

# Analysis on Rational Correction of Application Scope of Voluntary Surrender System in China

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**ABSTRACT**-In the practice of voluntary surrender system in China, especially in cases of residual voluntary surrender, voluntary surrender system will be apparently invalid if the suspect brought to justice mistakenly thinks his or her behavior constitutes a crime due to wrong legal understanding and then confesses it, while such a crime is only an infringement act of legal interest in accordance with objective elements of the crime. It can also be concluded that such special cases are not applicable to confession and even merit system. Based on the different perspectives of utilitarianism, labeling theory, and legal economics, the negative impact of the above-mentioned defects can be seen. And not only that, it also reflects that it is reasonable to correct the application scope of voluntary surrender system.

## 1. INTRODUCTION

Under the present system of surrenders in China, when suspects mistakenly believe they are committing a crime and confess their behavior, criminal suspects do not obtain entity or procedural forgiveness, which is one of the defects of the applicable scope of our present surrenders system. And this defect still has a certain negative impact, and also has a certain rationality. However, whether it is necessary to set up legal provisions or legal interpretation in order to incorporate this situation into the penalty discretion system such as the surrender system for evaluation still needs to explore the degree of necessity and rationality. If the lack of system in this case will not have an impact on judicial practice or little impact, it is true that there is no need to consider the problem of system improvement and optimization. However, THIS ARTICLE thinks that it is necessary and reasonable to include the "superfluous crime" of confessions into the evaluation system of penalty discretion system such as the surrender system. Therefore, this paper will analyze the above reasonableness from three aspects of criminal suspects' psychology, deviant sociology and economics, and elaborate on the above negative effects.

## 2. DEFICIENCY OF MODESTY AND TOLERANCE -- LACK OF FUNCTIONS OF CURRENT VOLUNTARY SURRENDER SYSTEM FROM THE PERSPECTIVE OF UTILITARIANISM

### 2.1. Explanation of blind area of current voluntary surrender system under the perspective of utilitarianism

When talking about happiness and pain, we cannot bypass utilitarianism. As mentioned above, utilitarianism is also an important value basis for the establishment of voluntary surrender system. Utilitarianism first appeared in front of people as a complete system in works of Bentham who is a British legal philosopher[1]. Utilitarianism proposed by Bentham is based on two masters of human beings in the nature--pain and pleasure. He described it this way in his work--Theory of Legislation, that, "People's sole object is the pursuit of pleasure and the avoidance of pain, even at the extreme moments when he rejects the greatest pleasure or embraces the most acute pain." [2] According to utilitarianism, each rational person would weigh these two masters and think twice before acting. The same is true of legislation and legal interpretation which should not go against people's utilitarian judgment, otherwise they will be evaluated as "evil" by the public and naturally will not be respected and obeyed.

With a brief analysis of Bentham's utilitarianism above, combined with the criminal's psychology, it is not difficult to find that although the satisfaction criminals

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get when committing a crime is much more than the pain caused by the censure, it does not mean that they are willing to accept the punishment prescribed by laws, because each behavioral process cannot be viewed as a whole, the comparison process should be understood and analyzed at any moment of choice. However, the punishment discretion system such as voluntary surrender and confession is to give suspects one more chance to weigh the advantages and disadvantages, which is also the tolerance given by the Chinese criminal law system: to give up freedom to obtain forgiveness or to flee to the end of the world in fear all day long under the background of utilitarianism. For example, in the case of theft and purchase of stolen goods by Dong Baowei, the three defendants committed theft together. Dong Shuguang reported to the stolen entity what he and others stole because of the small share he had got and hearing that he could get a bonus for reporting[3]. In fact, defendant Dong Shuguang surrendered for mercenary mentality, and analysis from the perspective of utilitarianism shows that defendant Dong Shuguang had already made a choice after hearing that there would be a reward of report, and believed that the satisfaction of the reward was greater than the “pain” of being brought to justice and convicted. This actually gives suspects a chance to make a choice.

