

# CRIMINOLOGICAL THEORY AND ORGANIZATIONAL CRIME\*

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To understand the circumstances that lead to organizational crime, we need to consider the insights of strain theories on the distribution of legitimate and illegitimate opportunities, of labeling theory on the way stigmatization can foster criminal subculture formation, of subcultural theory as applied to organized business subcultures of resistance to regulation, and of control theory. It is contended that an integration of these perspectives into a theory of organizational crime is possible; a continuity can be established with the mainstream traditions of criminological theory in the domain of organizational crime. Thirteen propositions are advanced as a basis for building such an integrated theory. The key to this attempt at synthesis is the notion of differential shaming—the shaming from organizational cultures of compliance versus the shaming from subcultures of resistance to regulatory law.

Sutherland (1983) showed that traditional criminological theory is flawed by a class bias which precludes explanation of crimes of the powerful. Contributions to criminological theory since Sutherland (e.g., Wilson and Herrnstein 1985) have continued largely to vindicate this critique. The scholars who *have* taken up the challenge of explaining the criminality of the powerful generally have eschewed the Sutherland program of building general theory that gives an account of all types of crime. Gross (1978:55), for example, establishes his case for a theoretical perspective on organizational crime grounded in organization theory by attacking “all the leading [criminological] theories” for the “disturbing bias” of focusing attention on the behavior of individuals (or groups of individuals) to the exclusion of the behavior of organizations. The aim of this article is to show that we can reconstruct traditional criminological theory to render it innocent of this charge.

For this reason the subject of the article is organizational crime rather than white-collar crime (Sutherland 1983), corporate

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crime (Clinard and Yeager 1980), economic crime (Leigh 1977), white-collar lawbreaking (Reiss and Biderman 1980), corporate and governmental deviance (Ermann and Lundman 1987), corporate misconduct (Vaughan 1983), occupational crime (Clinard and Quinney 1973), corporate transgression (Michalowski and Kramer 1987), or any of a variety of other related definitional specifications. To simplify Schrager and Short (1978) and Shover (1978), organizational crime is defined as crime perpetrated by organizations or by individuals acting on behalf of organizations.

My purpose is by no means to reject the merit of explanations of organizational crime derived from organization theory. On the contrary, although it is important not to give up on the Sutherland project (Braithwaite in press), general theories of crime will explain only modest proportions of the variance in particular types of crime; accordingly, theories tailored to those particular types of crimes must be constructed to grapple with the unexplained variance. In the case of organizational crime, these theories are likely to be derived from organization theory, as a number of scholars have shown in different ways (Albanese 1984; Clinard 1983; Clinard and Yeager 1980; Cohen 1977; Coleman 1987; Cullen, Maakestad, and Cavender 1987; Ermann and Lundman 1978; Faberman 1975; Finney and Lesieur 1982; Geis 1984; Goff and Reasons 1984; Kramer 1982; Needleman and Needleman 1979; Shapiro 1987; Stone 1975; Vaughan 1983, in press; Wheeler and Rothman 1982). I will attempt to argue that it is a mistake to assume that organizational crime is so different from individual crime as to require different paradigms.

## TWO TRADITIONS OF INTEGRATION

There are two important traditions for integrating explanations of crimes of the powerless and of the powerful: the Bonger tradition and the Sutherland tradition.

The Dutch Marxist Willem Bonger (1916) explained both crime in the streets and crime in the suites by the cupidity and exploitativeness in interpersonal relations that emerge in the capitalist transformation of work from its value for use to its value for exchange.

As soon as productivity has increased to such an extent that the producer can regularly produce more than he needs, the division of labour puts him in a position to exchange his surplus for things that he could not produce himself; at this moment there arises in man the notion of no longer giving to his comrades what they need, but of

keeping for himself the surplus of what his labour produces, and exchanging it. Then it is that the mode of production begins to run counter to the social instincts of man instead of favouring it as heretofore (Bonger 1916:37).

The thrust of the Bonger analysis was that capitalism developed "egoism" at the expense of "altruism." First, a criminal attitude is engendered by the conditions of misery inflicted on many of the working class under capitalism. Second, a similar criminal attitude among the bourgeoisie arises from the avarice fostered when capitalism thrives.

Coleman's (1987) attempt at an integrated theory of white-collar crime is within the Bonger tradition. Like Bonger, Coleman believes that the motivational culprit in white-collar crime is the "culture of competition" to which capitalism gives rise.

My own *Inequality, Crime and Public Policy* is also in the Bonger tradition (Braithwaite 1979). The thesis there is that nations, and other geographical sites, which are afflicted with high levels of inequality of wealth and power will suffer high rates of both crime in the streets and crime in the suites. Those at the bottom of unequal class structures are attracted to crime, and to constituting criminal subcultures, by the systematic blockage of access to legitimate opportunities. For the poor, the illegitimate opportunities constituted by criminal subcultures are mostly inferior substitutes for the legitimate opportunities available to the wealthy. Those who enjoy extreme wealth and power, on the other hand, use those resources to ensure that their power is unaccountable ("power corrupts"). In addition, the powerful are able to constitute illegitimate opportunities that are more rewarding than legitimate opportunities. Greater inequality makes both problems worse: it creates both Michael Milkins and Ned Kellys.<sup>1</sup>

The second tradition of integrating the explanation for crimes of the powerless and of the powerful is Sutherland's differential association. This approach has an organizational dimension because Sutherland believed that many corporations were organized for crime, in a structural sense. Crime arises from an excess of definitions favorable to law violation over definitions unfavorable to law violation. My *Crime, Shame and Reintegration* (Braithwaite 1989) follows the Sutherland tradition in that it is a theory of differential shaming. Specification of different modalities of shaming is posited there as a missing link that enables the integration of the seemingly incompatible theoretical traditions of

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<sup>1</sup> Ned Kelly, the poor Irish-Australian who became a bushranger, was Australia's most famous social bandit.

labeling, subcultural, control, opportunity, and learning theories of crime. I do not see the Bonger and Sutherland traditions as incompatible; each makes possible partial theories which account for modest proportions of the variance in crime rates.

