

Shaming and Compliance

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Abstract: Naming and shaming offenders is often considered an effective strategy to improve compliance. Shaming exposes an offender to condemnation by a community of stakeholders. The threat of negative publicity, reputational damage and social disapproval is perceived as a sanction, and can in theory be more powerful than a formal legal sanction. This chapter asks to what extent naming and shaming can improve compliance. It takes stock of extant empirical evidence on the effect of shaming policies on regulatory compliance and identifies conditions for shaming to affect compliance. The complex relationship between ‘naming and shaming’ and compliance makes it difficult to predict and control the various effects of shaming sanctions. The chapter concludes that the unpredictability of effects makes ‘naming and shaming’ a risky tool for regulators. A theory about naming and shaming should differentiate among types of offender, shaming agent and social context.

30.1 INTRODUCTION

Societies are governed by a multitude of rules and norms. Some of these are explicit and formal, but many are implicit and informal. These norms safeguard the stability, predictability and trust necessary for societies to function and for collective action problems to be overcome. Part of these norms are legal rules, enforced through the legal system. But compliance with social norms is induced through a much broader array of social control mechanisms than legal sanctions: socialization, rewards, nudges, and social sanctions. One important type of social sanctions is shaming: the exposure of a norm offender to public disapproval of his or her behaviour. The threat of being exposed to public disapproval prevents people from offending social norms in many situations.

We can observe a wide variety of forms of naming and shaming. Perhaps the most prominent is vigilante online shaming. Body-shaming for people whose bodies defy beauty ‘standards’ and counter-shaming of body-shamers; drought-shaming for people who water their lawns in dry areas; shaming of racists, white supremacists or alleged sex offenders: the availability of mobile cameras and social media allows transgressors of social norms to be exposed worldwide in minutes and results in spontaneous ostracism. Such shaming is a weapon of the powerless: it exposes people and holds them to account for behaviour that is seen as bad but is at the same time retaliatory and can ruin lives (Ronson 2015). But shaming sanctions have always also been part of the legal system: from the medieval pillory until current times, judges have imposed legal shaming sanctions. Examples include ‘warning’ signs – ‘Here lives a sex offender’ -(McAlinden 2007), obligations for shoplifters to pose with

signs reading 'I am a thief' (Schwarcz 2003) or punishments for Driving under the Influence (DUI) such as obliging offenders to wear T-shirts or put stickers on their cars. Also, public registries are maintained of parents who evade child support or white-collar offenders in public registries.¹

A very different, but equally prominent category of shaming is non-governmental organization (NGO) shaming campaigns against global corporations. Such shaming can address corporate irresponsible and harmful behaviour in the grey area between national laws, and pose a significant threat to corporate reputations. In a closely related category is NGOs shaming states and international regulatory bodies, such as Transparency International's Corruption Perceptions Index which ranks countries by their perceived level of public sector corruption² and the Financial Action Task Force's public list of jurisdictions with weak measures to combat money laundering and terrorist financing.³

Shaming of individuals or businesses is also increasingly common in the regulatory process. Regulators issue blacklists of tax offenders; disclose health and safety violations, toxic emissions and offences of financial laws; and issue public warnings against schools or nursing homes with quality deficits. Although often justified as 'transparency' in the context of open government and freedom of information, such disclosure equally serves to warn potential clients, deter individuals and organizations from offending and stimulate compliance, and thus clearly has elements of shaming (van Erp 2010). This chapter therefore focuses on naming and shaming in the context of regulatory compliance as a modern information-based strategy for regulatory enforcement.

The chapter first defines 'naming and shaming' as a regulatory instrument (Section 30.2). Then, I discuss the theoretical relation between shaming and compliance, by describing the working mechanisms behind shaming (Section 30.3). As this chapter focuses on regulatory compliance, its focus is not primarily on the psychology of shaming (psychological and emotional individual reactions to shaming in interpersonal relationships; see Lewis 1971; Harris 2001, Tangney and Dearing 2002; Coontz 2015). Instead, it focuses on the more sociological aspects of the relationship between shame and compliance in organizations and groups. Section 30.4 reviews existing research on the impact of shaming on compliance. Finally, in Section 30.5, I compare legal and shaming sanctions, and review existing evidence on the effectiveness of shaming in comparison with law.

