Reintegrative Shaming, Republicanism, and Policy

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This chapter summarizes the explanation of crime in the theory of reintegrative shaming. It then shows how Republican political theory instructs us in how to apply the explanatory theory in a decent way. The theory motivates communitarian rather than statist solutions to our crime problems. The communitarianism advocated is not neighborhood communitarianism, the participatory democracy of the eighteenth-century New England town meeting. In the twentieth century, struggles for such local direct democracy have dissipated idealism because they attempt too much. I will argue that forms of communitarianism that can focus moral energies and reduce crime in the automobile age are social movement politics and the individual-centered communitarianism of the New Zealand Maori idea of family group conferences.

The Explanatory Theory

The key idea of the theory of reintegrative shaming (Braithwaite, 1989) is that some societies have higher crime rates than others because their citizens less effectively shame criminal behavior. The societies with low crime rates are not those that punish crime most effectively, but those that are most effectively intolerant of crime. Shaming in the theory means all social processes of expressing disapproval that have the intention or effect of involving remorse in the person being shamed and/or condemnation by others who become aware of the shaming. The forms that shaming take are culturally specific, ranging from highly formal ceremonies such as criminal trials to subtle informalities such as the raising of an eyebrow.

It is not just that shaming is a more effective deterrent than punishment, though there is reason to believe that the fear of disapproval by others has more
effect on crime than the fear of formal punishment (Tittle, 1980; Nagin and Paternoster, 1991). Shaming also contributes to the internalization of the wrongfulness of crime. Through being shamed ourselves, but, more important, from observing the shaming of others who break the law, we are educated to believe that crime is wrong. Once cultural practices of shaming have accomplished this internalization, punishment by pangs of conscience becomes a much more powerful deterrent than fear of disapproval by others. The disapproval of our own conscience is delivered with more certainty than disapproval by others, who may not find out about our misdeeds. Self-disapproval is also delivered in a more timely way because it precedes the actual commission of the crime, as well as immediately following it, whereas social disapproval may lag long after the act.

So shaming accomplishes moral education about the wrongfulness of crime as well as deterrence through both social disapproval and self-disapproval. The most important effects of shaming, however, are not mediated by deterrence at all. Most readers of this chapter will have had some person give them trouble during the past month. One of the ways you might have sought to solve that problem was by murdering the troublesome person. Ask yourself why you did not solve your problem by murdering the person causing it. Most of us will reach the conclusion that we did not weigh up the benefits of murder against the possible costs of getting caught, being punished, being disapproved by others, and suffering the pangs of our own conscience. Rather, we conclude that murder never crossed our minds as a way of solving our problem. Somehow murder had been rendered unthinkable as a mode of problem solving. It is not that we calculated the costs and benefits of murder or struggled with our conscience; murder was right off our deliberative agenda. Most of us refrain from committing murder most of the time because murder is simply unthinkable to us. The key to crime prevention is grasping an understanding of how this unthinkableness is accomplished. According to the theory of reintegrative shaming, cultural practices of shaming make a crime unthinkable.

In cultures where shaming works well, shaming ceremonies give a salience to community deliberation about the wrongfulness of crime. Crime is not something left to professionals such as judges and social workers to clean up (or sweep under the carpet); it is something citizens talk about. Through participating in disapproval of the harm done by specific criminal acts in their experience, citizens educate each other about why certain kinds of acts, called crime, are simply wrong. Understanding that something is a crime then triggers a process of well-socialized citizens convincing themselves that this kind of conduct is unthinkable so that in the future they will not deliberate over its costs and benefits.

Someone who accepts this theory must therefore reject radical abolitionist prescriptions that we would be better off if we had no such concept as crime in our ways of thinking about problems of living. On the contrary, the theory of reintegrative shaming suggests that the concept of crime is a powerful cognitive resource in enabling voluntary, democratic-participatory, nonpunitive forms of social control. For example, if citizens in a democracy decide that a new technology is so dangerous that it must never be exploited (e.g., a new biological weapon), it is important to criminalize the conduct of corporations that produce the technology. In one symbolic swoop, this lets all companies know that it is morally unacceptable to weigh up the costs and benefits of production: It is simply a crime and should be unthinkable. The democratic process of legislating for criminalization is a more efficient and decent mechanism of social control here than any alternative. One alternative would be to say to corporate America: “You can calculate the costs and benefits of producing this technology, but if you allow it to do harm, you will have to pay for the costs of this harm.” This alternative runs a variety of risks: companies may miscalculate; detecting and estimating the costs of the harm may be difficult, and so on. We are better off for the symbolic resource of being able to say that this is a crime—something the legislature and most citizens believe to be morally wrong in any circumstance.