*Crime, Shame and Reintegration* devoted only limited attention to the question of organizational crime. My mission here is to show how the mainstream theories mentioned above can be adapted to the explanation of crimes perpetrated by organizations rather than by individuals. I do not defend the proposition that it is sensible to construe organizations as criminal actors, as this has been done elsewhere (Braithwaite and Fisse in press). Nor do I explain the mechanisms whereby shaming can affect both organizations and their individual members; that question also has been addressed elsewhere (Braithwaite 1989:125-27; Fisse and Braithwaite 1983). I do not suggest that an explanation of organizational crime via this new integration of traditional criminological theory is the best possible partial explanation of organizational crime. Rather I suggest that it is one very promising partial explanation with the special virtue of generalizability to all forms of predatory crime—to all forms of crime whose criminalization can be defended by a republican normative theory of criminal justice (Braithwaite and Pettit in press). Therefore this article should be read as another piece of the broader enterprise of constructing a republican criminology.

We begin by arguing for the explanatory potential of opportunity theory with regard to organizational crime, and proceed to a similar discussion of subcultural theory. Then the notion of differential shaming is developed from the labeling and learning theory traditions. Differential shaming operates as a shunt, contingently directing us down the tracks of a control theory explanation or a subcultural explanation of organizational crime, depending on the type of shaming involved.

## OPPORTUNITY THEORY

Merton (1957) tells us that in any society there are a number of widely shared goals which provide an aspirational frame of reference. The most important of these in America is material success. In addition to cultural goals held up as "worth striving for," there are defined legitimate institutionalized means for achieving the cultural goals. Elaborating on Merton, Cloward and Ohlin (1960) maintained that if delinquency is to result from blockage of legitimate means to achieving a cultural goal, there is a second requirement: illegitimate means for achieving the goal must be

open.<sup>2</sup>

Cloward and Ohlin were theorizing about juvenile delinquency. Far from being seen as relevant to white-collar crime, their theory has been used largely to account for disproportionate delinquency among members of the working class, who are believed both to have legitimate opportunities more systematically blocked and illegitimate opportunities more readily available.

Certainly the poor objectively have truncated legitimate opportunities. We can conceptualize Merton's and Cloward and Ohlin's theories, however, as applying to opportunities to achieve whatever goals are important to individuals or organizations from the starting point of their present positions. Thus we can talk sensibly of the blocked aspirations of the already wealthy executive to become a millionaire. We might understand his or her behavior in paying a bribe as legitimate means for securing a contract being blocked at that time and as the illegitimate opportunity to do so corruptly being open. Vaughan (1983:59) says that a cultural emphasis on economic success motivates the setting of a new goal whenever the old one is attained.

From a cruder viewpoint, we can break out of the implied limiting of opportunity theory to the satisfaction of need and can apply it as well to opportunities to satisfy greed. Gross (1978) points out that in both capitalist and socialist societies, organizations break the law because they strive to attain goals. In a capitalist society, an organization might seek to secure a certain level of profit; under socialism, the goal might be to satisfy a production target set by the state. Under both systems there will be occasions when organizational actors are unable to achieve the goal through legitimate means. Hence either a socialist or a capitalist pharmaceutical manufacturer can find itself in trouble because a product that cost a fortune to develop is denied legitimate access to markets around the world as a result of doubts over side effects. An illegitimate opportunity then can arise in the form of a health minister in a particular country who is known to accept bribes in return for allowing products into the country. In fact, we can understand the comparatively high level of bribery in the international pharmaceutical industry (Braithwaite 1984) both in terms of such known networks of corruption providing illegitimate opportunity structures and in terms of legitimate opportunity blockages being unusually severe. By the latter I mean that the pharmaceutical

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<sup>2</sup> A full explication of Cloward and Ohlin's (1960) position would go on to show that they were not only opportunity theorists, but subcultural theorists as well. They were concerned not only with opportunities to *perform* a role but also with the opportunity to *learn* a role.

industry deals with major win-lose situations; the growth of the corporation depends on a small number of successful products, and spending a fortune on a single product only to have it kept off the market is a major disaster. In this respect the pharmaceutical industry is like the defense contracting industry, which also is comparatively corrupt (Boulton 1978; Clinard and Yeager 1980), and is unlike companies that sell (say) breakfast cereal, where there are many buyers, many products in the corporation's range, and low product development costs.

Identifying an organization's goals is typically problematic. The goal of the pharmaceutical company medical director might be scientific glory, whereas that of the top management team might be to stave off a takeover. Thus we must avoid a monolithic, conflict-free conception of the organization and its goals. Our theory must accommodate subunit goals; it must motivate a research tradition that empirically grounds the social construction of goals. The concept of "goal" must be sufficiently open to allow us to conceive as goal-directed an organization that rummages through a garbage can for a routine solution to a problem (Cohen, March, and Olsen 1972; cf. Georgiou 1973; Vaughan in press). The organization experiences strain when legitimate means to the goal of implementing the garbage can solution are blocked.

Thus the first two propositions of a theory of organizational crime might be expressed as follows:

1. Organizational crime is more likely to occur when an organization (or an organizational subunit) suffers major blockages of legitimate opportunities to achieve its goals.
2. Organizational crime is more likely to occur when illegitimate opportunities for achieving the organization's goals are available to organizational actors.