30.2 NAMING AND SHAMING: DEFINITION

'Naming and shaming' can be defined as publicly naming or otherwise identifying a person, group or organization that is guilty of some antisocial act so as to expose him, her or them to public shame, with the intention of embarrassing them into improving their behaviour (Braithwaite 1989). 'Public shame' is the emotion related to being (or feeling) exposed to disapproval. Extensive psychological research has evaluated differences between shame – the emotion of negative evaluation of the self – and guilt – the emotion of negative evaluation of something one *did* (Lewis 1971; Tangney and Dearing 2002). In other words, shame is much more fundamental to one's core identity than guilt, which relates to a specific act and can be

¹ <https://des.az.gov/services/child-and-family/child-support/wanted-child-support-evaders>; www.utfraud.com/RegistryLists.

² www.transparency.org/cpi2018.

³ [www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc\(fatf_releasedate\)](http://www.fatf-gafi.org/publications/high-risk-and-other-monitored-jurisdictions/more/more-on-high-risk-and-non-cooperative-jurisdictions.html?hf=10&b=0&s=desc(fatf_releasedate)).

repaired, whereas shame relates to one's identity in the eyes of others, and makes one want to disappear from the public eye (Tangney and Dearing 2002).

In line with this psychological scholarship, criminologists have developed the concepts of *stigmatizing* and *reintegrative shaming* (Braithwaite 1989; Harris and Maruna 2006). Stigmatizing shaming happens when elements of humiliation are added to the act of exposure – such as the obligation to wear visible signs – and the aim is to exclude the offender from participation in the community. Stigmatizing shaming, ostracism, humiliation or status degradation are all related to the labelling of shamed individuals or businesses which alienates them from communities and disqualifies them from social acceptance. Stigmatization can exclude and reject people from communities and thus withdraw opportunities for compliant behaviour, or even confirm offending behaviour when the stigma results in the offence becoming the master trait – equalling a person to the offence and thus making it impossible to change.

Reintegrative shaming, by contrast, condemns the offence but not the offender, and thus rejects the idea that stigmatization is a defining element of naming and shaming (Harris 2017). Reintegrative shaming means that public disapproval of the offence is combined with communicating trust in the offender's willingness to improve (Makkai and Braithwaite 1994). The offender is addressed as a good person who committed a bad act, from which restoration is possible. Reintegrative shaming should encourage offenders to become re-engaged with the substantial goals of the law of a community with shared social norms. Thus, reintegrative shaming strengthens the bond between the offender and the community. As shaming is most effective when people reform their behaviour and remain part of the group (Jacquet 2016), as a general principle reintegrative shaming should be preferred and stigmatizing shaming should be avoided – both from the perspective of justice and from the perspective of effectiveness.

Whether or not it is a punishment in the legal sense, sociologists – in particular sociologists in the tradition of Durkheim – regard shame as one of the most prominent social emotions underlying society (Scheff 2003). Shaming entails the breaking of social bonds, which obstructs participation in society; the anticipation of shame is what makes people comply with social norms. Shaming, thus, is a punishment in the sociological sense: it punishes through social disapproval and damage to reputation. In the same vein, legal scholars have argued that shaming should be seen as a sanction just as financial sanctions or imprisonment (Kahan and Posner 1999): they have identical goals but damage different assets: a prison sentence targets individual liberty; a financial sanction targets capital; and shaming targets the social status, reputation or esteem of stakeholders (Kahan and Posner 1999). Of course, these effects can be combined. However, the analytical difference is that the sanctioning power exercised by shaming is not coercive or hierarchical by a 'sovereign', as is the case with formal sanctions, but disciplinary in a Foucauldian sense. It is exercised within societies rather than from above, dispersed in networks and a variety of social settings. Rather than pressuring individuals to conform to 'normality' through external surveillance, shaming exercises pressure through internalized surveillance and self-monitoring.

In a regulatory context, the goal of releasing information about offenders is often more prominent than the goal of condemnation as in a criminal justice shaming setting. Regulatory shaming can be defined as 'any intentional publication, by regulatory agencies in the executive branch, of information regarding companies' misbehavior that is designed to convey a normatively negative message to the public, for a regulatory purpose' (Yadin 2019: 4). It invites stakeholders to apply pressure, to change the discourse, to alter behavioral

patterns or ways of thinking about the shamed entity, and in appropriate circumstances to denounce, condemn or boycott it. Regulatory shaming is therefore more directed towards triggering the community to shame an offender by informing them than imposing shame on the offender directly. Yadin's definition distinguishes regulatory shaming from more general regulatory transparency and disclosure, such as regulatory agencies publicizing inspection reports or performance information about regulated entities. These are, at least analytically, more neutral, as their intention is not to convey a normatively negative message to the public but to inform the public about the activities of government, in the context of government accountability, freedom of information and citizen's 'right-to-know'.

