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Gottschalk, P. (2019). Application of the theory of convenience to a case of illegal public procurement of healthcare services. *International Journal of Procurement Management*, 12(6).

<http://dx.doi.org/10.1504/IJPM.2019.102937>

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Application of the Theory of Convenience to a Case of Illegal Public Procurement of Health Care Services

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ABSTRACT

We address the following research question in this article: How can convenience theory in terms of motive, opportunity, and willingness explain deviant behavior in the case of public procurement of health care services in a Norwegian municipality? This research is important, as it can identify motives at the individual and organizational level, opportunities at the organizational and societal level, and willingness at the individual level, even when there is not necessarily corruption involved. The application of convenience theory is by no means an excuse for violations of laws and regulations. Rather, this article demonstrates where prevention of misconduct and crime needs attention. It is particularly at the organizational level, where opportunity structures tend to enable commitment and concealment of illegitimate financial transactions. When auditing and other forms of control are de facto absent, where the blame game occurs, and where it is impossible to trace events because documents and emails have disappeared, then misconduct and crime become convenient options.

Keywords: white-collar crime; public procurement; convenience theory; neutralization techniques; opportunity structures.

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INTRODUCTION

The theory of convenience suggests that white-collar crime occurs when there is a financial motive, an organizational opportunity, and a personal willingness (Gottschalk, 2017). White-collar crime can be distinguished from ordinary crime (“street crime”) based on the status of the offenders, their access to legitimate occupations and resources, and the common presence of an organizational form. Sutherland (1983) specifically focuses on emphasizing the respectability of white-collar offenders, stating that persons of the upper socio-economic class commit all kinds of financial crime. The ability of white-collar offenders to commit crime relates directly to their privileged position in the social structure, and their orientation to legitimate and respectable careers (Friedrichs et al., 2018).

There are two very distinct forms of white-collar crime, occupational versus corporate offenses (Cullen et al., 2006). While occupational crime benefits the individual, corporate crime benefits the organization more directly than individuals that committed the offense (Craig and Piquero, 2017). The current case is concerned with corporate crime in a public organization. The organization has admitted to crime in public procurement (Lyngstad, 2018).

We address the following research question in this article: How can convenience theory in terms of motive, opportunity, and willingness explain deviant behavior in the case of public procurement of health care services in a Norwegian municipality?

This research is important, as it can identify motives at the individual and organizational level, opportunities at the organizational and societal level, and willingness at the individual level, even when there is not necessarily corruption involved.

ILLEGAL PUBLIC PROCUREMENT

Public procurement in a municipality in Norway has to follow certain laws and regulations. They are concerned with public tenders, accounting, and documentation. The municipality in our case has admitted to crime in public procurement by violating laws and regulations (Lyngstad, 2018). The municipality has thirty thousand inhabitants and is located in the southern part of Norway.

In recent years, the municipality has bought health care services from an outside vendor for the equivalent of US\$2 million annually without any documentation. The control committee in the municipality hired private fraud examiners to find out how it had occurred, but both investigations failed. While BDO (2016) concluded that interviewees remembered surprisingly little of events and sequences of events, Hjort (2018) concluded that relevant emails to enlighten the case were non-existent.

Helge Moen was chief financial officer (CFO) in the municipality. He blew the whistle on corruption and fraud in public procurement in the municipality in the spring of 2016. He then was on sick leave for half a year before returning to work. After working for about 40 days, other executives forced him to move because of a tense situation in the working environment. He then became subject to retribution (Karlsen, 2018).

Helge Moen was one of the whistleblowers. The other whistleblower was Ragnar Holvik. Independent of each other, Holvik blew the whistle on corruption in public procurement at about the same time in the spring of 2016. The contents of Holvik's warning concerned the assistant municipal manager for health and care services who favored her sister-in-law as provider of health services without proper procurement process and incapacity. The recipient of Holvik's warning was an acting councilperson and a municipal manager, as well as all members of the municipal council. The first reaction to his warning was ignorance and rejection. Next, the whistleblowing letter was not processed. Then, Holvik experienced public

harassment by politicians who claimed he was wrong. Then, after the fraud examination conducted by global auditing firm BDO (2016), the conclusion was that illegal procurements of health care services had indeed occurred. Both Moen and Holvik officially and formally received the status of whistleblowers by political bodies as well as the management in the municipality (Johansen, 2018).

However, then retaliation started, and Holvik as well became sick and was on sick leave for almost a year. Before returning to his position as a chief advisor to the councilperson, Holvik lost key assignments, and the mayor criticized him publicly and thus broke the rule of confidentiality concerning employees in the municipality. Holvik had to hire an attorney to defend his case, and the attorney launched a claim on behalf of Holvik for retaliation and harassment. When Holvik returned back to work in January 2018, Holvik was immediately isolated by being assigned an office far away from the town hall where all his colleagues had their offices. Holvik lost most of his assignments and duties (Malde, 2018).