Yet if greed is insatiable—if there is no limit to rising aspirations—everyone might be expected to commit crime. Thus the two opportunity theory propositions make for a weak theory on their own. They are necessary conditions for crime, which must be complemented with an account of why some actors find it acceptable to seize illegitimate opportunities and why others do not. Another weakness is that illegitimate opportunities are not pre-given facts totally external to organizations. An organization may not stumble into a price-fixing meeting with competitors; it may actively create its illegitimate opportunities. Blocked legitimate opportunities (low profits) indeed may motivate the constitution of a price-fixing subculture (Simpson 1987; Straw and Szwajkowski 1975), which in turn creates illegitimate opportunities. For a remedy to

the two problems—the need to account for the acceptance and rejection of illegitimate means for the creation of illegitimate opportunities—we can seek to complement opportunity theory with subcultural theory. A linking proposition between opportunity and subcultural theory is as follows:

3. Blockage of legitimate opportunities for the attainment of organizational or subunit goals fosters subculture formation within an industry.

### SUBCULTURAL THEORY

Many of the most important illegitimate opportunities take the form of subcultures that transmit knowledge of how organizational actors can work together to break the law (Cressey 1976). Geis's (1967) classic study of heavy electrical equipment price fixing can be interpreted as showing that a criminal subculture existed in that industry. The subculture socialized neophyte executives in how to cooperate with their competitors to fix prices and how to rationalize this behavior as good, necessary, and inevitable. A corrupt police department transmits a subculture of corruption to its new recruits. Among other things, the subculture instructs them in how to play their part in sustaining an illegitimate opportunity structure—the code of silence, from whom and how to collect payoffs, from whom to receive one's share of the takings, and how to deal with deviants from subcultural norms (Sherman 1982).

Thus subcultural theory substantially concerns the exercise of informal social control to secure noncompliance with the law. This perspective contrasts with control theory (e.g., Hirschi 1969; Lasley 1988), which concerns the exercise of informal social control to secure compliance with the law. Being mutually contradictory in this way, how can these two theoretical traditions be integrated? Geis's electrical equipment executives had a stake in conformity to a subculture of price fixing; in coal mining companies with outstanding safety records, executives have a stake in conformity to mine safety laws (Braithwaite 1985). What we need, in Daniel Glaser's (1987) words, is "a theory of tipping points," a theory that explains when the balance of social control favors subcultural theory (a stake in noncompliance) and when the balance favors control theory (a stake in conformity with the law).

The principle of differential association (Sutherland and Cressey 1978) can be conceived as a formula for such a tipping point. When definitions favorable to violation of a law exceed definitions unfavorable to violation of the law, violation of the law will occur. The challenge for a theory of organizational crime is to give

greater specificity of content to the social conditions in which the stake in compliance will predominate and to the social conditions which tip the balance to a stake in noncompliance. I submit that the variable which plays this role is shaming.

### THE THEORY OF TIPPING POINTS—DIFFERENTIAL SHAMING

Shaming is a two-edged sword. Criminal subcultures often operate by shaming those who defy criminal subcultural norms: police officers who refuse to take their cut, price-fixing conspirators who “cheat” through price competition. At the same time, shaming from the wider community prevents criminal subculture formation. Moreover, organizational actors often experience shaming that cuts in opposite directions—from both a majoritarian morality of compliance with the law and a subcultural morality of noncompliance. Thus the organizational actor is buffeted by differential shaming. Further, I will argue that the nature of the shaming for noncompliance—whether it is stigmatizing or reintegrative—exerts a crucial influence on actors’ choice as to which of the two forms of shaming they will take to heart.

#### *What is Shaming?*

Shaming is an expression of disapproval that can be enacted in an infinite variety of verbal and nonverbal cultural forms. I have exemplified this diversity elsewhere (Braithwaite 1989). The disapproval is expressed with the intention or effect of invoking remorse in the person being shamed and/or condemnation by others who become aware of the shaming. It is not necessary for lawbreakers to be confronted directly with shame in order to be influenced by it: the knowledge or suspicion that others are gossiping about them can be a more powerful form of social control than direct confrontation. The most important forms of shaming occur within interdependent communities—workmates, family, the Academy of Criminal Justice Sciences. Shaming by the state, however—notably the shaming associated with a criminal conviction—is also important.

#### *Labeling Theory and Shaming*

A central message of the labeling perspective (Becker 1963; Schur 1973) is that “social control leads to deviance” (Lemert 1967:v). Control theory makes the opposite prediction: social disapproval by others who are important to the actor will reduce deviance. The theory of differential shaming splits shaming into two



types—one that works as labeling theory says it should, and another that works as control theory says it should. The first is called stigmatization; the second, reintegrative shaming.

Reintegrative shaming is shaming issued by actors who maintain bonds of respect for the offender and who terminate episodes of shaming with gestures of reacceptance or forgiveness. Reintegrative shaming is focused on the evil of the deed rather than on the evil of the actor. Such shaming labels the act as disreputable while striving to preserve the identity of the offender as essentially good.

Stigmatization, in contrast, is disintegrative shaming in which no effort is made to reconcile the offender with the community. Offenders are outcasts; their deviance is allowed to become a master status trait; degradation ceremonies are not followed by ceremonies to decertify deviance.

Necessarily, this distinction is made at a rather high level of abstraction, as it is designed to apply to domains as disparate as vandalism and antitrust violations. In the remainder of the article we will give it more concrete content in the arena of corporate regulation: stigmatization is regulation which is confrontational and unforgiving; reintegrative shaming is regulation which is cooperative but firm—tough on cheating, but forgiving to cheaters who reform.

### *Shaming: Preventing and Fostering Subculture Formation*

Organizations find it more difficult to sustain subcultures of noncompliance when outsiders become aware of lawbreaking. This situation is Justice Brandeis's "sunlight as the best disinfectant." Organizations can sustain subcultures of noncompliance more successfully if they can enforce a code of secrecy or create a smokescreen of diffused accountability so that members of the organization can go out into their neighborhoods, their churches, their social groups without suffering accusations that they are criminals. Modern societies generally are not sufficiently open to uncover many of the abuses of powerful organizations; generally it is not difficult to maintain secrecy, to cover up, or to paint a picture of confused organizational accountability for the outside world (Fisse 1984).