Of course, the line between disclosure and shaming is blurred, as disclosure may, in reality, be directed more towards persuading than informing, and more to the disclosed party than to citizens or consumers (Cortez 2018; van Erp 2010). Negative information disclosed by regulators can be used for naming and shaming when specific actors single out firms and publicly express disapproval. Thus, the act of shaming can be performed both by the 'naming' regulatory authority and by a third party, such as the media, NGOs or politicians. For example, Food and Safety inspectorates regularly publish 'scores on the doors': shortened versions of inspection reports of food service providers visible on their premises. Although their intention was to inform the public about inspection results and to assist consumer choice, the media have often subsequently added a normative component by compiling highly publicized lists of 'filthy restaurants'.

30.3 WORKING MECHANISMS OF SHAMING

A theoretical 'ideal' model of naming and shaming distinguishes the causal steps of naming, blaming and shaming that result in compliance (cf. Felstiner et al. 1980, see Figure 30.1). 'Naming' means that an offence is detected, attributed to a certain actor and disclosed. 'Blaming' means that the disclosed information actually reaches an audience and is not overlooked. Naming going unnoticed is quite possible, given the information overload that audiences often experience (van Erp 2010). 'Shaming', subsequently, refers to the public condemnation of a person or corporation; its exclusion from social networks, loss of reputation and loss of opportunities. In each step in the model, distortions can occur which limit the impact of naming and shaming on compliance.



FIGURE 30.1 Naming, shaming, and compliance

Theories about shaming generally identify two working mechanisms through which shaming results in compliance: deterrence and moral education (Braithwaite 1989; Ayres and Braithwaite 1992). Naming and shaming may *deter* individuals, or firms, from offending, as they fear social disapproval and exclusion as punishments from the community they belong to. The punishment may also result in more material damage as shaming leads to loss of status and reputation and may thus be detrimental for business opportunities. Shaming damages reputations: by revealing negative information about someone's behaviour. Upon hearing about an offender's bad behaviour, stakeholders may re-evaluate how likely that offender is to keep his

promises or deliver expected outcomes (Ellickson 1994; Fombrun and Van Riel 1997). The fear of being shamed is an important motivation for compliance – hence, shaming deters, just as financial sanctions or imprisonment are intended to (Kahan and Posner 1999). Shaming, however, sends a more powerful normative message: whereas formal punishment communicates that legal norms have been breached, shaming communicates the message that social or moral norms have been offended. It is an expressive instrument that works through emotions such as the wish to be respected and the fear of being humiliated (Murphy and Harris 2007). A financial sanction invokes a calculative cost–benefit analysis, whereas shaming appeals to an offender’s conscience by indicating that behaviour is irresponsible and impressing on the offender that she or he did not take their responsibilities towards the community seriously. It shows that an offence is not just technical but damages the community.

This means that effective shaming therefore works best in a normative ‘community of conscience’, where members agree about the damaging nature of the offence (Karp 1998: 289) and offenders care about their reputations. When these conditions are absent, shaming will not always lead to actual shame. Offenders may not acknowledge the social norm; or may attempt to reason away their responsibility for the offence (Harris 2001; Murphy and Harris 2007). Communities may not respond. Thus, a crucial precondition is that the compliant party values being part of the community and senses that being subject to shaming will hurt the relation with the community. In such situations, shaming can even stimulate compliance even when the offender does not genuinely feel ashamed, when he or she acknowledges that a reputation for compliance is important for functioning in the community. However, in situations where public consensus about the inappropriateness of the behaviour and public support for shaming sanctions are missing, shaming may not result in public condemnation (Parker 2006) or, subsequently, in compliance.