The process of weighing is abstract from a utilitarian point of view, thus even judges also cannot determine precisely which choice will be more satisfying, especially when neither dominant power has a clear edge. Therefore, in this case, suspects who have a wrong understanding of laws can only get the consideration of discretion by confessing all the “crimes” they have committed, which is ambiguous. For example, in the current judicial practice, some grass-root judicial organs mechanize the implementation of the plea for leniency system, which can not psychologically urge suspects to repent, but urge them to make a hasty confession in fear and suspicion due to psychological pressure. On the other hand, it also promotes the suspects’ resistance. The tolerance of voluntary surrender system should be reflected in its fair and reasonable tolerance attitude, i.e. it is a reward for criminals. It is also the embodiment of tempering justice with mercy and leniency and combining reward and punishment in the Criminal Law of People’s Republic of China, confirming the criminal policy of combining punishment with leniency. The focus of modest and restrained principle of criminal law is that the legislators try to obtain as much judicial benefit as possible at the minimum cost, and the voluntary surrender system is an important embodiment of the modest and restrained principle of the Criminal Law of People’s Republic of China, which mainly manifests in the modesty of penalty degree. However, problems mentioned above make voluntary surrender system fails to give enough “rewards” to criminals, thus making the judicial resources that could have been saved wasted, which also violates the connotation of modest and restrained principle of the Criminal Law of People’s Republic of China and makes the criminal law system that should have been involved eventually not involved

in relevant situations.

Suspects honestly and positively confess all their crimes with the purpose of voluntary surrender and the motive of seeking forgiveness, but what they obtain is not forgiveness stipulated in voluntary surrender system, which obviously does not accord with the satisfaction he or she expects. That is to say, the leniency of the criminal law is insufficient, and it is bound to discourage their enthusiasm for repentance. For example, in the case of Wei Rongxiang’s intentional homicide, Wei Rongxiang actively surrendered to the public security organ after the murder, but she escaped from the detention house with the help of her boyfriend during arrest and detention period[4]. Obviously, the criminal Wei Rongxiang surrendered while the result does not conform to her expectation, so she quickly made a choice when her boyfriend came to “rescue” her, thinking that escape brings her more benefit compared with voluntary surrender. Her escape overturned the former choice of surrender voluntarily. Therefore, she completely lost the idea to confess and chose to escape and resist the judicial procedures.

Moreover, the complexity of psychological mechanism of crime makes criminal suspects scruple when confessing residual crimes, because recidivism can strengthen others’ judgement on their subjective malignancy and personal harmfulness. That is to say, although truthful confession may get forgiveness, assessment of their personal harmfulness by the public is bound to be more severe. The stipulation about recidivism in the Criminal Law of People’s Republic of China also confirms this point of view. Criminal suspects certainly do not want their behaviors harmful to the society to be exposed, because the exposure will bring them pain. However, when they take the initiative to enhance the present pain to reduce the greater pain in the future, only to find that the hope is disappointing, resistance is bound to come into being in their minds, and they will be more conservative to ambiguous choices, leading them to confront and conceal rather than choose the uncertain hope. The existence of voluntary surrender system should eliminate all the uncertainties mentioned above and make the tolerance and modest and restrained principles of the Criminal Law of People’s Republic of China get the maximum expression within a reasonable range. That said, it should also impose a more balanced punishment in the humanitarian aspect, and adapt to the subjective and objective respects of voluntary surrender and appropriate punishment. However, current voluntary surrender system does not have such functions mentioned above, creating problems rather than give a satisfactory answer.