I will now consider the importance (for generating a stake in compliance) of shaming by the general community, professional peers, and agents of the state. Then I will attempt to distinguish the modalities of informal social control in which these actors increase the stake in compliance from those in which social control fosters criminal subcultures.

Snider (1987) argues that struggles waged in the community by trade unions, environmental organizations, and consumer groups often achieve real reform by forging change at the ideological level. Adverse publicity over corporate crime can insinuate a gradual redefinition of "reasonable" business behavior. Shaming of business misconduct can "raise the price of legitimacy for corporations" by lifting the standards of corporate behavior necessary to secure public acceptance. New limits on the tactics that are acceptable in the pursuit of profit are required to avert legitimization problems when these struggles secure victories in the court of public opinion.

Thus, while ideological structures reinforce the cohesion of the dominant class in most instances, this cohesion does not come without a price. Class and rights struggles, by increasing the price the dominant class must pay for legitimacy, create interstices within capitalism whereby meaningful and beneficial change can occur (Snider 1987:59).

Shaming from the general community is not the only important kind of extra-organizational shaming. An informed and especially potent form of shaming can be directed at individuals from their professional networks and associations; physicians who fudge drug safety data for the pharmaceutical company that employs them may suffer their worst mauling at the hands of colleagues in the medical profession. The most traumatic degradation ceremony of all might be a hearing from the medical association as to whether they should be disqualified. Industry and professional self-regulatory arrangements are potentially powerful arenas for extra-organizational shaming. This potential is realized only infrequently, however, because government regulatory arrangements are rarely designed to give incentives for potential self-regulation (Frank and Lombness 1988; cf. Sigler and Murphy 1988).

Government regulatory officials are another important source of extra-organizational shaming. Top managers of corporations characterized by a culture of compliance with the law become concerned when they see evidence of government regulatory personnel denigrating their policies as irresponsible or their conduct as illegal. In some Japanese corporations, even gentle written rebukes by regulators can trigger enormous heartache and upheaval. Indeed, even in American and Australian nursing homes I have observed managers reduced to tears on several occasions by critical verbal or written reports on standards. Criminologists profoundly underestimate the power of informal disapproval by government officials. Many organizational actors, in contrast, cut themselves off from the impact of regulatory shaming by condemning their

condemners, by participating in a business subculture of resistance to regulatory law.

The regulator-regulatee relationship is critical to understanding how organizations tip between a culture of compliance and a subculture of resistance to regulatory law. Bardach and Kagan (1982) argue that an organized business subculture of resistance develops when regulatory agencies are unreasonable, uncooperative, inflexibly rulebook-oriented, and litigious in their dealings with business. Such subcultures supply rationalizations for non-compliance and disseminate knowledge of methods of legal resistance and counterattack (see also Reich 1981). The point is much the same as Matza (1964:89) made about delinquent subcultures: "Being pushed around puts the delinquent in a mood of fatalism. He experiences himself as effect. In that condition he is rendered irresponsible." In Katz's (1988) theoretical terms, if the offender is "humiliated," he or she might transcend that mutilation through rage. This is true particularly if the delinquent (the executive) is "pushed around" in a way he or she perceives as unjust or oppressive, because a sense of injustice abrogates the moral bond of law. "The subculture of delinquency is, among other things, a memory file that collects injustices" (Matza 1964:102). In the same way, the subculture of corporate tax avoidance and evasion is a memory file that collects the injustices of the Internal Revenue Service (cf. Barnett 1984; Vogel 1974).

Once a climate of hostility and distrust comes to characterize government-business relations, the regulatory agency loses its capacity to exercise informal control over managers who have no respect for the agency and its inspectors. Then it has no choice but to exercise control through the courts, a modality of control which is difficult to sustain where the volume and complexity of offending is high. It can be, however, that regulated organizations are indifferent to governmental disapproval until the agency establishes credentials as a "significant other" by occasionally flexing its legal muscles. Moreover, because organizational crimes are rarely prosecuted, symbolizing the harm of the wrongdoing is an especially important effect of criminal enforcement.

Thus regulatory agencies must maintain a difficult balancing act between confrontational and stigmatizing regulation, which compromises their capacity for moralizing and educative social control, and enforcement so weak that business regards both them and the law as of no particular consequence. There is now a growing literature on how regulators can secure a relationship of cooperation and consultation against a background of tough

enforcement for those organizations which do not reciprocate cooperation (Braithwaite 1985; Frank and Lombness 1988; Kagan and Scholz 1984; Scholz 1984a, 1984b). When this occurs, governments will succeed more often in persuading organizational actors that the law is necessary and just; it will not supply the symbols of unreasonableness which fuel business subcultures of resistance. Let us call this a cooperative, firm regulatory relationship. This form of regulation is trusting toward cooperating organizations, tough toward cheating organizations, and forgiving toward cheaters who switch to cooperation.

This cooperative, firm relationship is most likely to prevail when interests countervailing to business are well organized. When regulatory agencies stand alone against business, they are most likely to be pushed by the industry into spineless *laissez-faire* (capture) or into a retreat to crude legalism (hiding from the power of business, or snapping back at it, by resorting to the security of rulebook regulation). When the regulatory agency stands in the middle between business and constituencies who want regulation to be tougher (the trade union movement with occupational health and safety laws; the environmental movement with environmental protection laws; the women's movement with antidiscrimination laws), and chances are better that it will be pushed by both parties to the creative middle ground of regulation which is cooperative and firm. It is not only that regulatory agencies are pushed into this position; they also gather the political resources to choose that position for themselves. A regulatory agency that stands alone against industry jeopardizes cooperative relationships with the industry whenever it institutes tough enforcement. An agency caught between business and a countervailing constituency with some political clout, however, can appeal to business to understand the pressures it suffers from the latter to institute the tough enforcement. In Australia, regulators frequently leak information to consumer groups, suggesting that they use it to put the regulators under outside pressure. Then they enjoy the strategic advantage of the middle ground. Being situated on the middle ground renders cooperative and firm regulation not only the most effective policy but also the most politically astute.