As shaming serves to deter through moral condemnation of offending behaviour, it aims not only to improve the behaviour of the offender but also to educate the community about what is accepted, and thus reconfirm the social norms within a community and build consciences (Braithwaite 1989). This ‘moral education’ effect is the second mechanism through which shaming could function. By expressing what is wrong, the community also expresses what it considers right. Thus, shaming is a much more participatory form of social control than legal sanctions, requiring an audience (Jacquet 2016). Here, it becomes clear that shaming punishments do not serve to retaliate in the first place (as stigmatizing shaming would) but contribute to the internalization of norms and the reinforcement of the social order. Shaming communicates that offences are harmful and aims to strengthen communities’ shared expectations about appropriate behaviour. Public exposure of the offender underlines that the conduct is unacceptable and is expected to evoke normative disapproval from the general public or the offender’s peers (Braithwaite 1989; Parker 2006).

The deterrent and moral education effects of shaming combine, as shaming not only deters potential offenders but also influences perceptions of appropriate behaviour and thus also influences behaviour indirectly (Kahan and Posner 1999: 377). In sum, the preventative effect of shaming can be seen as a mix of reputational deterrence and moral education or, as Kahan expresses it, ‘a magic cocktail of instrumental utility and social meaning’ (Kahan 2006: 1).

30.4 RESEARCH INTO THE EFFECTS OF SHAMING ON COMPLIANCE

Given the high expectations generally held about the impact and effectiveness of shaming on compliance, a surprisingly limited amount of empirical research has been carried out. This

section reviews evidence on tax shaming; on shaming of alcohol-related offences; and miscellaneous research on business offences.

30.4.1 *Tax Shaming*

One of the few areas that has been relatively extensively researched is disclosure of tax non-compliance and tax shaming. Many countries and states disclose information on taxpayers with debts. Half of the taxation agencies in the OECD have the power to publish the names of tax avoiders/dodgers and nearly 90 per cent have used this power, according to most recent data (OECD 2017). The introduction of such policies and differences in disclosure rules between countries have given scholars the opportunity to conduct natural experiments to evaluate their effects.

In Norway, information about income tax payments has been publicly available since the early twentieth century. Compliance is not an explicit goal of tax transparency: the rationale behind publication of tax payments is government transparency and freedom of information. In the past, pamphlets detailing how much local residents paid in tax were frequently sold to raise funds for local soccer teams or other charities. One can assume, then, that tax information was widely distributed. Since 2001, the Norwegian government has provided user-friendly, searchable online databases with individual tax information as part of its digitalization strategy. This has resulted in an average increase of reported income among business owners of 3 per cent, with compliance increasing more in municipalities where paper tax lists were not widely distributed before (Slemrod et al. 2013). Anecdotal evidence also suggests that Portugal and New Zealand have increased tax compliance after they began to publish lists of taxpayer debts. Greece, too, annually publishes information about tax evaders but has not seen the same improvement in tax compliance. Scholars attribute this to the low tax morale of the Greek population in general (Perez-Truglia and Troiano 2018).

Dwenger and Treber (2018) investigate the introduction of a tax naming-and-shaming policy in Slovenia in 2012, a policy which aimed to reduce corporate income tax debt among businesses and the self-employed. The Slovenian shaming list publishes online the names of taxpayers with debt of more than 5,000 euros. As this policy was quite controversial, the publication received wide media attention: 42 per cent of the Slovenian population visited the tax agency/department website the day it was published, April 15, 2013. Dwenger and Treber (2018) find that taxpayers reduced their tax debt by 8.5 per cent before the first list was published. Thus, the policy raised more than 50 million euros in previously uncollected taxes (approximately 9 per cent of annual collected corporate income taxes). The largest improvement was in industries where businesses are more concerned about their reputation: industries selling to end-consumers. Such businesses are highly dependent on domestic markets and are well known to consumers (Dwenger and Treber 2018). Presumably, they wanted to keep their names off the list to avoid being publicly shamed.

After the initial improvement, however, the shaming policy seems to be losing its impact. The study shows that 96 per cent of the businesses that were on the first shaming list also appear on the second list. The *threat* of shaming, then, is effective, but shaming itself isn't. On this basis, the authors recommend that tax collectors give offenders a clear, visible threat that they will be shamed – for example through a warning or announcement letter – and allow taxpayers some time to settle their debts before executing the shaming.