At the same time, not only will lack of relevant provisions on the content of residual crimes of mistaking confession in the system of voluntary surrender place criminal suspects in an uncertain dilemma, but also make judiciary into uncertainty. For criminal suspects who have a wrong legal understanding, especially for those who mistakenly believe that their behaviors are really infringement of legal interests in accordance with the objective requirements of committing crimes, truthful

confession, however, makes them think that there is a great uncertainty of pain and no benefit. Therefore, the judicial organ, in such a special case, can not benefit from the establishment of voluntary surrender system, and it is placed in an uncertain state whether it can benefit.

Also, this kind of vacancy in the system is in essence not conducive to criminal suspects who meet this kind of situations, and does not meet the requirements of the human rights protection of the Criminal Law. Moreover, due to the principle of penalty humanitarianism, all criminal suspects willing to accept the legal guidance should be given relatively equal rights to obtain utility and reduce pain. That said, if the system design succeeds to fill the above deficiencies, it can be more incentive. In this way, a relatively broad condition is set up, and it will be a "shot in the arm" for all the criminal suspects who are inclined to accept the guidance of provisions after weighing advantages and disadvantages of utilitarianism. It can also enhance the penitence and rehabilitation of the criminal suspects to a greater extent.

## 2.2. Negative Effects of Labeling

The introduction of labeling theory here in this paper is to illustrate the negative impact of the absence of relevant institutions on the degree of satisfaction or "happiness" in criminal suspects' decision process in multiple points of view, combined with analysis on utilitarianism mentioned above, to prove the rationality of correction thought. With the analysis and research of the decision process of criminal suspects mentioned above based on the labeling theory, we can seek for the invisible driving force of committing a crime.

For suspects, there is no doubt that their criminal behaviors must be deviant. According to evaluation standards of laws and regulations, they will be evaluated as law followers or lawbreakers by being judged whether their deviant behaviors conform to provisions, and people who have more serious behaviors will be evaluated as criminal suspects. For those lawbreakers or criminal suspects, this kind of titles is a label. Judicial organs confirm such a label by arresting them or giving them punishment and other means, and the impression of such labels will also be strengthened in the public, making suspects condemned by more people, which further strengthens the role of the label. When the labeled suspects unconsciously agree those labels, they are more likely to violate laws more severely, creating more serious illegal behaviors. For example, in the case of Wang Hao's intentional injury, Wang Hao was under 19 years old and was defined as a troublesome teenager. Under the influence of the label, he was sentenced to probation for intentional injury. During the probation period, he stabbed another two people, making one dead and the other seriously injured[5].

According to a brief description of labeling theory, combined with the above analysis of utilitarianism, criminal suspects choose to confess their general illegal behaviors or legal interest infringement behaviors in accordance with the objective requirements of

committing a crime after making a hard choice. Although these behaviors do not reach crimes, they are typically deviant. Criminals choose to confess their crimes in the hope of obtaining expected satisfaction and are they willing to risk being labeled or being enhanced their existing labels. If suspects do not get the desired reward, only to find their labels enhanced, potential social danger will be added in the long run. At the same time, for suspects themselves, being labeled is obviously not in accordance with their wills, making them become an "outsider" in the society or social circle, which imposes a very negative impact on them and is an act that only increases their pain. At this level, when suspects are engaged in the psychological struggle of whether to confess their residual crimes, more situations should be considered. And it is obvious that the balance is tilted to the "pain" side again, which increases the uncertainty of their choice of repentance once again.

Neither everyone will be very active in being labeled negative nor they are very active in identifying with negative labels of themselves, including criminal suspects. However, the role of labeling is imperceptible. If you want to eliminate or weaken the role of labels, you must either objectively weaken the label on the social level or continually disagree the label with powerful external forces. The case of Guo Yulin and other's robbery can be referred to here. Suspects denied their behaviors of knife intimidation after confession, which is both [6] a lie to exonerate and a resistance to the felony label. They tried to obtain the judicial authority for misdemeanor affirmation, and the criminal suspects' psychology at that time was similar to the above analysis. But if suspects only get vague answers, the effect will be greatly diminished. However, for current voluntary surrender system in China, "residual crimes" confessed by suspects truthfully based on a wrong legal understanding cannot be included in the evaluation system of voluntary surrender system. As noted above, such circumstances can only be treated as extramural circumstances at the present time. This kind of mitigation is not clear to criminal suspects and is far less real than the mitigation granted to them by voluntary surrender system stipulated in the provisions of the Criminal Law of People's Republic of China.

