

JUVENILE OFFENDING: NEW THEORY AND PRACTICE

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It takes a whole village to raise a child.
African Proverb.

PHILIP PETTIT AND I HAVE DESCRIBED THE KIND OF CRIMINOLOGY WE DO as republicans (Braithwaite & Pettit 1990; Braithwaite 1993). It is not my purpose in this paper to explain how a republican political philosophy can solve a range of problems that are unsolved by liberal political theory. Suffice it to say here that a key concept in the civic republican tradition is citizenship. This is critical in the *fraternité* part of the republican slogan of "*liberté, égalité et fraternité*". *Fraternité*, of course, is not much of a concern with liberal political theory, sharply focused as it is on the struggle of individuals to be free from the restraints of state power.

Australia and New Zealand have criminal justice systems that are shockingly oppressive in either liberal or republican terms, systems that have been characterised by brutality, racism, patriarchy, contempt for both offenders and victims by professionals within the system, fabrication of evidence, corruption and ineffectiveness. However, there have been some modest changes in recent years which must be judged progressive from a republican perspective. Whatever the imperfections of the Fitzgerald reforms to the Queensland criminal justice system (Queensland 1989), and they are considerable, they do manifest a shift in the direction of accountability to citizens and even engagement of citizens through their capacity to make submissions to the Criminal Justice Commission and the parliamentary Criminal Justice Committee.

Generally, throughout Australia and New Zealand, we have seen some increase in the importance of citizenship in policing under the slogan of community policing. Most important in terms of its effects, social movement politics have become more important (Braithwaite 1991). Pre-eminent among these has been the women's movement, which has sought to change patterns of domestic violence by communicating directly with citizens, asking women to break the silence and men to speak out against misogyny among their mates. Similarly, there has been the social movement against environmental

despoilation and white-collar crime generally. Finally, the social movement against drink driving, which is probably saving many more Australian lives each year than the total number of murders, has been transacted in part through direct appeals to citizens, such as through television, to change the practices of drinking groups, and by having designated drivers.

The ideological shift struck me on a recent visit to Wagga Wagga when I attended a crime prevention workshop run by the police for a group of eleven-year-old children. The constable asked the group of children what they would do if dad offered them a drive when he had had too much to drink. "Now I don't want you to tell me if dad ever has done that. I just want you to think about whether you would be responsible enough for your own safety to get in a car with anyone, even dad, who had had too much to drink." It occurred to me that this is not a liberal crime control strategy; indeed it is one that might be distasteful to many liberals because it intervenes in the private space of the family. It is a republican strategy because it is about the direct engagement of young citizens catalysed by the state. Potentially, it might also be an effective strategy because our own children could be in a uniquely powerful position to shame us if we drink and drive. The point is that it is no longer true to characterise debates over criminal justice policy in Australia and New Zealand as battles between liberalism and authoritarianism; we can also conceive of a liberal/republican divide that is becoming increasingly important.

No reform manifests the shift more clearly than the New Zealand Children, Young Persons and their Families Act 1989. This act is about citizenship responsibilities as fundamental to the strategy for dealing with juvenile crime, as well as citizenship rights. This republican statute's political motivation comes not from the Roman or Florentine or French or American republics, but from the great Maori republics. It was a reform from below, not a reform from the North. Reform had its roots in the frustration of Maori families with the way the Western state disempowered them through the criminal justice system. In the report prepared by Maori leaders that was the first step to the radical transformation of the New Zealand juvenile justice system, the Maori critique of Western criminal justice was forceful: "Imprisonment typified the Western response—the equation of individuals with animals distanced from their communities but later to be inflicted back on them" (Ministerial Advisory Committee 1986).

The spirit of the New Zealand juvenile justice reforms is to get offenders and their communities, particularly their families, to take responsibility for offending. Crime victims have their rights as citizens taken more seriously. But they too are asked to shoulder the citizenship responsibility of participating in a constructive way in a deliberative process oriented to helping the offender to become a law-abiding, rights-respecting citizen. Under this model, both the offender and the victim are imputed the status of responsible citizen in a community, whereas under a liberal model their status is as individual subjects of state justice; the status of the victim is simply that of evidentiary cannon fodder, of witness or claimant, not of citizen with participation rights and obligations.

So how is this supposed to work in practice? The part of the New Zealand reforms which are most exciting in this respect is the family group conference. Instead of dealing with an offender before a juvenile court, a youth justice coordinator convenes a conference to which the offender, the offender's family (extending often to aunts, grandparents, cousins), other citizens who are key supports in the offender's life (perhaps this might be a football coach he particularly respects), the victim, victim supporters (often family members), the police and in some contexts a youth justice advocate are invited.

