Pride in
Criminological Dissensus

John Braithwaite

The main thrust of the conclusion to Christopher Uggen's essay is, I think, right: "Though it remains a very powerful influence on behavior, moralizing shaming is but one form of informal social control" (at 498). In the final part of this reply, I will say something about how to integrate the explanatory power of shaming with that of other modalities of social control. It is kind of Christopher Uggen to see my book as innovative and fresh. But I honestly do not think it is. Publication of this book represents just another moment in a communal process of theory development among criminologists. Hence, it is of course the case that other criminologists will not buy it as a total explanatory package for any other moment in any particular context. The best one can hope for is that others will find components of the theory useful to graft onto their own explanatory agendas in specific contexts.

This is not to devalue, however, the enterprise of fashioning from the collective wisdom of one's discipline theories of maximum explanatory power that are useful in as wide a range of contexts as is possible. As I have explained in another recent article,[1] the main use of good general theories in an applied field such as criminology is in supplying policy practitioners with a set of explanatory frameworks worth scanning for application to a particular context. It may be that in a particular context the "best" general

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1. John Braithwaite, "Beyond Positivism: Learning from Contextual Integrated Strategies," J. Research Crime & Delinq. (forthcoming).

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theory is useless but that each of several other theories makes a partial contribution to a nuanced understanding of crime in this specific context.

While I am at ease with the central thrust of Uggen's conclusion, there are a number of important claims in the essay with which I wish to take issue. In this comment, I reject the view that the theory makes incompatible assumptions about consensus and dissensus over the rightness of the criminal law. I concede that I should have given more attention to the community disorganization perspective, but I reject the privileging of geographical community in criminology. It is a bad idea to attempt to specify exactly what behavioral enactments are required to accomplish reintegration. This does not mean that reintegrative shaming cannot be learned or operationalized. It pleads my innocence to the charge that "Braithwaite appears all too willing to sacrifice individual rights" (Uggen at 494). In the final section I argue that no criminal justice policy could ever rely totally on reintegrative shaming. Our challenge should be radical redesign of criminal justice institutions to displace the centrality of punitive control with minimalist integrated strategies in which reintegrative shaming has a more prominent place. But first I want to concede as forcefully as I can that the explanatory framework in *Crime, Shame and Reintegration* is but a partial one and in particular that its neglect of "integration into the economic structure of society" (at 489) is a critical neglect for any well-rounded understanding of crime.

Inequality and Crime

Uggen, following Currie,[2] suggests that it could be that Japan's low and falling postwar crime rate has more to do with "a national full-employment policy" than with cultural traditions of shaming. Unlike many criminologists, I do read the evidence as suggesting that unemployment is often a cause of crime and that national full-employment policies are at the center of a crime control agenda.[3] So I by no means discount the possibility that Uggen and Currie could be making a good point about Japan. The important point, however, is that there is no incompatibility between unemployment and reintegrative shaming explaining crime. More than that, as Uggen's figure 1 begins to show, there are crucial synergies between the way unemployment and shaming contribute to explaining crime.

While *Crime, Shame and Reintegration* is a theory of rather general scope (explaining many different kinds of crime in many different con-

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2. Elliott Currie, *Confronting Crime: An American Challenge* 46 (New York: Pantheon, 1985).

3. See John Braithwaite, Bruce Chapman, & Cezary A. Kapuscinski, "Unemployment and Crime: Resolving the Paradox," American Bar Foundation Working Paper No. 9201 (Chicago: American Bar Foundation, 1992).

texts), it is advanced as a theory with very partial explanatory power across those contexts. That is, it claims to explain a wide diversity of phenomena, but only some of the variance in each of them. A decade before *Crime, Shame and Reintegration*, I wrote a widely ignored book called *Inequality, Crime and Public Policy* that explored the case for the partial explanatory power of economic inequality in criminology.[4] It was a useful book that should have been attacked for its partiality rather than ignored as irrelevant. In particular, it was never condemned in the way it should have been for its neglect of sex inequality, a neglect I have attempted to remedy in more recent work, including *Crime, Shame and Reintegration* (which is unusual as a general theory that incorporates an explanation of the gender-crime relationship).