Much more could be said to support this proposition. Ian Ayres and I are completing a paper which will do just that (Ayres and Braithwaite 1989). For the moment, let me say only that what I am suggesting here builds on Handler's (1988) advocacy of "dialogic communities" (Bernstein 1983) of regulation and on Meidinger's (1986, 1987) sympathetic description of "regulatory

communities" which involve participatory regulatory decision making among industry, government, and public interest groups.

We can reconstruct the foregoing scenarios as follows in the discourse of traditional criminological theory. When extra-organizational actors, especially government regulatory officials, stigmatize organizations and their executives as untrustworthy, as unworthy of consultation and cooperation, as cynical profit maximizers, these designations become self-fulfilling expectations. Labeling theory can be useful for understanding organizational crime in this way: stigmatized executives are degraded in certain human relationships that are important to them; they experience a kind of marginality, are encouraged to internalize the identity of a rapacious profit maximizer, and thus are attracted to subcultures which provide social support for offending. Stigmatizing regulatory styles—unforgiving confrontational styles that communicate a presumption of business untrustworthiness—foster organized business subcultures of resistance. Regulatory styles (and styles of wider community response to organizational wrongdoing) that direct potent shaming at the offender within a continuum of respect and human dignity secure social control without driving offenders into subcultures of resistance.

Thus stigmatic regulation creates the conditions in which the counterproductive effects of labeling and subcultural theory will occur; cooperative, firm regulation creates the conditions in which control theory works; cooperative, permissive regulation (the most common sort; Grabosky and Braithwaite 1986) creates the conditions in which regulators will not be taken seriously and will be treated as an irrelevance. This, then, is the response to Glaser's call for a "theory of tipping points" to integrate otherwise mutually incompatible theories. Organizations are conceived as arenas where the interpretations of cultures of compliance and of subcultures of resistance to law compete for the attention of actors who confront blockages of legitimate means for achieving goals. In some circumstances this dynamic will tip in favor of the subculture of resistance. The theoretical agenda is to identify these circumstances.

Benson's (1989) data from interviews with convicted white-collar offenders can be read as suggesting that not only organizations but also individuals can be conceived as battlegrounds between the interpretations of cultures of compliance and subcultures of resistance. Benson reports that offenders experience conflicting emotions: shame and rage; embarrassment and hostility. He suggests that feeling mad is a survival mechanism, a way of overcoming the

paralysis caused by feeling bad. The theory of reintegrative shaming suggests another survival mechanism: adopting the repentant role (Braithwaite 1989:162-65) or, at the organizational level, the role of the reformed organization. At the individual level, this role can involve what Goffman (1971:113) called disassociation: the reformed self can stand back and be critical of the "bad old self" which was not the "real me."

Let us now summarize the propositions toward a theory of organizational crime that have been added in this section.

4. Organizational crime is more likely to occur when subcultures of resistance to a law are strong. Such subcultures neutralize the moral bond of the law and communicate knowledge about how to create and seize illegitimate opportunities and how to cover up offending.
5. Subcultures of resistance develop when organizations and their executives are stigmatized as untrustworthy, as undeserving of cooperative regulation wherein disapproval and sanctioning are dispensed within a continuum of respect. When organizations are treated as irredeemably crooked, they are more likely to become crooked.
6. As long as these counterproductive modes of stigmatization are averted, criminal subcultures are less likely to develop when potent shaming is mobilized against both guilty individuals and the organization itself by the general community, professional or industry peers, and government regulatory officials. Shaming of organizational crime does more than deter crime and inhibit criminal subculture formation. It builds new standards of "reasonable" corporate behavior that inform executives' consciences.
7. General community shaming of organizational crime is enhanced by the apparatus of an open, vigorous democracy—active oppositional groups struggling to protect the environment, consumer, worker, and other rights, a free press with strong traditions of investigative journalism, freedom of information laws, societal protection for whistle blowers, and vigilant oversight of organizational wrongdoing by open judicial or legislative committees of inquiry (see Ayres and Braithwaite 1989; Fisse and Braithwaite 1983).
8. Shaming of organizational crime by professional and industry peers is enhanced by vigorous commitments to industry and professional self-regulation, including the establishment of self-regulatory forums that forcefully denounce particular individuals and organizations adjudicated guilty of wrongdoing.

9. Shaming and informal control of organizational crime by regulatory officials are facilitated by cooperative regulation backed by firm enforcement (as opposed to regulation which is cooperative and weak or confrontational and unforgiving).<sup>3</sup>
10. A cooperative and firm regulatory style is more likely to be achieved when the agency stands in the middle between the regulated industry and an organized countervailing constituency that wields some political power.
11. The vigorous industry and professional self-regulation posited in Proposition 8 is more likely to occur under a government regulatory regime that is cooperative and firm, that catalyzes a commitment to the desirability of the law within the industry or the profession, and that gives the industry an incentive for self-regulatory controls as a means of preempting government enforcement (Braithwaite 1985; Frank and Lombness 1988).

In the foregoing discussion I provided no more than a sketch of these additional eight propositions. The brief treatment is excused by the fact that this article elaborates the implications for organizational crime from a more general theoretical work on shaming and crime (Braithwaite 1989). Here I aspire only to render these theoretical implications clear in an organizational context. For an account of why these propositions might be plausible, it is necessary to refer to the more general work on why and how shaming is crucial to social control.