THEORY OF CONVENIENCE

The theory of convenience suggests that white-collar misconduct and crime occurs when there is a financial motive benefitting the individual or the organization, an organizational opportunity to commit and conceal crime, and a personal willingness for deviant behavior (Gottschalk, 2017).

The white-collar crime triangle has similarities with the fraud triangle (Cressey, 1972), which suggests three conditions for fraud: (1) incentives and pressures, (2) opportunities, and (3) attitudes and rationalization. However, there are two distinct differences. First, convenience is a relative concept, indicating that offenders have the option of alternative actions to reach their goals that do not represent illegitimate behavior. Second, it is in the organizational

setting where offenders have access to resources so that opportunity arises to commit and conceal crime.

Financial motive is concerned with the desire for profit that offenders more conveniently achieve in illegal ways. The desire finds its causes in both possibilities and threats.

Possibilities can emerge in the perspectives of profit-driven crime (Naylor, 2003) and goal orientation (Dodge, 2009; Jonnergård et al., 2010), as well the American dream (Pratt and Cullen, 2005; Schoepfer and Piquero, 2006). Threats can be found in perspectives of strain (Froggio and Agnew, 2007; Langton and Piquero, 2007; Wood and Alleyne, 2010) and fear of falling (Piquero, 2012).

An interesting starting point is to look at Maslow's (1943) hierarchy of needs. The Russian-American psychologist Abraham Maslow developed a hierarchy of human needs. Needs start at the bottom with physiological need, need for security, social need, and need for respect and self-realization. When basic needs such as food and shelter are satisfied, then the person moves up the pyramid to satisfy needs for safety and control over own life situation.

Higher up in the pyramid, the person strives for self-respect, status, and recognition. While street crime is often concerned with the lower levels, white-collar crime is often concerned with the upper levels in terms of status and success. Most individuals will want to move higher up in the pyramid when needs below are satisfied.

As far as money or other valuable items can help climbing higher in the pyramid, potential offenders may find white-collar crime convenient if other options to achieve success are more stressful and require more resources. Whether the offender wants more at a certain level or wants to climb to higher levels in the pyramid, financial crime can be a means to the end.

For some white-collar criminals, money is the goal of crime. For other white-collar criminals, money is a means to a goal of acceptance, influence and fame.

For example, to be accepted and potentially admired as a successful businessperson, the enterprise has to grow and make money. Financial success as a businessperson can lead to influence, privileges, and status. Admiration and respect in the elite is a desirable goal for many individuals. If such a goal is difficult to reach by legal means, illegal means represent an alternative.

Organizational opportunity is concerned with illegal profit that one can obtain more conveniently in an organizational setting where the offender can enjoy power and influence based on position and trust. The organizational dimension sets white-collar criminals apart from other financial criminals. White-collar crime can be distinguished from ordinary crime (“street crime”) based on the status of the offenders, their access to legitimate occupations, the common presence of an organizational form, and the extent of the costs and harmfulness of such crime. Sutherland (1983) specifically focused on emphasizing the respectability of white-collar offenders, stating that persons of the upper socio-economic class commit all kinds of financial crime. The ability of white-collar offenders to commit crime is dependent on their privileged position, the social structure, and their orientation to legitimate and respectable careers (Friedrichs et al., 2018).

The perspective of principal and agent suggests that when task transfer occurs from a principal to an agent, the principal is often unable to control what the agent is doing. Agency problems occur when principal and agent have different risk willingness and different preferences, and knowledge asymmetry regarding tasks exists (Eisenhardt, 1985). The principal-agent perspective (or simply agency perspective) can illuminate fraud and corruption in an organizational context. The principal may be a board of a company that leaves the corporate management to the chief executive officer (CEO). The CEO is then the agent in the relationship. The CEO in turn may entrust tasks to other executives, where the CEO becomes the principal, while people in positions such as chief financial officer (CFO),

chief operating officer (COO), and chief technology officer (CTO) are agents. Agents perform tasks on behalf of principals. A CEO may cheat and defraud owners (Williams, 2008), and a purchasing manager can fool the CEO when selecting vendors (Chrisman et al., 2007) by taking bribes that can cause the company to pay more for inferior quality, for instance. The agency perspective assumes narrow self-interest among actors. The interests of principal and agent tend to diverge, and the principal has imperfect information about the agent's contribution (Bosse and Phillips, 2016). According to principal-agent analysis, exchanges can encourage illegal private gain for both principal and agent (Pillay and Kluvers, 2014). According to the agency perspective, managers are opportunistic agents motivated by individual utility maximization. Taking an economic model of man that treats human beings as rational actors seeking to maximize individual utility – when given the opportunity – then executives and other members of the elite will maximize their own utilities at the expense of shareholders and others.