The point is that if you believe in science as a communal process of advancing partial explanations and then having them critiqued for their partialities, you nod with approval when someone like Uggen attacks the limited attention in a single text to "integration into the economic structure of society." More than that, however, you work constructively to point out the synergies and contradictions between the two lines of partial explanation. In this case, I happen to think it is the synergies that are important.

In another article I have explicitly drawn out the synergies between the theory in *Crime, Shame and Reintegration* and that of *Inequality, Crime and Public Policy*.[5] There is both a noninstrumental and an instrumental side to why political and economic inequality (including gender inequality) increases crime. First, my argument is that much crime, particularly violent crime, is motivated by the humiliation or stigmatization of the offender and the offender's perceived right to humiliate the victim. Inegalitarian societies, I argue in that piece, are structurally more humiliating than egalitarian societies. For example, it is structurally more humiliating to be a black in South Africa than in Botswana. So I see quite an important connection between criminogenic structures of shame and criminogenic structures of inequality. According to the more instrumental side of the analysis, inequality worsens both crimes of *poverty* motivated by *need* for goods for *use* and crimes of *wealth* motivated by *greed* enabled by goods for *exchange*. More generally, inequality worsens both crimes of the exploited and crimes of exploitation.

While this is an unsatisfactorily brief treatment of work on integrating the two types of theoretical contributions, I hope it is enough to show that (*a*) I accept the criticism of the partial nature of the explanation in *Crime*,

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4. John Braithwaite, *Inequality, Crime and Public Policy* (London: Routledge & Kegan Paul, 1979).

5. John Braithwaite, "Poverty, Power, White-Collar Crime and the Paradoxes of Criminological Theory," 24 *Australian & New Zealand J. Criminology* 40 (1991).

Shame and Reintegration with regard to "integration into the economic structure of society," and (b) it is a fruitful exercise to explore the synergies the book misses between the two types of explanations.

Consensus and Explanation

I do not agree with Christopher Uggen that the theory makes incompatible assumptions about consensus and dissensus over the rightness of the criminal law. My critics tend to be glib on this issue, and it is time to set the record straight. Empirically, I happen to believe that there is overwhelming consensus over the wrongness of predatory crimes like murder, rape, and theft in contemporary Western societies and probably in almost all contemporary societies. Theoretically, my account will not work where that consensus is perfect (an unlikely worry) and when we approach complete dissensus (just as many people believe that the crime is a good thing as believe it is a bad thing).

The theory will not work in a world of perfect consensus because there will be no criminal subcultures in such a world, so there will be no sustenance for the stigmatization effects posited by the theory. Note also here that the theory accommodates richly plural forms of subculturalism (at 23–27, 65). So, for example, the theory can be powerfully relevant to rape in a society in which rape is consensually accepted as shameful but in which a substantial proportion of men accept that in certain contexts women ask for or even deserve to be raped.

The theory will not work in explaining marijuana use in a society in which the proportion of the population who believes there is something wrong with marijuana use falls to 50%. In such a society, increased capacities to shame reintegratively will not predict marijuana use because subcultural shaming to encourage marijuana use will be just as powerful as mainstream shaming to discourage use. The theory is one of differential shaming. The pattern of crime in a society is explained both by the way majoritarian shaming discourages crimes and by the way subcultural shaming of stigmatized people nurtures crime. The level of crime is explained, in part, by the strength of majoritarian shaming in comparison to subcultural shaming. The most simple-minded critics, among whom I do not count Uggen, sometimes point to subcultures wherein crime is not shameful as some sort of evidence against the theory—this when the theory not only gives an account of how such subcultures come into existence but actually depends on them coming into existence for its explanatory framework to be true.

I have said that the theory will not work where consensus about crime is perfect and when we approach complete dissensus (just as many people believe that the crime is a good thing as believe it is a bad thing). This sets

a range where the consensus assumptions fit most types of crime. In fact, several drug researchers have written to me suggesting that illicit drug use in America and Australia does fall within this range of consensus assumptions. So they accuse me of erring in restricting the focus of the theory to "predatory crimes" that exclude illicit drug use. They may be right. It is an empirical question whether or not I was in error in excluding drug use as one of those domains where the theory has explanatory power.