Although China has set up relevant rules of the plea for leniency system in the Criminal Procedure Law of People's Republic of China to cooperate with the implementation of the system of voluntary surrender and confession in the Criminal Law of People's Republic of China, just as mentioned above, the mechanized and procedural execution procedures of some judicial organs cannot make criminal suspects truly experience the positive result of repentance. On the contrary, they are forced to admit their crimes under the pressure of judicial organs, and they confess their crimes in misunderstanding and fear. If they do not confess their crimes after being harshly investigated, they will be labeled as "resistance", which is more likely to make them dare not take the risk of admitting other uncertain crimes.

Although crimes confessed by criminal suspects due

to wrong legal understanding cannot be regarded guilty, their behaviors are typically deviant, especially for those elementary transgressions. Once they become known, a label is inevitable. Those who are labeled as negative will bring potential dangers to the long-term development of the society and have a negative impact on their own improvement. This is also the reason why a concise and powerful mitigation is extremely important. Therefore, according to current surrender system of China, in special situations mentioned above, the leakage that criminal suspects cannot obtain strong mitigation needs to be improved.

### 3. THE DEFECT OF REWARD MECHANISM -- LEGAL ECONOMIC ANALYSIS OF ANOMIE OF CURRENT VOLUNTARY SURRENDER SYSTEM

Legal economics and utilitarianism provide different points of view. From the perspective of human sensibility, utilitarianism is abstract and cannot be measured accurately. From the perspective of rational people, legal economics uses relatively measurable economic concepts cost and income for comparative analysis.

**Table1.** The specific method of "net-clearance action" and "deadline surrender" criminal policy of a district public security sub-bureau[7]

Situations of fugitives		Targets of surrender persuasion	Voluntary surrender situations		Matters concerned by relatives of fleeing suspects
Local household registration	Outsiders	Close relative of fugitives	Suspects brought to justice	Suspects surrender voluntarily	1. The sentence
3	29		27	14	2. Whether the death penalty is imposed (in murder cases)

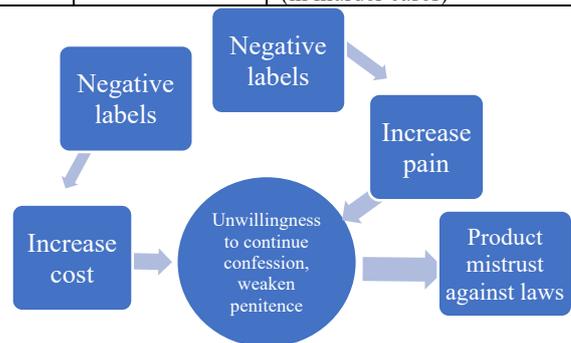
Therefore, the "benefit" of mitigation stipulated in the provisions is often a bargain and attractive for them in the "transaction" between criminal suspects and judicial organs. This is also the reason why the establishment of voluntary surrender system can often become one important driving force for criminal suspects who make a "transaction" with judicial organs.

However, when the "crimes" confessed by criminal suspects are only caused by their wrong legal understanding, there will be a large error in the calculation of "cost" and "benefit". Criminal suspects paid the "cost", but did not get the corresponding "benefit", and even the result of their behaviors both increased the "cost" and reduced the "benefit". Also, just as the above analysis based on Bentham's utilitarianism, criminal suspects' estimation of "cost" and "benefit" will also produce a sense of gap between ideal and reality if there is a large error between the actual result and the estimation of "cost" and "benefit". In this case, suspects will have a sense of distrust of laws and even the judicial organs. Therefore, criminal suspects tend not to make truthful confessions, even though their true residual crimes meet the requirements.

