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Whither criminological theory?

The theory in this book suggests that the key to crime control is cultural commitments to shaming in ways that I call reintegrative. Societies with low crime rates are those that shame potently and judiciously; individuals who resort to crime are those insulated from shame over their wrongdoing. However, shame can be applied injudiciously and counterproductively; the theory seeks to specify the types of shaming which cause rather than prevent crime.

Toward a General Theory

Crime is not a unidimensional construct. For this reason one should not be overly optimistic about a general theory which sets out to explain all types of crime. In fact, until fairly recently, I was so pessimistic about such an endeavor as to regard it as misguided. Clearly, the kinds of variables required to explain a phenomenon like rape are very different from those necessary to an explanation of embezzlement.

Equally clearly, there is a long tradition of purportedly general theorizing in criminology which in fact offers explanations of male criminality to the exclusion of female crime by focusing totally on male socialization experiences as explanatory variables. Other theories focus on big city crime to the exclusion of small town and rural crime by alighting upon urban environment as an explanation; others explain juvenile but not adult crime, or neglect the need to explain white collar crime.

Notwithstanding the diversity of behavior subsumed under the crime rubric, the contention of this book is that there is sufficient in common between different types of crime to render a general explanation possible. This commonality is not inherent in the nature of

the disparate acts concerned. It arises from the fact that crime, whatever its form, is a kind of behavior which is poorly regarded in the community compared to most other acts, and behavior where this poor regard is institutionalized. Perpetrators of crime cannot continue to offend oblivious to the institutionalized disapproval directed at what they do. Unlike labeling theorists, I therefore adopt the view that most criminality is a *quality of the act*; the distinction between *behavior* and *action* is that behavior is no more than physical while action has a meaning that is socially given. 'The awareness that an action is deviant fundamentally alters the nature of the choices being made' (Taylor *et al.*, 1973: 147).

It has been said that there is nothing inherently deviant about using a syringe to inject opiate into one's arm because doctors do it all the time in hospitals – deviant behavior is no more than behavior people so label. However arbitrary the labeling process, it is the fact that the criminal chooses to engage in the behavior knowing that it can be so labeled that distinguishes criminal choices from other choices. It is the defiant nature of the choice that distinguishes it from other social action.

Jimmy and Johnny are confronted with an opportunity to commit crime: an unlocked car. Johnny feels pangs of conscience overwhelm him as he approaches the criminal opportunity; he also thinks of how ashamed his mother would be if he were caught; he backs off. Jimmy, in contrast, goes ahead, steals the car, is unlucky enough to be caught, appears before a judge, admits that he has committed a crime and is convicted, a fact announced in the local newspaper. In all of this, Jimmy and Johnny, Johnny's mother, the judge, and those who read the newspaper all shared a view of what crime was and what the courts have the authority to do when criminals are caught. There is no other way for the participants to make sense of such interactions without some shared view of the institutional orders involved – in this case those of the criminal law and the criminal justice system. The critical point is that by all of them invoking the institutional order they help to reproduce it. Jimmy and Johnny, their families, the police who catch them, their lawyers, the judge, all treat the criminal law and the criminal justice system as 'real' concepts which define what Jimmy did. They are institutional relationships within which the encounters with the police and courts are situated, and institutional relationships that are indeed constituted by interactions such as those experienced by Jimmy.

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The criminal law and the criminal justice system are 'real' precisely because countless people like these accept them as real and reproduce them through such social action.

It is not that, as W. I. Thomas (1951:81) said, if actors 'define situations as real they are real in their consequences', because this famous dictum implies that something like crime might not be real: it only has consequences because people believe in it. Rather, crime is reproduced as something real by repeated sequences of interactions akin to those of Jimmy and Johnny. Similarly, shame, conscience, the power and authority of the police and the judge – the things that constrained Johnny but not Jimmy – are structural and psychological constraints upon crime which are themselves reproduced as real by the very encounters in which the crime construct is reproduced. Social structures like the criminal justice system are therefore both a resource for actors to make sense of their action and a product of that action; social structure is reproduced as an objective reality that partially constrains the very kinds of actions which constitute it (Giddens, 1984).

A theory of any topic X will be an implausible idea unless there is a prior assumption that X is of what Philip Pettit (pers. comm., 1986) calls an explanandary kind. To be an explanandary kind, X need not be fully homogeneous, only sufficiently homogeneous for it to be likely that every type or most types of X will come under the same causal influences. There is no way of knowing that a class of actions is of an explanandary kind short of a plausible theory of the class being developed. In advance, giraffes, clover and newts might seem a heterogenous class, yet the theory of evolution shows how the proof of the pudding is in the eating. A general theory is not required to explain all of the variance for all types of cases, but some of the variance for all types of cases.