The final point I want to make about consensus-dissensus assumptions is that people tend to see deep logical traps at the foundations of an integrated theory such as mine because they are befuddled by reified conceptions of consensus. Criminologists should know better when they can rely on a rich ethnographic literature illuminating the multifarious ways in which citizens who believe that the law is right at a certain level can abrogate its moral claims at other levels by techniques of neutralization,[6] disassociation,[7] and the like. Underlying a real and culturally meaningful general consensus about the wrongness of rape, there can indeed be many contextual dissensuses about rape being okay. Only when we allow a reified conception of consensus to drive out the nuanced understanding in the ethnographic literature of the way people talk when they accuse and excuse crime do we see consensus-dissensus as being an "insoluble inconsistency" (Uggen at 496) at the foundation of the theory.

Community and Crime

Given the importance I place on interdependency and communitarianism in the theory, Uggen thinks I should have given more attention to the recent developments on community disorganization and crime to be found in the work of scholars such as Bursik, Krohn, Sampson, and Skogan. He is probably right, and I might have attended more to the non-American work as well. At the same time, a motif of American urban sociology in recent decades, strongly reflected in the work of Sampson,[8] is that modern transportation and communications have transformed community in a way that undermines the privileging of geographical community. Citing Tilly,[9] Granovetter,[10] and others, Sampson concludes that "contrary to the assumption of decline in primary relations, modern urbanites have substituted nonspatial communities for spatial communities; metropolitan

6. Gresham Sykes & David Matza, "Techniques of Neutralization: A Theory of Delinquency," 22 *Am Soc. Rev.* 664 (1957).

7. Erving Goffman, *Relations in Public* (New York: Basic Books, 1971).

8. See, e.g., Robert J. Sampson, "Communities and Crime," *in* M. Gottfredson & T. Hirschi, eds., *Positive Criminology* (Beverly Hills, Cal.: Sage Publications, 1987) ("Sampson, 'Communities and Crime' ").

9. Charles Tilly, "Do Communities Act?" 43 *Soc. Inquiry* 206 (1973).

10. Mark Granovetter, "The Strength of Weak Ties," 78 *Am. J. Soc.* 1360 (1973).

residents build viable sets of social relations that are dispersed in space."[11]
It is simply untrue that contemporary urban life is too disorganized for it
to be possible for shaming to have any power.

We must look beyond neighborhoods for the interdependencies that
make it possible for the theory of reintegrative shaming to work, while
continuing to take neighborhood effects seriously. This is especially true of
the types of crime problems that pose the greatest threats to contemporary
societies—white-collar crimes. Neighborhood interdependencies are not
centrally important to informal controls against bank fraud, insider trad-
ing, or toxic waste dumping, nor are they irrelevant. Nor is geography
irrelevant to the very real sense of community that careful observers find
on Wall Street, in the City of London, or the Tokyo Stock Exchange.
These communities that do congregate in particular places at particular
times are the key resources we must work with if we are to forge control
strategies for our deepest crime problems. With juvenile delinquency,
schools are communities of at least equal importance to neighborhoods.
My book is therefore guilty of a rather shallow treatment of many different
types of communities, of which neighborhood is just one.

Operationalizing Reintegrative Shaming

Uggen pleads that the "pertinent question, however, is not *whether* to
reintegrate or stigmatize, but precisely *how* to accomplish reintegration"
(at 490). This certainly sounds like a reasonable question. Sadly, however,
I doubt that I can give any satisfactory answer to it. The reason is that
there is so much situational contingency in what gives rise to stigmatiza-
tion or reintegration. In the working-class football club where I spent
much of my youth, it could be a reintegrative way of admonishing an Ab-
original colleague to say: "Why did you have to do that, you black bas-
tard?" It could also be way of getting your teeth knocked out if the
utterance were interpreted as a stigmatic one. For those in the club who
were known to respect Aboriginal people (because they were married to
one, because they took their side in a fight, or for whatever reason), to
chide in a relaxed, joking manner, calling the offender "a black bastard,"
could actually be a way of communicating "You know me better than to
think that this criticism of you is a racist criticism." Human beings, even
Australian rugby league players, are subtle, ironic communicators. And
the ironies they exploit to communicate respect and caring are so cultur-
ally diverse and situationally specific as to defy any cookbook approach to
how to be reintegrative.