### 3.1. Legal economic analysis of criminal suspects under the defect of reward mechanism

According to the legal economics mentioned above, it can be inferred that, after criminal suspects are brought to justice, whether they should continue to confess the crimes that the public security organ does not know is a difficult problem. They will carefully measure and calculate the "cost" and "benefit" of each choice.

There is no doubt that for most criminal suspects, in provisions relevant to voluntary surrender, merit and other penal discretion systems of the Criminal Law of People's Republic of China is the explicit provision of the "benefit", that is, the provisions of the Criminal Law of the "reward". The way to obtain such a "benefit" is also stipulated in relevant provisions or legal interpretation. When criminal suspects meet the preset requirements of laws, they can obtain the "benefit" stipulated by laws, but the decision whether to obtain it depends on the calculation of the cost of criminal suspects to meet the legal requirements under their own values. The following table summarizes the specific methods and contents of the criminal policy of net-clearing action and deadline voluntary surrender in a district public security sub-bureau in 2011, from which we can see the importance and significance of freedom for ordinary rational people.



**Figure 1** Schematic diagram of the influence of three factors mentioned above on the criminal suspects' repentant psychology

On the one hand, establishment of voluntary surrender system is to guide criminal suspects to confess actively, but for reasons mentioned above, when criminal suspects confession their residual crimes, current voluntary surrender system in China cannot play its role, which will have a negative effect for voluntary surrender system due to the anomie state.

### 3.2. "Cost-benefit" analysis before and after correcting current voluntary surrender system

Imperfections of the system will also increase the "cost" of law enforcement by judicial organs, because truthful confession of suspects is the most direct and simple way to investigate cases and obtain fairly high "benefit" at fairly low "cost" and also one of preliminary purposes of setting up systems mentioned above, including voluntary surrender system. But, if criminal suspects are in fear of risk because of reasons mentioned above, for judicial organs, the most economical and convenient way cannot work. Voluntary surrender system cannot play its functions, so judicial organs must spend more time, human resources and capitals in maintaining social harmony, etc.. From any of the three variables of judicial resource output, including the difficulty of investigation of investigators, proof of procurators and recognition of judicial organs, the increase of input will reduce the efficiency.

Based on the above analysis, benefits of current voluntary surrender system mainly include saving human and financial resources and time costs, which are respectively set as  $T_1$ ,  $T_2$  and  $T_3$ . Due to the positive correlation among them, they can be expressed like this:  $T_1 = aT_2 = bT_3$ . If the totally saved judicial cost is set as  $T$ , then  $T$  equals to  $kT_1$ ,  $T_2$  and  $pT_3$  ( $k, P, q > 1$ ). The voluntary surrender system which improves the above problems is similar to it, but it saves more cost. If the totally saved judicial cost is set as  $T_0$ , then  $T_0$  equals to  $nT$  ( $n > 1$ ).

As for the cost of the improved voluntary surrender system, it mainly includes the mitigation of the penalty imposed on the defendant and the increase of the circumstances mitigated for the defendant that does not conform to voluntary surrender system. Assuming that the penalty to be imposed before voluntary surrender is set as  $R$ , the commutation ratio is  $Q_0$  ( $0 < Q_0 < 1$ ), so the circumstances mitigated is  $RQ_0$ . Assuming that the mitigation circumstances of the defendant under voluntary surrender system is set as  $P$ , the increase of judicial cost can be expressed as  $PRQ_0$  after the voluntary surrender system is perfected. The cost of current voluntary surrender system mainly includes the mitigated circumstances of the defendant, which is set as  $Q$  ( $0 < Q < 1$ ) ( $Q < Q_0$ ).