Another illustrative study is a field experiment in which a relatively mild form of shaming was applied to individuals with tax debts in three US states. The experiment aimed to make

tax debtors believe that their debts were going to be exposed to their neighbours. The researchers hypothesized that this would make debtors more likely to pay out of fear for their reputation. The (real) tax debtors were informed by letter that their name and tax debts were publicly listed, along with the names and tax debts of nine other tax delinquents in their geographic area, and given a web address where their names could be found. The experimental group was informed that this information *would be* sent to neighbours unless they paid, whereas the control group did not receive this last message. The experiment showed that people with relatively low debts (up to \$2,500) paid those debts after receiving the letter. For higher debts, however, this effect did not occur. The researchers suggest that large debt owners may simply not be able to pay, or are stubbornly unwilling to. Those with larger debts may also be less sensitive to shaming: 'being taken off the delinquency list may be worth paying a debt of \$250, but may not be worth paying a debt of \$150,000' (Perez-Truglio and Troiano 2018: 12). The researchers also tested the effect of alternative deterrent measures, such as frequent reminders of financial penalties, yet the effect was lower than the threat of shaming (Perez-Truglia and Troiano 2018).

Equally insightful is an Australian study into feelings of stigmatization of taxpayers who were charged with violation of tax regulations by the Australian Tax Authority. Even without their offences being published, those offenders who reported to have experienced feelings of stigmatization in the enforcement process were more likely to report tax evasion in comparison to offenders who had received a more respectful, reintegrative treatment. The study design does not allow for causal claims, but it does provide some support that a reintegrative approach of tax offenders leads to lower reoffending while stigmatization leads to greater reoffending (Murphy and Harris 2007).

30.4.2 *Anticipated Shame and Compliance among Youth*

Criminological studies find that shame is negatively related to offending (Svensson et al. 2013). One area of this research has investigated the relation between anticipated shame and compliance intentions among youth. This research asked young people if they would feel shame when their significant other (such as a parent) found out about an offence. Young people who answer that they would feel shame are more likely to report that they intend to follow the law (Svensson et al. 2013). The cross-sectional design of such studies has limitations, however, as it relates responses in the present to behaviour in the past. For example, a study among college students in the USA examined the effect of various formal and informal sanctions on intended violations of college alcohol policies. Most US colleges prohibit the use of alcohol by undergraduates on campus. The survey indicates that students are not easily deterred by the threat of punishment, including the threat of suspension. What does deter students is the threat of being shamed and feeling guilty, but only among students who are already sensitive to feelings of embarrassment and guilt (Kelley et al. 2009). Likewise, a study of learner drivers in Australia demonstrates that drivers who expect to feel shame and guilt when violations are detected are more likely to comply with extra road safety regulations. Thus, shame is a more effective deterrent than formal sanctions – for those sensitive to it (Allen et al. 2015).

30.4.3 *Business Regulatory Offences*

In addition to tax offences, an area of business compliance that has received considerable attention from scholars is food hygiene. A common practice for food vendors is to have 'scores

on the doors' which indicate hygiene ratings to customers. Several empirical studies show a significant improvement in food hygiene after the introduction of 'scores on the doors' or similar forms of disclosure. Compliance is higher when businesses expect a negative rating to affect sales and when they feel embarrassed upon being put in negative light (Bavorova et al. 2017).

Various researchers have studied the effects of the US Environmental Protection Agency's Toxics Release Inventory (TRI), one of the first and most prominent information disclosure schemes. The TRI is designed to inform citizens about pollution by firms in their local environment. The TRI was initially very effective. Within ten years of its inception, toxic emissions had been reduced by half (Cortez 2011). This effect can be attributed to the massive publicity surrounding the disclosed information in its early years. Later research, however, shows a flattening of the compliance effects after the volume of information increased and attention dropped (Cortez 2011). An event-study (Campa 2018) shows that industrial plants which receive newspaper coverage of their emissions reduce those emissions by 29 per cent more than plants which are not covered. Further, plants located near a larger number of newspaper headquarters produce lower toxic emissions (although this effect is limited to plants operating in industries that produce consumer goods) (Campa 2018). Moreover, in Campa's study it became clear that disclosed information is not followed up by consumers; but the threat of reputational damage has an independent deterrent effect on polluting firms – a finding supported in other research on regulatory disclosure (van Erp 2010).