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11. Sampson, "Communities and Crime," at 110.

Hence, Uggen is right that whether reintegration occurs "is contingent on the offender's interpretation of the shamer's reaction. . . . Ultimately, the individual being shamed—not the shamer—determines whether the shaming is reintegrating" (at 490; Uggen's emphasis). This does not mean that one cannot learn how to shame reintegratively. We cannot write guidelines on what we have to do to tell a good joke, but we surely can learn how to tell jokes to Australians and how to tell jokes to Americans. This learning is an acquired situational wisdom learned through years of experience in a culture. The stories of our experience instruct us on "how to 'read,' via a 'poetic apprehension,' the layers of meaning contained in a situation so that [we] are able to move beyond the 'obvious' to the 'obtuse' meanings."[12] In other words, stories and experiences of successful reintegrative shaming can "constitute a consciousness, a sensibility, a way of being out of which action will flow without recourse to specific instructions. Unlike rules, stories do not address action directly but rather constitute a sensibility out of which action flows."[13] The training I am involved in with police officers and regulatory inspectors in Australia does not teach reintegrative shaming with guidelines but with stories, experiences, role plays, and training videos. Once the trainees have some extended experience under their belts in the practice of reintegrative shaming, they have much more wisdom about how to do it than I do.

You might say: "This is fine. We can learn such subtle contextual knowledges in ways other than defining principles. But this does not solve the problem that there is no scientific way of operationalizing reintegrative shaming. Therefore, your theory is untestable." Not so. We can operationalize reintegrative shaming just as Uggen suggests. That is, we ask A if she perceived B to be disapproving of her. Then we ask other questions to measure whether the disapproving was perceived to be reintegrative or stigmatizing. The interaction of the perceived disapproval measure and the perceived reintegration measure is the subjective operationalization of reintegrative shaming. Toni Makkai and I have just completed a study in which we tested the effect of reintegrative shaming on compliance with the law in just this way.[14]

Not only is this a more sensible and feasible approach to operationalization than measuring exposure to utterances or body language predetermined as reintegrative, it is also more theoretically relevant. As Uggen points out, "mere *exposure*" to actions of a type defined as criminogenic "is not a sufficient cause of criminal behavior, because whether we notice the definition, remember it, and 'make it our own depends on whether it mat-

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12. Clifford D. Shearing & Richard Ericson, "Police Culture: Towards a Figurative Conception of Action," 42 *Brit. J. Soc.* 481 (1991), citing Lyotard and Barthes.

13. Clifford Shearing, personal communication, 1992.

14. Toni Makkai & John Braithwaite, "Reintegrative Shaming and Compliance with Regulatory Standards" (unpublished, Australian National University).

ters to us' " (at 490). "As a consequence, reintegration can only be accomplished with the assent and cooperation of the individual being shamed" (*id.*). Indeed, the theory has some important things to say about when exposure will be ignored because it does not matter to us. For example, exposure will matter when it occurs between actors in a relationship of interdependency. Interdependency does not predict exposure to reintegrative gestures so much as acceptance of the gestures as reintegrative. And it is this acceptance that counts, at least according to the theory.

Rights and Adversarial Proceedings

According to Uggen, "Braithwaite appears all too willing to sacrifice individual rights and adversarial proceedings if they tend to 'de-communitize' justice" (at 494). "Adversarial proceedings," yes. "Rights," never.[15]

It would be irresponsible scholarship to write a book suggesting greater use of reintegrative shaming without articulating a moral position on what should and should not be shameful. Philip Pettit and I have set down a much more detailed position on this[16] than can be found in *Crime, Shame and Reintegration*. We call this normative stance republican. In essence, we advocate setting criminal justice policies so as to maximize dominion. Dominion is a republican conception of freedom. It is a social, comparative, and subjective conception of freedom that incorporates the notion of equality of liberty prospects. It is resilient freedom for a social world rather than the liberal's brittle conception of asocial freedom in a world of isolated individuals.

When we choose whether to engage in reintegrative shaming, according to our normative theory the choice should be made so as to maximize dominion. The freest societies are the societies wherein the crushing of freedom is shameful. Shaming can be a dire threat to freedom; but equally, there can be no freedom without the capacity to shame. Whether shaming reduces or increases freedom depends on which normative positions prevail concerning what should be shamed.