Personal willingness is concerned with the impression that surprisingly few white-collar criminals think they have done anything wrong. Most of them feel innocent and victims of injustice when put on trial, convicted and imprisoned. By application of neutralization techniques (Sykes and Matza, 1957), they deny responsibility, injury, and victim. They condemn the condemners. They claim appeal to higher loyalties and normality of action. They claim entitlement, and they argue the case of legal mistake. They find their own mistakes acceptable. They argue a dilemma arose, whereby they made a reasonable tradeoff before committing the act (Siponen and Vance, 2010). Such claims enable offenders to find crime convenient, since they do not consider it crime.

Some white-collar offenders are narcissists. Narcissists exhibit an unusual trust in themselves, believing that they are uniquely special and entitled to more benefits than are legitimately available to them (Ouimet, 2010).

FINANCIAL MOTIVE

An executive in the municipality worked in the area of health care when she decided to leave the municipality and start her own health care business. On her way out of the town hall, she made sure that she got work for the municipality in her new firm. She was successful, and already in the second year of operation, her firm made substantial profits. After a few years, her firm was able to buy an institutional building in the town (Berg, 2017).

The building had belonged to a Christian church congregation that was in serious financial trouble. The buyout for more than US\$1 million rescued the church from a financial ruin.

Many appreciated the help including the mayor of the town, who belonged to the Christian Democratic Party. The mayor was not interested in finding out how money from the municipality could end up financing a rescue plan for his church (Glimsdal, 2018).

Another motive was savings in time and effort and thus cost for the municipality when procuring health services from outside vendors (Farquhar and Rowley, 2009). There were savings when the municipality was able to cover health care needs comfortably with relief and ease (Carrington and Catusus, 2007). The less effort needed the better (Mai and Olsen, 2016).

Furthermore, ends can justify means, where timely health care is the important goal (Jonnergård et al., 2010). Goals can justify means where success is of utmost importance, and where failing to achieve goals can cause suffering as a catastrophe.

As suggested by Agnew (2014) social concern for others can be a strong motive for deviant behavior. Crime is acceptable as long as it is committed to benefit others out of social concern. Social concern involves biologically based inclinations that sometimes lead people to consider others' interests as just as important, or even more important, than own interests. Provision of health care services are for the welfare of others, and innocent people should never suffer harm because of bureaucratic rules and regulations (Antonsen, 2017).

As suggested by Langton and Piquero (2007), removal of strain can be a strong motive for deviant behavior. Financial crime can remove strain. Social structures within society or within an organization may pressure members of the elite to violate laws. Municipal executives perceived pressure when handicapped and other patient groups needed help, and did not get it. Lyngstad (2018) describe the situation as acute:

When in June 2012 we experienced a situation of emergency, where we had to get a help offer during a week, we did not have a framework agreement for the purchase of this type of care services. And the municipality must be able to endure criticism. I have to endure criticism for that.

Some bureaucrats may suffer from narcissism, especially when they compare themselves to politicians. People with narcissistic tendencies may construct their own professional worlds, in which they decide for themselves what is right and what is wrong. Narcissism is a deviant personality trait (Chatterjee and Pollock, 2017) where narcissistic self-confidence coupled with drive, ambitiousness, and insensitivity to others may enable some people to undertake risky business endeavors that more prudent and introspective individuals would never attempt (Benson, 2013).

In line with public service motivation hypothesis, municipal managers can be dedicated to public service. The hypothesis seeks to explain why individuals choose public service over private service, given the perceived disparities in pay scale, advancement opportunities, and overall work environment (Kjeldsen and Jacobsen, 2013; Perry et al., 2010). The hypothesis suggests that some individuals work in the public sector based on their values. They have a desire to contribute to the well-being of society in general through their work (Nalbandian and Edwards, 1983; Wright, 2007). The concept of public service motivation is a theorized attribute of public employees that provides them with a desire to serve the public (Perry and Wise, 1990).

ORGANIZATIONAL OPPORTUNITY

A municipality has an administration of bureaucrats and a board with politicians. In an agency perspective, politicians are principals, while bureaucrats are agents. Majority rule implies that the parties winning an election is in charge on the board of politicians. In the case municipality, politicians are reluctant to move into bureaucrat responsibilities, while bureaucrats avoid political decision-making in municipal affairs (Berg, 2018). In this way, agency problems might occur. The principal can simply not control the agent, and agency problems occur because of different risk willingness and different preferences, as well as knowledge asymmetry regarding tasks. The agency perspective assumes narrow self-interest and self-centeredness among participants in the relationship. The interests of principal and agent tend to diverge, and the principal has imperfect information about the agent's contribution (Bosse and Phillips, 2016).