Braithwaite and Mugford (1992) have conceived of these conferences as citizenship ceremonies of reintegrative shaming¹. The theory of the reform, not always translated into practice, is that the discussion of the harm and distress caused to both the victim and to the offender's family will communicate shame to the offender for what he or she had done. Secondly, the intention of assembling around the offender the people who care about and respect them most is to foster reintegration, or healing as they prefer to call it. Healing of social relationships. In the traditional Maori way, the healing can have a rather physical manifestation at the end of the conference through hugging, kissing on the cheek and nose pressing. Whatever the cultural form in which it is manifested, the objective is to avoid casting out, stigmatising the young person. A successful conference is one where the offenders are brought to experience remorse for the effects of their crimes and to understand that they can count on the continuing support, love and respect of their families and friends.

In *Crime, Shame and Reintegration*, I argued that ceremonies which accomplish this are important to crime control (Braithwaite 1989, p. 173). The trouble with the conventional liberal process is that it is stigmatising. Traditional courtrooms fail as a communicative and problem-solving forum. The denunciations of prosecutors, judges and police who enjoy no intimate bond of care and mutual respect with the offender are liable to degrade and stigmatise. Consequently, the young person is liable to reject his rejectors, and in the worst scenario, find comfort and symbolic distance from his rejectors in

¹ The key theoretical idea here is that shaming can be partitioned into reintegrative shaming (which controls crime) and stigmatisation (which can make the crime problems of shamed actors worse). The distinguishing characteristics of the two types of shaming are as follows:

Reintegrative shaming

1. Disapproval while sustaining a relationship of respect.
2. Ceremonies to certify deviance terminated by ceremonies to decertify deviance.
3. Disapproves evil of deed without labelling person as evil.
4. Deviance not allowed to become a master status trait.

Stigmatisation

1. Disrespectful shaming, humiliation.
2. Ceremonies to certify deviance NOT terminated by ceremonies to decertify deviance.
3. Evil person, not just evil deed.
4. Deviance allowed to become a master status trait.

the world of a delinquent subculture. According to the theory, when the institutions of the courtroom and the detention centre take a liberal form, they not only fail to prevent crime, they cause it through the symbolic effects of stigmatisation.

Family group conferences also fail quite often as reintegrative ceremonies. Braithwaite & Mugford (1992) have recently attempted to set down fourteen conditions that distinguish successful from unsuccessful reintegration ceremonies. Highly stigmatising family group conferences still exist, and ridding criminal justice ceremonies of stigma, and replacing stigma with reintegrative shaming, is an enormous task. Surprisingly, the parents of the young offenders brought before the conferences I have observed seemed more stigmatic than the victims or the police. Perhaps this is a social selection effect. The parents who have histories with their children that lead them to a formal confrontation with the juvenile justice system may act in a more stigmatic way toward their children than the average parent. The sort of crime victim and police officer who agree to participate in these conferences may be more nurturing than the average victim and the average police officer. However, I suspect this may be more a social context effect than a social selection effect. When crime victims are asked to be good citizens by giving up their time for a conference in the hope that this will get the young offender's life back on track, so that other victims will not suffer the same fate, they do tend to treat their participation in the conference as a civic act. Certainly, they are often interested in getting compensation for losses they have suffered. But as Clifford Shearing remarked with surprise after observing two conferences in Wagga Wagga: "They all wanted to win the battle for his [the offender's] soul rather than his money". Shearing was alluding here to Nikolas Rose's (1990) influential book, *Governing the Soul*.

The now considerable literature on public attitudes to crime shows that while citizens are extremely punitive and unforgiving in the abstracted attitudes they express in public opinion surveys, as citizens get closer and closer to making judgments about particular offenders based on a detailed understanding of the background to the offence, they get less and less punitive (Doob & Roberts 1983; Heinz & Kerstetter 1979; Kigin & Novack 1980; Shapland, Willmore & Duff 1985; Wietekamp 1989, pp. 83-4). While the victim movement may be a rather punitive one, individual victims empowered in dealings where they are given some detailed insight into the life circumstances of their offender can be surprisingly non-punitive (Ashworth 1986, p. 118).

Actually, the Wagga Wagga program of family group conferences is probably more a success in its dealings with victims than the New Zealand program. The satisfaction level of police, Youth Justice Coordinators, parents and young offenders were very high in a recent evaluation of New Zealand conferences—91 per cent, 86 per cent, 85 per cent and 84 per cent respectively (Morris & Maxwell 1993). But victim satisfaction with the outcome of the conference was only 48 per cent. Of course, one might interpret this as a good result compared with victim satisfaction with traditional courts. But we must combine this negative result with the fact that only half the family group

conferences in New Zealand succeed in getting victims or victim representatives along to the conference.