In *Not Just Deserts*, Pettit and I show why republicans must tie their hands against breaching uncontroversial criminal justice rights in any circumstances. This need to take rights seriously is derived from the subjective component of our conception of dominion. Subjective freedom is at risk, freedom lacks subjective resilience, in a world without firm assurances that rights will be respected. The republican juror could never vote to convict an innocent man to quell a riot that may occur as a result of a not-

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15. At least never for those rights which the republican theory says should be rights. See John Braithwaite & Philip Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice* (Oxford: Clarendon Press, 1990).
16. *Id.*

guilty verdict. Her hands are tied by her republican moral position to pro-
tect the rights of the innocent.

I will not repeat the extensive treatment of this issue in that book. Let
me just state baldly that republicans are not allowed to "sacrifice individ-
ual rights . . . if they tend to 'de-communitize' justice." Nor are republicans
allowed to sacrifice a right to a fair trial. But republicans should be critical
of the fact that very few criminal defendants in the American and Austra-
lian criminal justice systems get a fair trial. The production-line justice of
our lower courts is a mockery of the right to a fair trial. Giving defendants
a right to meaningful community justice in which both they and victims
are given voice and respect as an alternative to choosing their right to an
adversary jury trial can enable the criminal justice system to make more
just decisions and to be more rights-respecting.[17] Yes, then, I do want to
see fewer adversarial proceedings. But I think that can be done so as to
strengthen rights, not weaken them. Whether I am wrong on that is empir-
ically refutable. For example, research Lawrence Sherman, Heather
Strang, and I are proposing in Australia would test empirically the proposi-
tion that offenders and victims processed through reintegrative shaming
ceremonies will be more likely to perceive specific rights to have been
respected than offenders and victims processed through the court. If it
turns out to be the case, however, that reintegrative shaming ceremonies
reduce respect for rights, then republicans must abandon them, whatever
effects they might have on crime.

Reinforcing Moral Values with Self-Interest

Uggen takes me to task for claiming that one "cannot take the moral
content out of social control and expect social control to work."[18] In a fair
counterpoint, Uggen says that "control may be effected by any number of
moral, amoral, and immoral social sanctions and incentives. Moreover, the
smooth functioning of a social unit may be accomplished by factors such
as enlightened self-interest as well as by shaming and internalized re-
straint" (at 496). I do accept this counterpoint. However, I also stick to the
view that societies in which social control rarely has any moral content are
societies that encounter deep difficulties in securing the compliance of citi-
zens with its laws. This does not deny Uggen's point that certain individu-
als are "beyond shame" (at 497).

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17. See David B. Moore, "Evaluating Family Group Conferences: Some Early Findings
from Wagga Wagga," Criminal Justice Planning & Coordination Conference (Canberra:
Australian Institute of Criminology, 1993).

18. John Braithwaite, *Crime, Shame and Reintegration* 142 (Cambridge: Cambridge Uni-
versity Press, 1989).

There is a critical difference here about what is to be done at the societal and individual levels. The crucial political implication of the theory is about what can be accomplished by struggling through social movements to render exploitive conduct shameful.[19] So the women's movement can achieve much through protracted historical struggles with the objective of rendering violence against women shameful. But this sociohistorical analysis does not deny that at the individual level we will occasionally confront violent misogynists who are beyond shame and who must be dealt with in some other way.

What we need is a theory of when moralizing appeals are the appropriate response and when threats or appeals to tangible self-interest are more appropriate. I do not subscribe to Uggen's suggestion that James S. Coleman has provided a satisfactory theory of this sort.[20] The counterproductivity of Coleman's privileging of rational choice in a vision of how to foster a synergy between moralizing and tangible self-interest is well illustrated in the following passage: "As 20th-century parents are increasingly independent from their children's support in old age, for example, parental incentives to bring up productive children have diminished. Coleman offers state-sponsored 'bounties' to be paid for effective child rearing as one rather radical response to such a problem" (Uggen at 498). Bounties for effective child rearing seem to me a good strategy for reducing the quality of child rearing. The trouble with such theories about nurturing virtue by making virtue pay is that in fact they destroy virtue.[21] A wealth of experimental psychological literature, seemingly never read by rational choice theorists, tells us what every good parent knows: It is a bad idea, for example, to seek to motivate children to do well at school by offering them financial rewards for good marks.[22] Why? One critical reason is that when children persuade themselves that the reason they learn is to get extrinsic rewards, they fail to savor and nurture the intrinsic rewards of learning. Similarly with children learning to obey the law. We are likely to do better when we follow a "minimal sufficiency principle" in resort to rewards or punishment as we seek to persuade children to comply with the law. Our first recourse should never involve securing respect for the law by threatening dire sanctions. Rather it should involve moral suasion about the virtues of respect for the particular law. With most children and adults