Institutional deterioration was occurring in the municipality. Structures, including schemes, rules, norms, and routines deteriorated and nobody could remember much or find much as documented in two investigation reports (BDO, 2016; Hjort, 2018). As deterioration develops, opportunities for deviant behavior increases. Municipal managers found opportunity for and acceptance of illegal behaviors. There was no central overview of procurement processes (BDO, 2016: 34):

The procurement process in the municipality is decentralized. This implies that each unit is responsible for purchases within their area, based on needs and budgetary resources. There is no rules or regulations regarding decentralization, and there are no job descriptions. There is no documentation regarding what positions that can carry out purchases and thereby making the municipality financially liable.

The lack of memory among interviewees (BDO, 2016) and the disappearance of email among the same municipal executives (Hjort, 2018) illustrate the institutional and moral deterioration and collapse that was taking place.

Institutional deterioration opened up for the blame game, where nobody would take responsibility for violation of laws and regulations. The blame hypothesis is concerned with factors that cause blame attribution to some individuals but not to others. External attributions place the cause of a negative event on external factors, absolving the account giver from responsibility (Eberly et al., 2011; Lee and Robinson, 2000). Based on media coverage and investigation reports it is evident that those who carried out the illegal purchases in the municipality blame decisions from above, while executives above claim they never learned about those purchases.

Institutional deterioration combined with the blame game illustrates social disorganization that opens up for deviant behavior and misconduct with reactions or actions. The social disorganization hypothesis suggests that social disorganization leads to the breakdown of conventional social norms. The gradual erosion of conventional relationships weakens the functional authority over potential white-collar offenders (Hoffmann, 2002). Opportunities to commit financial crime increase (Wood and Alleyne, 2010). Lack of social control attenuates bonding mechanisms by making supervision and interpersonal attachments more tenuous. Social disorganization weakens the ability of social bonds to circumscribe delinquent behavior.

The opportunity structure in the municipality reflects principal-agent problems, institutional deterioration and blame game, as well as social disorganization. Generally, opportunity manifested itself in the lack of a capable guardianship. Guardianship is supposed to prevent an offender from getting to the target, or to make the offender decide it is too risky to go after the

target (Benson and Simpson, 2015). The opportunity structure was preserved by silencing whistleblowers (Johansen, 2018; Karlsen, 2018; Malde; 2018).

PERSONAL WILLINGNESS

For bureaucrats involved in procurement of health care services to benefit suffering individuals in the municipality, the most important thing is that people get help as required. The public service motivation hypothesis can explain both motive and willingness (Kjeldsen and Jacobsen, 2013; Nalbandian and Edwards, 1983; Perry et al., 2010; Perry and Wise, 1990; Wright, 2007). Offenders apply the technique of neutralization concerned with loyalty to an important task of helping people in need of health services. There was a situation characterized by a crisis, as described in a newspaper article by the former mayor (Antonsen, 2017):

When we called a meeting on June 14, 2012 to put in place a help offer in six days, the list of participants is all that is needed to bring the seriousness to light. In addition to several from the municipality: three from the police, two from the hospital.

In the spring of 2015, Grimstad municipality was in the unreal situation that the municipal help apparatus in one case had a gross breakdown. We did not manage to provide the service we should, after trying a lot of resources for a long time. I had tried to start a dialogue with relatives, without success. Then a municipal manager asked me if I meant it was acceptable to go straight to Farm In Action, who were the only ones we knew about who could have the capacity to take over the help function immediately. I said yes. Thus, the company received a new big assignment from Grimstad.

The neutralization technique of justifying misconduct and crime by higher loyalties implies that the offender denies the act could find motivation in self-interest. Rather, the offender

claims willingness for deviant action was instead out of obedience to some moral obligation. The offender appeals to higher loyalties, and arguing that it was according to expectations. Those who feel they are in a dilemma that must be resolved at the cost of violating a law or policy employ this technique. In the context of an organization, an employee may appeal to organizational values or hierarchies (Siponen and Vance, 2010; Sykes and Matza, 1957). Although not obvious, involved managers in the municipality claim that, they themselves had no benefits from their illegal actions. They argue that their action was a necessary shortcut to get things done. They argue that what they did is acceptable given the situation. They claim normality of action, where everyone else does and would do the same in a similar situation. They claim entitlement to action, where it is sometimes a required behavior in their positions.

CONCLUSION

This article has demonstrated the application of convenience theory to public procurement fraud. White-collar offenders demonstrate motive, opportunity and willingness that cause misconduct and crime to emerge as convenient when public service require them to do so. The application of convenience theory is by no means an excuse for violations of laws and regulations. Rather, this article has demonstrated where prevention of misconduct and crime needs attention. It is particularly at the organizational level, where opportunity structures tend to enable commitment and concealment of illegitimate financial transactions. When auditing and other forms of control are de facto absent, where the blame game occurs, and where it is impossible to trace events because documents and emails have disappeared, then misconduct and crime become convenient options.

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