The Wagga Wagga program is yet to receive the kind of systematic evaluation undertaken by the Victoria University team in New Zealand, but it seems clear that the Wagga Wagga program is being considerably more successful at getting the attendance of victims and victim supporters. The unsystematic evaluation work in Wagga Wagga also suggests a high level of victim satisfaction possibly because the Wagga Wagga program puts in a lot of work, in the words of Senior Sergeant Terry O'Connell, to "make the victim feel important". One might say that the philosophy of the Wagga Wagga program is more victim-centred, while the philosophy of the New Zealand program is more centred on the young person. With regard to reintegrative shaming, being victim-centred has advantages from an offender point of view. The objective of focusing on the act and the problems it has caused for the victim can steer the ceremony away from a stigmatising preoccupation with the badness of the young person. In other words, being victim-centred can foster shaming that is focused on specific deeds rather than whole persons. While the Wagga Wagga reforms have learned so much from New Zealand, this is where there is something that the New Zealanders can learn from Wagga Wagga.

There is a political dimension to the victim-orientation as well. Conservative law and order politicians constantly hammer two themes: the decay of the family as an institution in contemporary societies and the crime victim as the forgotten player in offender-centred criminal justice systems. The political feasibility of the family group conference is that it empowers families and sharpens family responsibilities (as well as offender responsibilities) to come up with solutions to the problem at the same time as it empowers victims. The process is an opportunity for politicians to match their rhetoric with political support for a family-centred, victim-centred program. Conservative politicians can also find that their traditional allies in law and order campaigns, the police, are enthusiasts for family group conferences—witness the 91 per cent police satisfaction with conference outcomes in New Zealand. Witness also the fact that in Australia, it is the police who are the leading force for progressive reform in this area and that the Australian and New Zealand Police Federation carried a resolution at its 1991 conference in support of the New Zealand program. This is a program that, through being republican in its philosophical foundation, not only muddies the liberal/authoritarian divide, it also muddies the divide between the constituencies who support law and order and those who oppose net widening. The net that is widened is not the net of state control, it is the net of community control. Both the New Zealand and Wagga Wagga programs have, on balance, done much more to narrow than to widen nets of state control (*see* Morris & Maxwell 1993).

The key ingredients of this approach to juvenile justice reform are therefore really quite simple:

- Convene a conference to which the key invitees are the offender, the people who are most supportive of the offender (usually his or her family), the victim and people to support the victim.
- Give all participants an opportunity to explain how the offence affected their lives and to put forward proposals for a plan of action.
- After the offender and his or her family have listened to the other speakers, empower them to propose final plans until they come up with a plan that is agreeable to all participants in the conference (including the police).
- Monitor implementation of the plan, particularly those elements involving compensation to victims and community work.

My empirical claim is that such a criminal justice procedure encourages reintegrative and discourages stigmatic forms of shaming; it tends to nurture acceptance of responsibility by individuals and families, apology, restitution and forgiveness; it discourages exclusionary forms of punishment and outcasting. This, of course, is a claim that can be rebutted by well-designed evaluation research.

These simple principles and procedures could be viewed as rather similar in their community policing philosophy to community aid panels or as similar to dyadic victim-offender reconciliation programs that have enjoyed some popularity in the United States for decades. However, they involve a major conceptual leap beyond these ideas. A community aid panel of Aboriginal elders is a significant step toward community policing for dealing with Aboriginal offenders. However, in an urban setting, the Aboriginal elders will not necessarily be people the young Aboriginal will know or respect. The idea of family group conferences is to assemble in the room the particular Aboriginal people who care about a particular Aboriginal young person. It mobilises a communitarian process on both the victim and the offender side, not simply a dyadic victim-offender reconciliation between two individuals. But it is a form of communitarianism that can and does work in large multicultural cities. It is a practical form of communitarianism because it is individual-centred. Instead of citizens being asked to participate on behalf of an abstract goal like community crime prevention (as with Neighbourhood Watch), they are asked to come along to help a particular young person or a particular victim. My observation is that citizens are flattered to be nominated as someone who enjoys the respect of a young person in trouble or a victim experiencing trauma. So they participate when the approach is made in these terms.

The New Zealand Maoris have shown us the path to a form of communitarian control that, within broad principles, can be flexible enough to accommodate not only a Maori minority and a white majority, but a great plurality of cultures and subcultures. Pacific Islander communities in New Zealand, just like the Aboriginal community in Wagga Wagga, have adapted the model to accommodate their cultural forms. New Zealand is showing the

world how communitarian crime control can work in individualistic capitalist metropolises through the practical expedient of constructing an individual-centred communitarianism. But like all beautiful theories, it can be and is corrupted by ugly practices. Women are often dominated by patriarchal family structures in these conferences. Sometimes when families are effectively empowered by the conference process, they use that power to further crush a young person whose voice is barely heard during the conference (*see* Morris & Maxwell 1993). Sometimes racism flares between victims and offenders of different backgrounds.

Even when the process works well, a two-hour conference rarely turns around problems that have been festering for many years. Yet the theory of the conference is not that the conference itself will transform lives, but that the conference could be a catalyst for communities to commit to taking responsibility for ongoing action plans. Even more modestly, the conferences can be construed as a means for the community to ritually signify the fact that it takes crime seriously, without doing the harm that characterises the alternative rituals of courtroom trials, formal punishment and incarceration.

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