Similarly, Johnson (2020) has studied the impact of press releases by the US Occupational Safety and Health Administration (OSHA). He finds that peer companies located within 5 kilometres of an offending firm improve their compliance with health and safety regulations and experience fewer occupational injuries. In fact, being close to a company that gets negative press has two to three times the effect on peer company compliance than an actual OSHA inspection of their own facility. In other words, OSHA would have to conduct at least forty additional inspections to achieve the same improvement in compliance as that achieved with a single press release. Johnson (2020) suggests that this effect occurs because of pressure from workers. Workers read press releases about companies with poor health and safety records, and put pressure on their own employer to keep workers secure. In Johnson's (2020) analysis, facilities in areas where unions are strong substantially improve compliance following a press release about a peer, whereas those in areas where unions are relatively weak display no improvement.

This finding concurs with the much earlier, seminal Australian nursing home study by Makkai and Braithwaite (1994). They found that expectations of a scandal in the media *as such* do not seem to deter nursing home managers from breaking the law. Negative press only matters insofar as it matters to professional peers, family, neighbours and friends. Only through disapproval from these groups will negative press invoke a process of reintegrative shaming which is expected to stimulate compliance. Whereas Johnson (2020) suggests that employers concede to workers' demands to avoid future litigation cost, an alternative explanation could be that they do not want to alienate their employees.

In Brazil, the government has blacklisted districts with high deforestation rates to monitor and control illegal deforestation as a forest conservation policy strategy since 2007 (Cisneros et al. 2015). Cisneros et al. (2015) find that the average effect of blacklisting ranges between roughly 13 per cent and 36 per cent of reduction in deforestation, corresponding to an average 4,022 square kilometres of forest saved per year (2008–12). This effect may not be primarily attributable to shaming, though. Landowners in blacklisted districts face more administrative

burdens from the Brazilian government in obtaining licences for deforestation and, surprisingly, attract more support from international NGOs to assist improvements (which may also explain the effect). These studies suggest that it may be difficult to disentangle the various mechanisms through which shaming can lead to improved compliance. Whether reputational pressures from shaming lead to compliance or whether shaming affects other kinds of incentive may not be clear or even possible to delineate.

To conclude, empirical studies in a variety of fields and among diverse populations have found that shaming has a positive effect on compliance. Although most studies do not explicitly address a working mechanism, they give support for both the deterrence and the morality thesis – although the moral education of a community is more difficult to investigate. Extant research also clearly indicates that the effects are limited to those sensitive to shaming and reputation, and to regulations that are perceived as legitimate.

30.5 CONDITIONS, COMPLICATIONS AND PROPORTIONALITY

Both shaming and legal sanctions can improve compliance through inflicting reputational and financial damage on offenders. Further, the threat of sanctions acts as an incentive for compliance. Scholars generally argue that legal sanctions and reputational sanctions can complement each other. Formal litigation may produce negative publicity, which triggers further negative reactions from customers or other stakeholders in a snowball effect (Shapira 2016; Iacobucci 2014; Cortez 2011). Legal scholars have therefore argued that shaming is a punishment disproportionate to the crime: offenders that are shamed following a legal sanction are effectively punished twice. To avoid violations of the *ne bis in idem* principle, legal scholars argue, legal sanctions should somehow factor reputational damage into the size of the penalties (Shapira 2016; Iacobucci 2014).

The interactions between reputational and legal sanctions have been amply discussed in terms of sanction severity. The severity of sanctions, however, does not necessarily predict compliance with a rule. The question of whether legal and shaming sanctions interact with regard to inducing *compliance* has received less attention in the literature. A key question – particularly in the case of regulatory shaming – is what triggers compliance? Is it the legal sanction, the subsequent publicity or their combination? Drawing on the ‘naming – blaming – shaming – compliance’ framework, one would assume that legal sanctions are the trigger. Sanctions against corporations inform the general public that an offence has been committed. This can induce negative reactions from stakeholders, who may in turn demand organizational change (compliance). Parella (2018) gives the example of FIFA. After the international football federation was accused of corruption, Visa, Adidas and Coca-Cola threatened to withdraw their sponsorship unless FIFA cleaned up its act. That is, after stakeholders of these companies exercised pressure on *themselves*.