Then, we can make a comparison between "benefit" and "cost" of the improved voluntary surrender system based on the Kaldo Hicks's standard\*. When the operation of the improved voluntary surrender system is bringing minimum positive benefits to the society, i.e. its boundary benefit, which can be expressed by the formula:  $nT = RQ_0 + PRQ_0$  which can be simplified as:

$$T = (1+P)RQ_0/n \quad (1)$$

Similarly, the boundary benefit of current voluntary surrender system can be obtained as follows:

$$T = RQ \quad (2)$$

Since the penalty of criminal suspects is a fixed quantity stipulated by the Criminal Law of People's Republic of China,  $RQ$  and  $RQ_0$  are both fixed values, set as  $m$  and  $k$  respectively, then the above formula can be transformed into:

$$T = K/N + Pk/n \quad (3)$$

$$T = m \quad (4)$$

$m > 0, n > 1, k > 0, 0 < Q < 1$ , so this function model can be made as shown in the figure:

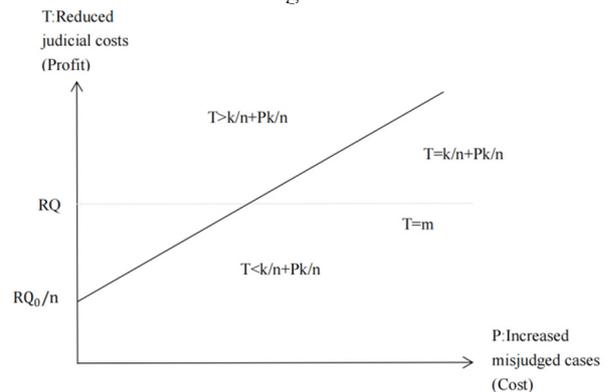


Figure 2 The function  $T = k/n + Pk/n$  and  $T = m$

It can be found from the upper side of the figure that when the increased cost (error rate) is within an acceptable range, the current voluntary surrender system can be improved to make up for the problems mentioned above, so as to obtain greater positive social benefits and reduce judicial input. At the same time, it can be seen that if the anomie of voluntary surrender system is corrected, the judicial benefits can be increased in a certain range while the judicial costs remain unchanged.

Therefore, the establishment of a tolerant system to fill the leakage of the current system can make criminal suspects believe legal guidance in the greatest extent and expect their behaviors to bring themselves thrilling "benefit", which will not only let them more inclined to actively confess and repent, but also be more conducive to application of voluntary surrender and confession system. Also, it can effectively save the judicial cost, creating a win-win situation between criminal suspects and judicial organs.

## 4. CONCLUSIONS

To sum up, it can be found that the current surrender system in China is not tolerant to criminal suspects. The lack of this system will make the criminal suspect unwilling to confess his remaining crimes, and his heart will produce a lack of faith in justice. In this case, the system of voluntary surrender still does not play its due role. Its function of encouraging and inducing criminal suspects to confess their remaining crimes truthfully is hidden in this special case. Moreover, from the

\* Based on this standard, the increased part of some people's welfare is regarded as the benefit generated by this system, and the decreased part of others' welfare is regarded as the cost of this system. If this system increases some people's welfare while decrease others', as long as the amount of increased one is more than reduced one, it can be confirmed that this system increases social welfare as a whole, then it can be regarded that this system promotes maximum efficiency.

perspective of the principle of equal application of criminal law, if the existing system can not fully guarantee the equal rights of qualified criminal suspects, it is unfair to the criminal suspects in the special circumstances mentioned above. At the same time, It can also be found that the current system of voluntary surrender in China is insufficient for the judicial organs. The cost of judicial practice will increase, the role of surrender system in this case will be weakened, but also makes the judiciary into a certain degree of uncertainty.

According to the rational analysis of the criminal suspect and the judicial organ, there is a certain lack of system in the system of voluntary surrender in our country under the special circumstances that the criminal suspect confesses to the remaining crime by mistake, which leads to the drawbacks analyzed in the above two aspects.

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