### CONTROL THEORY

The propositions above sketch an account of the circumstances in which subcultures of resistance to a particular law within organizations might be averted or weakened. Where these subcultures overwhelm the culture of compliance, the organization has "an excess of definitions favorable to violating the law over definitions unfavorable to violation of the law" (Sutherland and Cressey

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<sup>3</sup> Scholz (1987) sought to predict the effectiveness of the Occupational Health and Safety Administration (OSHA) in preventing injuries to workers across 34 states. In keeping with Proposition 9, Scholz found that what he called "cooperative" enforcement (firm enforcement concentrated on the "bad apples") was more effective than "stringent" enforcement. Contrary to Proposition 10, however, Scholz found that labor involvement in regulation had more effect in increasing the "stringency" of regulation than in increasing its "cooperativeness" and that labor involvement reduced the enforcement effectiveness of cooperative programs. Yet it may be ineffectiveness of enforcement that increases labor involvement, especially because the latter was measured by the number of complaints per worker filed with OSHA (see further Ayres and Braithwaite 1989).

1978:81). Within such an organization, to the extent that intra-organizational shaming works well, it is likely to be shaming of those who comply with the law, those who do not "play the game," or those who blow the whistle to the outside world. Once a subculture of resistance has been entrenched, intra-organizational controls that work well can be counterproductive.

It is a reasonable assumption, however, that for most criminal laws, most organizations will contain more definitions favorable to compliance than definitions favorable to violation; there will be more actors with a stake in conformity to any given law than actors with a stake in nonconformity; and the analytical framework of control theory will have some explanatory power. It is hypothesized that in any organization one can identify a culture of compliance with the law and subcultures of resistance to law, but that in most organizations the former is the more powerful influence.

There are various reasons why we should consider internal organizational controls as explanations for variation in rates of organizational offending. Bayley (1983) notes the following:

The police organization has a more extensive, subtle, and discriminating set of controls over its members than do external agencies. In addition to formal disciplinary punishments involving pay, postings and promotions, it can exhort, slight, harangue, praise, embarrass and so forth (Bayley 1983:154).

It is a mistake to place excessive emphasis on the importance of formal disciplinary controls within organizations; these are desperate last resorts to exert control, not the site of the day-to-day action. Actors comply with organizational norms because such obedience is an essential requirement for being an effective, influential person in the organization. "Being powerful rests on being included in calculated strategies and ongoing decisions; being included in strategies and decisions rests on others' evaluation of one's accountability, which in turn rests on one's willingness to obey group standards of behavior" (Hamilton and Biggart 1985:13). To be an effective, influential member of the organization, one must be trusted as someone who plays by the rules of the game as defined within the organization. This requirement is a two-edged sword: to be effective and powerful in a criminogenic organization, it can help to be a crook.

I contend, however, that for most regulatory arenas, most organizations have an excess of definitions favorable to compliance over definitions favorable to crime. This is a refutable empirical claim with which many criminologists are inclined to disagree. One of the reviewers noted here: "This seems at odds with, for example, Clinard et al. (1979)." I read the data in Clinard, Yeager,



Brisette, Petrashek, and Harries (1979) as support for the hypothesis that most large corporations occasionally commit crimes and that most large corporations comply with the law most of the time. This observation is surprising because the levels of sanctioning and the rewards of offending indicated by the Wisconsin study (Clinard and Yeager 1980) suggest that it is economically rational for organizations to seize illegitimate opportunities.

The puzzle is to understand why corporations engage in the irrational activity of complying with the law so often; control theory helps to resolve this puzzle. In most of the 50 corporations within which I have done fieldwork over the past 15 years, one of the organizational rules of the game was to comply with the law (see also Brenner and Molander 1977; Victor and Cullen 1988:114). Consider criminal temptations that exist in universities, the organizations where most of my readers work. Scientific fraud—fabricating data—is a rational crime, as the risks of detection are virtually nil. Yet who in the criminological research community thinks that in the organizations where we work, there is an excess of definitions favorable to fraud over definitions unfavorable to fraud? Nevertheless it is true that in the organizations I have studied, there are definitions favorable to crime, various forms of willingness to turn a blind eye to the law in extenuating circumstances.

Intra-organizational controls can have some force even where such extenuating circumstances apply. If legal compliance creates difficulties for achieving subunit goals, the circumstances in question may appear unpersuasive to organizational actors from outside that subunit. Thus persons in the legal department or the public relations unit at corporate headquarters might not be especially impressed with the proposition that one of the corporation's plants could meet its production target only by breaking the law.

The literature on organizational crime is overdismissive of the fact that people in organizations have consciences; many of them believe in complying with the law not for any calculative reason, but simply because it is the right thing to do. Moreover, from their position in one subunit of the organization, often they are not especially tolerant of the problems of people in other subunits; in fact they sometimes relish the opportunity to affirm their own competence and moral uprightness by shaming the failings of a manager in another subunit who can achieve results only by breaking the law. Thus we should never underestimate the importance of moralizing social control within complex organizations. Just as organizations that are open to criticism from without find crime a more difficult choice, so crime is less likely to flourish

within organizations where one's colleagues become aware of transgressions against the law.

Some of the literature suggests the possibility that organizations "full of antennas" (Fisse and Braithwaite 1983: 168-81), where lawbreaking becomes the subject of gossip within the organization, are inhospitable environments for organizational crime. My own study of five American coal mining companies with outstanding safety compliance records found that those companies were characterized by clearly defined accountability for safety performance, rigorous monitoring of that safety performance, and systems for communicating to managers and workers that their safety performance was not up to standard (Braithwaite 1985). In other words, if you break an important mine safety law in one of these companies, it becomes widely known that you were the one responsible, and you know that disapproving talk about your conduct is resonating throughout the organization.