A variety of research evidence provides us with insights into the complexity of this relationship. First, research indicates that not all regulatory ‘naming’ generates ‘blaming’ (negative publicity) or results in shaming. Press releases about administrative penalties for smaller offences often do not get picked up in the press, and the process that decides which offences and offenders get selected for media exposure is unpredictable (van Erp 2011). Media messages may also not unequivocally condemn business offences. White-collar crime is often depicted as ‘victimless’ or cunning rather than morally wrong (Levi 2002). Some corporations are ‘unshamable’, especially those less known to the general public. Some industries are successful despite being ‘disreputable’. Tobacco, weapons, porn, gambling and offshore tax avoidance

are examples of industries that are relatively insensitive to shaming. Their reputation with the general public is already tarnished, and their direct stakeholders couldn't care less about the industry's tainted brand as long as it is still profitable (Mahon 2002). Studies on the impact of regulatory sanctions on stock value show very mixed effects. Despite capital markets being 'hyper-responsive' (Cortez 2011: 1396), several economic event-studies demonstrate that stock rates decline after accounting fraud but not after unethical corporate behaviour, environmental offences or human rights violations (Carberry et al. 2018; Karpoff 2012). In other words, the market imposes a reputational sanction for offences that directly affect stockholders but not for behaviour that inflicts damage to third parties. Although 'reputation' is a more complex and multidimensional concept than the stock rate reflects, these findings indicate that we should not take the deterrent effect of reputational sanctions for granted. All in all, empirical research demonstrates that 'naming' does not always entail shaming, which makes the positive relation between naming and shaming, and compliance, less likely.

At the opposite end of the spectrum, another distortion of the shaming–compliance relationship can be observed. Shaming can cripple an organization so badly that it lacks the means to reform itself. After a shaming, clients and investors are likely to abandon the firm, and its poor reputation makes them harder to replace. Compliance, however, usually requires organizations to make investments: in safer equipment, training programmes, extra staff and so on. Thus, shaming could lock companies into non-compliant practices, rather than encouraging improvement. Another risk of shaming is that the information disclosed could turn out to be wrong; even despite retraction, this results in undeserved reputational damage that is hard to correct. This risk is increasingly real in the era of open data (Cortez 2011, 2018). Regulatory shaming therefore requires procedural safeguards similar to those applied to other forms of regulatory enforcement (Cortez 2011).

A third potential adverse effect may occur when deviant subgroups hold alternative norms and values from those of the general public. For members of these subgroups, *compliance* with 'mainstream' social norms is more likely to garner shame than non-compliance (as compliance would imply disloyalty to the subgroup). This phenomenon has widely been acknowledged within criminological research into deviant youth cultures, but it can also be observed within corporate elites. For example, in the area of disclosure of corporate executive payment, excessive executive payment may be judged negatively by the general public and the press but may be interpreted as a signal of status among corporate elites (Gopalan 2007). Also, deviance among Wall Street investment banks has been found to attract clients, as firms interpret the deviance as a signal of boldness or risk appetite (Roulet 2018). Finally, compliance can be symbolic and ceremonial, as when firms take action to positively alter impressions about the firm and deflect attention away from them, without truly changing behaviour (Zavyalova et al. 2012).

30.6 CONCLUSION

If the review of research in this chapter has demonstrated one thing, it is that the relationship between 'naming and shaming' and compliance is ambiguous. Research has only started to disentangle various effects. The process by which naming and shaming of offenders by legal actors translates to financial or immaterial reputation damage, and subsequently to improved compliance of the offender and other firms, is very complex. The type of business and market, the existing reputation of the offender, the type of offence, the authority and legitimacy of the shaming actor, and the intensity of media coverage all influence the effect. This conclusion

counters the often taken-for-granted notion that shaming is effective and that reputational sanctions deter more than financial ones. All in all, the effects of shaming sanctions can be difficult to predict and control.

More research is necessary to uncover mechanisms, conditions and counter-effects of shaming on compliance. The natural experiments and effect studies discussed in this chapter give some insights into the effects of various shaming policies but provide little understanding of the underlying causal mechanisms. Future research should address this and in particular could explore the moral and educative aspects of shaming, which have been relatively under-researched.

The unpredictability of effects makes ‘naming and shaming’ a risky tool for regulators. Jacquet (2016) therefore argues that shaming should be used with caution, and only in situations where formal legal sanctions are ineffective. For regular individual offenders, the legal system offers sufficient means to punish their behaviour to fulfil goals of retribution and deterrence. That’s why shaming sanctions for drunk drivers, sex offenders and shoplifters are disproportional. There are better alternatives. But for powerful actors who stand above the law, because of their financial power or because their behaviour is in the grey area that is difficult to control through law, shaming can stimulate compliance with social norms where the law is less effective. ‘It’s not that shaming is preferable; it’s just that, in some cases, shaming is all we have’ (Jacquet 2016: 106).

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