The homogeneity presumed between disparate behaviors such as rape and embezzlement in this theory is that they are choices made by the criminal actor in the knowledge that he is defying a criminal proscription which is mutually intelligible to actors in the society as criminal. At the end of Chapter 2 we will show that most criminal laws in most societies are the subject of overwhelming consensus. However, when dealing with the small minority of criminal laws that are not consensually regarded as justified, as with laws against marijuana use in liberal democracies or laws that create political crimes against the state in communist societies, the theory of rein-

tegrative shaming will not explain the incidence of their violation. In liberal democracies the crimes that involve doubtful consensus are victimless crimes. Thus, the way to eliminate this problem is by measuring crime rates based only on predatory offenses against persons and property (Braithwaite, 1979: 10-16).

If the awareness that an act is criminal fundamentally changes the choices being made, then the key to a general explanation of crime lies in identifying variables that explain the capacity of some individuals and collectivities to resist, ignore, or succumb to the institutionalized disapproval that goes with crime. Indeed, the theory in this book construes as the critical variable one type of informal social support for the institutionalized disapproval of the criminal law. This variable is shaming.

Contrary to the claims of some labeling theorists, potent shaming directed at offenders is the essential necessary condition for low crime rates. Yet shaming can be counterproductive if it is disintegrative rather than reintegrative. Shaming is counterproductive when it pushes offenders into the clutches of criminal subcultures; shaming controls crime when it is at the same time powerful and bounded by ceremonies to reintegrate the offender back into the community of responsible citizens. The labeling perspective has failed to distinguish the crime-producing consequences of stigma that is open-ended, outcasting, and person- rather than offense-centered from the crime-reducing consequences of shaming that is reintegrative. This is why there is such limited empirical support for the key predictions of labeling theory.

Astute scholars of criminological theory will already be concerned about my formulation. Braithwaite, they will say, is setting out to build upon two mutually inconsistent theoretical traditions. One is control theory, which, like my theory, begins from the proposition that there is fundamental consensus about, and rejection of, criminal behavior in the society. The second is subcultural theory, which is a theory of dissensus, of some groups having different values from others in relation to criminal behavior. In Chapter 2, I will argue that this opposition has been greatly overdrawn in theoretical debate within criminology. In fact, only very extreme forms of subcultural theory are irreconcilable with control and other consensus-based theories.

This is not a book which puts a torch to existing general theories to build a new theory upon their ashes. Rather it sees enormous

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scope for integrating some of the major theoretical traditions which have come to us largely from American sociological criminology – control theory, subcultural theory, differential association, strain theories, and indeed labeling theory. The key to synthesizing these potentially incompatible formulations is to inject a vital element missing in criminological theory – reintegrative shaming.

These theories came under concerted attack through the 1970s from the ‘new criminologists’. Today they are under attack from prophets of a new classicism in criminology. My contention is that the middle range theories of the fifties and sixties have survived the assault of the critical criminologists of the seventies and the neo-classical criminologists of the eighties rather more admirably than we are inclined to concede when we teach undergraduate criminology. Yet this is not to deny how profoundly important the missing elements in middle range criminological theory have been. The path to integrating these theories into mutually reinforcing partial explanations is not as difficult as has typically been suggested. If we fail to take this path we are left with a criminology which is the worst of all possible worlds. The next section is devoted to showing how criminology increasingly runs a risk of making the worst possible contribution to modern societies.

Once we put this pessimistic analysis of the contemporary scene behind us, however, and go back to the positive theoretical legacy of the fifties and sixties left by great American criminologists such as Sutherland, Cressey, Hirschi, Cloward and Ohlin, Albert Cohen, and Wolfgang, there is something quite substantial and empirically sustainable to build upon.

Criminology as a Cause of Crime?

At least half of the most influential criminologists in the world are Americans. It is not the purpose of this chapter to suggest that the United States has crime problems so much worse than other industrialized societies because it has more criminologists. The United States undoubtedly has spent so lavishly on criminology because it believes this is a necessary part of a national response to reduce crime. Yet I am inclined to wonder whether the professionalization of the study of crime is part of a wider societal movement which has tended further to debilitate the social response to crime, rather than strengthen it.

Criminology has become an export service industry for the United States in recent decades. Third World criminal justice professionals are accustomed to discreet jokes about American criminologists being funded as UN consultants, or by some other form of foreign aid, to communicate words of wisdom to countries that manage their crime problems much more effectively than the United States. There are reasons for fearing that such foreign aid exports not only American criminology, but may risk also the export of American crime rates.