In contrast, criminogenic organizations are characterized by "concerted ignorance." "Both superordinates and subordinates and insiders and outsiders have common interests in limiting the knowledge each obtains about the other. In what are often quite tacit ways, bargains are struck as to what each will require the other to know." (Katz 1979: 297). These are corporate cultures imbued with expectations from the boss to "get it done, but don't tell me how you do it." They are organizations that build communication blockages into reporting relationships to ensure that certain types of bad news do not land on the desks of people who can do something about them (Stone 1975). They are organizations where sticking your nose in other people's business or internal whistle blowing is a fatal career move. Sometimes the mechanisms for containing knowledge of wrongdoing are none too subtle, as in the pharmaceutical industry phenomenon of setting up a "vice-president responsible for going to jail" as the only senior executive with a need to know about certain practices (Braithwaite 1984).

The fact that corporate cultures vary enormously on this dimension is demonstrated by the existence of pharmaceutical companies with very explicit policies to ensure that chief executives *are* tainted with dangerous knowledge. A problem in pharmaceutical companies is that quality control managers' recommendations to destroy certain batches of drugs which do not meet purity specifications are overruled occasionally by production managers keen to meet their production quotas. Typically, production managers make this decision alone, protecting more senior management from knowledge of what they have done. In contrast, a number of

companies have policies that require all reports of the quality control director to be in writing and to be placed on the desks of certain senior managers; all decisions to overrule a quality control director's recommendation can be made only over the chief executive's signature. In these companies, chief executives have decided that although they want to put their middle managers under strong performance pressures, they do not wish to leave them the option of satisfying their performance targets by secretly breaking the law.

In a similar vein, there are examples of companies that impose extraordinarily strong obligations on employees to blow the whistle internally (ultimately to the audit committee of the board) on any illegality of which they become aware, whether or not it is within their normal domain of responsibility (see Exxon's policies, for example, in Fisse and Braithwaite 1983:168-81).

Even when a corporation does not transmit a subculture of resistance to the law, crime can flourish if individuals and subunits build walls around their part of the operation so they can be willfully blind to crime in another part of the organization. In the pharmaceutical industry I interviewed many executives who took pride in how ethically they performed their bit of the corporate mission, but who viewed it as none of their business how ethically or how unethically other subunits with which they deal did their work. Thus a quality control manager might do a magnificent job of ensuring that drugs which are tested fraudulently and promoted for inappropriate uses are nevertheless produced exactly to specifications. The quality control manager feels no concern for the social irresponsibility of the total process of making the product. Pharmaceutical company researchers who discover that a drug has a particular side effect believe that they have done their job responsibly by reporting the side effect to their boss. The fact that subsidiary managers in many Third World countries will suppress their bad news is not regarded as their concern: "That is the responsibility of the international marketing division." In a company which is an integrated moral community, in contrast, such researchers would be upset about the suppression of the side effect they discovered. They would contact medical directors in those subsidiaries to attempt to shame them into acting more responsibly or would complain to a corporate ethics committee or to the general counsel.

Crime flourishes in organizations which isolate people into sealed domains of social responsibility; crime is controlled in organizations where shady individuals and crooked subunits are exposed to shaming by those in the organization with a commitment

to the law. The key to understanding so much organizational crime, be it fraud in the safety testing of drugs or police corruption, is that organizational complexity can be used to protect people both from their own consciences and from shaming by colleagues with stronger consciences.

In both my studies of internal corporate compliance systems (Braithwaite 1984, 1985), I concluded that a requirement for effective internal regulation is that compliance subunits (e.g. safety departments, internal auditors) have organizational clout. This means more than anything else that they have the chief executive's backing to make their recommendations stick in dealings with line managers. In control theory terms, line managers have a stake in conformity to the edicts of compliance staff—the stake of sustaining the chief executive's goodwill. Stakes in conformity to the wishes of compliance staff also can be established by structuring line manager's strategic dependencies on that staff. In my favorite illustration, the animal welfare officer from a large Australian research institution told me that researchers had to take notice of her advice on compliance with animal welfare codes because they depended on her as the officer responsible for the ordering and delivery of animals to be used in experiments. Indeed it is a staple of organization theory that compliance both within and between organizations is more likely to conform to the will of those on whom one is strategically dependent (Blau 1964; Emerson 1962; Hickson, Lee, Schneck, and Pennings 1971; Jacobs 1974; Perrow 1961).

Let us attempt, then, to summarize in propositional form what we may have extracted from this thinking about organizational crime within a control theory framework:

12. In organizations with subcultures of resistance to law, crime is more likely to occur when organizational actors are morally isolated in sealed domains of responsibility and when concerted ignorance is built into organizational communication. Crime is less likely when compliance with the law is everybody's responsibility within the corporate culture, when the organization is "full of antennas," and when accountability mechanisms make it known widely within the organization that certain individuals or subunits have been responsible for a crime. Crime is less likely to the extent that shaming is directed against offenders by other constituencies within the organization.

13. Crime is less likely to occur when specialized compliance subunits (e.g., the environmental department) have organizational clout and when line managers are strategically dependent on them.

### CONCLUSION

An interplay between the author's fieldwork and traditional criminological theory has prompted 13 propositions as a basis for building a theory of organizational crime. Figure 1 summarizes the interrelationships among the propositions. My fieldwork, of course, supplies a very weak basis for assuming that the propositions are empirically correct. The propositions need to withstand the test of data collected with a view to refuting them. Even before that step is taken, a great deal of attention to theory development is needed in an area where long-standing theoretical neglect is finally receiving some redress (see particularly Coleman 1987).

The 13 propositions toward a theory of organizational crime suggest that the distribution of organizational crime depends on the availability of legitimate and illegitimate opportunities to achieve organizational and subunit goals, on the extent to which the subcultural realities of relationships between regulated organizations and the state foster subcultures of resistance to law, and on the extent to which those organizations that do not transmit such a subculture have internal informal controls which expose offenders to shaming.