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19. See John Braithwaite, "Inequality and Republican Criminology," *in* J. Hagan & R. Peterson, eds., *Crime and Inequality* (Stanford, Cal.: Stanford University Press, 1993).

20. James S. Coleman, "The Rational Reconstruction of Society," 58 *Am. Soc. Rev.* 1 (1993); *id.*, *Foundations of Social Theory* (Cambridge, Mass.: Harvard University Press, Belknap Press, 1990).

21. See Robert E. Goodin, "Making Moral Incentives Pay," 12 *Pol'y Sci.* 131 (1980).

22. See the studies cited in Ian Ayres & John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* 49–51 (New York: Oxford University Press, 1992).

most of the time, this moral suasion, unembroidered by threats or temptations, will work perfectly well.

Because appeals to self-interest destroy virtue, our socializing institutions are best when they are designed to make minimally sufficient appeals to self-interest. What, you may say, of when virtue fails, as it often enough does? Then we should shift our appeal from virtue to self-interest. But it is a shift we should make with circumspection and reluctance because of the risk that it will destroy virtue. Having made this shift, we will then often discover that appeals to self-interest will fail just as did appeals to virtue. We will find that the psychopath who is beyond shame is also beyond deterrence. We will find that there is no fine large enough to deter the corporate offender that will not so deplete the capital of the corporation as to cost innocent workers their jobs. Faced with sequential failures of both the theory of moral suasion and rational choice theory, we must shift to an incapacitative theory. Government inspectors must march into the undeterrable firm that is damaging the environment and stop work on production lines until protective technologies are put in place. The unshamable, undeterrable wife beater must be removed from his house and forced to live somewhere else—with other relatives, in a community house that runs programs for violent men, or in the most extreme cases, in a prison.

So I am unsympathetic to Uggen's suggestion of harnessing appeals to self-interest with moralizing social control, yoking them together institutionally. Rather, we should prefer to separate them in time. This preference is for a dynamic strategy that resorts *sequentially* to persuasion, then deterrence, then incapacitation, rather than coupling or tripling them *simultaneously*. In summary, my worries about Uggen's response to the admitted limitations of moralizing control are:

1. It neglects the problem that simultaneous appeal to virtue and self-interest can have the latter destroy the former.
2. It neglects the problem of what to do when appeals to virtue and appeals to self-interest both fail.
3. It is an approach that seeks a single best strategy of social control in a world where all strategies fail, a world that requires failsafe hierarchies of strategies for its worst problems.

No one can feel safe with a criminal law that can only deal with rational actors or shamable actors. The institutional design challenge is to bring our partial explanatory theories together into dynamic policy packages that cover the weaknesses of one theory with the strengths of another. At the same time, this redundancy of social control must be sought without creating a monstrously coercive Leviathan. The latter moral imperative is one reason why we should have a strong preference for moral suasion as a strategy of first recourse, with progressively more intrusive strategies swing-

ing in with growing reluctance later in the history of response to a problem. Ian Ayres and I have begun to develop in more detail the explanatory and normative theory to guide the design of such integrated enforcement pyramids.[23]

So I am well pleased when critics such as Christopher Uggen point to the limitations of the moralizing social control advanced as a partial explanation in *Crime, Shame and Reintegration*. Nonmoralizing forms of informal control, rational incentives, and formal punishments all also have some partial explanatory power. Debates about the respective limitations and evils of each modality of control are the most important things a community of criminologists do in struggling for a safer, freer, less dominated world.

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23. *Id.*, ch. 2.