Professional criminology, in all its major variants, can be unhelpful in maintaining a social climate appropriate to crime control because in different ways its thrust is to professionalize, systematize, scientize, and de-communitize justice. To the extent that the community genuinely comes to believe that the 'experts' can scientifically prescribe solutions to the crime problem, there is a risk that citizens cease to look to the preventive obligations which are fundamentally in their own hands. Thus, if I observe an offense, or if I come to know that my next-door neighbor is breaking the law, I should mind my own business, because there are professionals called police officers to deal with this problem. If a child toward whom I bear some responsible relationship by virtue of kinship or community has problems of delinquency, I might assume that it is best to leave it to the school counselor, who, unlike me, is an expert.

But exactly how is criminology implicated in this process of emasculating community crime control? To answer this question, we must look separately at the three major traditions of policy advice that have flowed from criminology: the utilitarian, the neo-classical, and the liberal-permissive.

The utilitarian tradition is underpinned by criminological scholarship concerned with the design of deterrent, rehabilitative and incapacitative strategies to reduce crime. Criminologists following this tradition of policy advice tell the community that scientific control of crime is possible if criminal justice professionals impose the right penalties on the right people for the right crimes, or if therapeutic professionals apply appropriate rehabilitative techniques, or if criminal justice professionals select the right people to be incapacitated by other criminal justice professionals. Under all utilitarian variants, the thrust of criminological advice is toward professionals taking over in different ways to make judgments for the community, informed by science, to prevent crime.

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The neo-classical tradition of policy advice denies the capacity of criminology to deliver sound professional guidance on how to reduce crime. However, it promises another kind of professionalization of justice. It proffers a systematizing of punishments by jurisprudential professionals so that they reflect the desert of defendants. The neo-classical model takes special affront at communities informally resolving crime problems outside the justice system. Police officers should not be allowed the discretion to 'kick kids in the pants'. Serious criminal offenses should not be dealt with by school principals sitting down with parents to try to sort out the problems of a youthful offender: if a serious crime has been committed, that is a matter for the courts, and the courts should administer the deserved punishment. For the neo-classicists, informal community involvement in crime control risks both excessive oppression and excessive leniency by do-gooders. Community justice is unpredictable, inconsistent, and unjust. The ideal is a professionalized justice that is measured to deliver systematically neither more nor less than offenders deserve.

The liberal-permissive tradition of policy advice is grounded in the labeling perspective. Becker (1963:9) told us that

deviance is not a quality of the act a person commits but rather a consequence of the application by others of rules and sanctions to an offender. The deviant is one to whom that label has successfully been applied; deviant behavior is behavior that people so label.

Or, as another labelist, Kitsuse (1962: 253), put it:

Forms of behavior per se do not differentiate deviants from non-deviants; it is the responses of the conventional and conforming members of society who identify and interpret behavior as deviant which sociologically transform persons into deviants.

The labeling perspective was important to the development of criminology as an empirical science because it fostered an appreciative stance toward offenders. While positivist criminology up to that point had seen offenders very much as determined creatures, the labeling perspective opened many eyes to the way offenders were choosing beings, involved in shaping their own destiny. They had an interpretation of what the world was doing to them, and what they were doing to it, which was frequently at odds with the official version that positivist criminology had taken for granted. The policy prescription that grew from this appreciative stance toward the

deviant was a call for tolerance and understanding, a plea to the community to see the deviant as more sinned against than sinning, to leave the delinquent alone, to see delinquency as 'just part of growing up'. While it was a good thing for the community to come to understand the many ways in which the deviant was sinned against, the labeling perspective was also telling the community to mind its own business. Certainly, it was at the same time telling the criminal justice professionals to keep their noses out of the affairs of deviants. Thus, while the utilitarians and neo-classicists were giving the community the message that community involvement in crime control could be dropped down their agenda because the professionals would take care of it, the liberal-permissive tradition of criminology was telling everybody, professionals and the community, to try 'radical non-intervention' (Schur, 1973).

If the theory in this book is correct, the tendency of each of these major traditions of criminological policy advice to imply a neutralization of community activism in crime control positively encourages crime. Crime is best controlled when members of the community are the primary controllers through active participation in shaming offenders, and, having shamed them, through concerted participation in ways of reintegrating the offender back into the community of law abiding citizens. Low crime societies are societies where people do not mind their own business, where tolerance of deviance has definite limits, where communities prefer to handle their own crime problems rather than hand them over to professionals. In this, I am not suggesting the replacement of 'the rule of law' with 'the rule of man'. However, I am saying that the rule of law will amount to a meaningless set of formal sanctioning proceedings which will be perceived as arbitrary unless there is community involvement in moralizing about and helping with the crime problem.