The latter control theory analysis swings into action only in the case of organizations that are not in the grip of a subculture of resistance. Control theory works only where there are more definitions favorable to compliance than definitions favorable to non-compliance. Subcultural and control theory accounts thus are posited as having differential explanatory power, depending on an organization's position on the differential association continuum.

The way shaming works in the culture is the key variable for explaining which organizations will transmit criminal subcultures. Among those organizations with weak or nonexistent criminal subcultures, shaming is also the key to explaining which organizations nevertheless will be criminogenic. Differential shaming is posited as the missing link that can integrate the otherwise contradictory traditions of subcultural and control theory (see further Braithwaite 1989). Both intra-organizational shaming and extra-organizational shaming—by the general community, the media, industry and professional associations, and regulatory officials—shape and control organizational crime. Shaming is a particularly

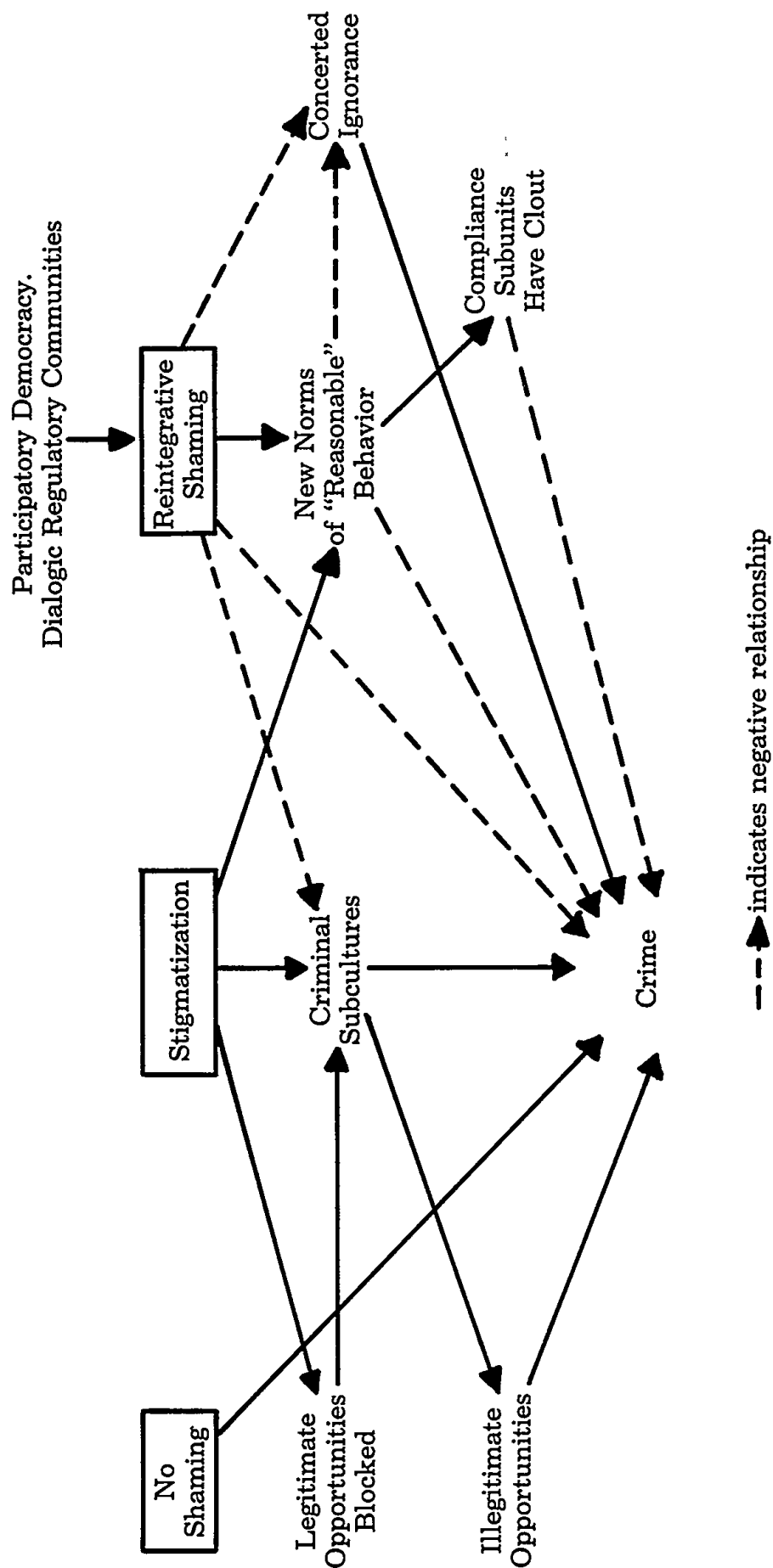


Figure 1. Toward a Theory of Organizational Crime

potent influence on organizational crime because organizational criminals, be they individuals or collectivities, generally have a profound stake in reputations, which are vulnerable. These collective and individual reputations are valued independently of any economic benefits they might deliver. Why and how shaming is important to understanding crime in general has been argued at length elsewhere (Braithwaite 1989); these reasons have force among even the poorest and most "disreputable" persons in the community. They have all the more force with a complex organization like a bank, a stock brokerage, or a university, whose reputation is a priceless asset. Shaming also matters individually to executives in such organizations, who cherish being reputable in the community and dread losing that respect from their professional peers which is crucial to their continuing success.

Further theoretical progress will turn on exploring the distinction between cultural processes of stigmatization that foster subcultures of resistance and shaming modalities that motivate individual compliance and organizational reform. Such a theoretical reorientation might make for a criminology of some practical use because a criminal justice system that makes compliance with the law economically rational for powerful organizations is probably not attainable (Moore 1987). Ask any vice-president responsible for going to jail!

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