou Lu: The Ten Years of Criminal Investigation — Statistics and Analysis, Tianjin Academy of Social Sciences Press, 2001 edition, p. 48.

IV. CONCLUSION

We should see that the diversification of any means may bring about the expansion of power, and this expansion is not necessarily good. For the current state of social governance in China, the stagger of crime and action has rational channels in a limited scope. In the foreseeable future, China's criminal situation will be in a state of change. If we only respond with the mentality and attitude of investigation and evidence collection, we may not even complete crime prevention, prevention and control. Of course, such diversification of crime governance changes with the change of the crime situation, and is not fixed in the form of stagger of crime and action. Perhaps one day, what we are discussing will no longer be the problem of staggering investigative and administrative actions, but another controversial issue that may interact with very effective actions.

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