There is a fourth prominent tradition of policy advice which, unlike the other three, does not recommend changes to the criminal justice system. This fourth tradition is populated by Marxists who see the overthrow of capitalism as a route to a crime-free society, or at least to a society with much less crime, and opportunity theorists such as those discussed in the next chapter, who see other fundamental structural changes, mainly in class inequalities, as policies for crime reduction. Sadly, however, the policy advice of criminologists is only ever taken seriously when it is directed at the criminal justice system, so this fourth major tradition of criminological policy

advice is of no consequence in influencing events. The world is yet to see a socialist revolution inspired by the desire to eliminate crime; and in my own capacity as a member of Australia's Economic Planning Advisory Council, I waited four years without witnessing a suggestion that a consideration against one policy choice rather than another was the impact on crime.

None of this is to deny that there have not been some tremendously valuable pockets of policy advice supplied by criminology. In Chapters 9 and 10 a number of them will be discussed. Perhaps such contributions have meant that criminology has made more positive than negative contributions to crime control. We will never know the answer to a question like this. The contention here has been simply that the three major traditions of policy advice run a real risk of counterproductivity if the theory in this book is correct.

Human Agency and Criminological Theory

Criminological theory has tended to adopt a rather passive conception of the criminal. Criminal behavior is determined by biological, psychological and social structural variables over which the criminal has little control. The theory of reintegrative shaming, in contrast, adopts an active conception of the criminal. The criminal is seen as making choices – to commit crime, to join a subculture, to adopt a deviant self-concept, to reintegrate herself, to respond to others' gestures of reintegration – against a background of societal pressures mediated by shaming.

The latter pressures might mean that the choices are somewhat constrained choices, but they are choices. This is especially so because the theory of reintegrative shaming explains compliance with the law by the moralizing qualities of social control rather than by its repressive qualities. Shaming is conceived as a tool to allure and inveigle the citizen to attend to the moral claims of the criminal law, to coax and caress compliance, to reason and remonstrate with him over the harmfulness of his conduct. The citizen is ultimately free to reject these attempts to persuade through social disapproval.

An irony of the theory is the contention that moralizing social control is more likely to secure compliance with the law than repressive social control. Because criminal behavior is mostly harmful by any moral yardstick, and agreed to be so by most citizens, moralizing appeals which treat the citizen as someone with the responsibil-

ity to make the right choice are generally, though not invariably, responded to more positively than repressive controls which deny human dignity by treating persons as amoral calculators. A culture impregnated with high moral expectations of its citizens, publicly expressed, will deliver superior crime control compared with a culture which sees control as achievable by inflicting pain on its bad apples.

In addition to the epistemological rationale for conceiving people as choosing in light of societal pressures rather than being determined by them, there is thus also suggested an empirical rationale: moralizing which then leaves agency in the hands of the citizen is more likely to work in the long run than a policy of attempting to remove agency from the citizen by repressive control. The epistemological claim and the empirical claim are linked to a normative claim: a shift of the balance of social control away from repression and toward social control by moralizing is a good thing. The tradition of linking the empirical claim that repressive control does not work with the normative claim that it is wrong dates at least from Durkheim:

Ideas and feelings need not be expressed through...untoward manifestations of force, in order to be communicated. As a matter of fact such punishments constitute today quite a serious moral handicap. They affront a feeling that is at the bottom of all our morality, the religious respect in which the human person is held. By virtue of this respect, all violence exercised on a person seems to us, in principle, like sacrilege. In beating, in brutality of all kinds, there is something we find repugnant, something that revolts our conscience – in a word, something immoral. Now, defending morality by means repudiated by it, is a remarkable way of protecting morality. It weakens on the one hand the sentiments that one wishes to strengthen on the other.

(Durkheim, 1961: 182–3)

Hence, shaming is conceived in this theory as a means of making citizens actively responsible, of informing them of how justifiably resentful their fellow citizens are toward criminal behavior which harms them. In practice, shaming surely limits autonomy, more surely than repression, but it does so by communicating moral claims over which other citizens can reasonably be expected to express disgust should we choose to ignore them. In other words, shaming is a route to freely chosen compliance, while repressive social control is a route to coerced compliance. Repressive social control, as by imprisonment, restricts our autonomy by forced