So far, so good. But there is a big problem with shaming criminal conduct. Labeling theory (e.g., Becker, 1963) highlights this problem. According to labeling theory, one of the effects of labeling persons as criminal is that they can become more likely to be criminal. Labeling a safecracker, for example, risks the possibility that they will have a self-identify as a safecracker affirmed by the labeling. We see the dynamics of labeling daily in the interactions of parents and teachers with young children: “You call me bad and I’ll show you how bad I can be,” the labeled child implicitly, and sometimes explicitly, says.

The theory of reintegrative shaming takes the labeling perspective more seriously than other criminological theories. It does this by partitioning shaming into two types—reintegrative shaming and stigmatization. When shaming is reintegrative, crime is reduced. When shaming is stigmatizing, the predictions of labeling theory apply and crime may be increased. The crucial theoretical move is this partitioning of shaming into a type that has a counterproductive effect to crime and a type that has a productive effect. Actually, practices of shaming are conceived as lying along a continuum ranging from highly reintegrative forms of shaming to highly stigmatizing forms. All cultures are complex mixes of reintegrative and stigmatizing shaming practices. But to the extent that reintegrative shaming is more dominant than stigmatization in a culture, the culture will have less crime.

How then does the theory distinguish reintegrative shaming from stigmatization? Stigmatization is disrespectful shaming whereas reintegrative shaming communicates respect for the person as well as disapproval of that person's
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Is there a general account we can give of the conditions for when shaming is right and when it is wrong? One such account is provided by Braithwaite and Pettit's (1990) republican theory of criminal justice. According to republican theory, shaming (like criminalization) is wrong when the consequence of shaming is to reduce liberty (where liberty is conceived in a republican way). We call republican liberty *dominion*.

The core claim of Braithwaite and Pettit's normative theory is that criminal justice policies should be designed so as to maximize dominion. There is no space in this chapter for a full exposition of how a republican conception of freedom differs from a liberal conception. It is called republican because of its grounding in the thought of thinkers such as Montesquieu (1977) and eighteenth-century political reformers like Jefferson. One of the ironies of American history is that the republican political movement that Jefferson led ultimately became the Democratic Party, not the Republican Party.

D ominion is a social, relational conception of liberty as opposed to liberty as the status of simply being left alone by others. You only enjoy republican liberty—dominion—when you live in a social world that provides you with a set of subjective assurances of liberty. Dominion is a citizenship status of assurance against falling into the status of slavery, falling under the power of others. Being a social, relational conception of liberty, by definition it also has a comparative dimension. To fully enjoy liberty, you must have equality of liberty prospects with other persons. If this is difficult to grasp, think of dominion as a conception of freedom that by definition incorporates the notions in the republican slogan: liberté, égalité, and fraternité—or sororité according to feminist reinterpretation (Karstedt, et al. 1997).

Braithwaite and Pettit (1990) argue that their republican normative theory offers advice on what kinds of conduct should be criminalized and what should be decriminalized. It also offers guidance on when it is right and wrong to shame deviant conduct (Braithwaite, 1994). The theory says that we should shame conduct when doing so will increase dominion. When shaming will reduce dominion (as in shaming a young girl for being assertive), then the shaming is wrong. It is wrong because it threatens freedom as liberté-égalité-sororité. Moreover, it is right to shame those who do such shaming. It is right to shame oppressors for engaging in a type of shaming that threatens dominion.

**Implications**

**Communitarianism I: Social Movement Politics**

The most important implications for crime prevention of a republican interpretation of the theory of reintegration shaming are not about government policy. As Sunstein (1988) has argued, civic republicans believe in active
citizenship—community participation in public life—as fundamental to republican ideology. It follows that republicans must take seriously social movements of citizens, organized in some way from below, as vehicles for progressive change. Such social movements are precisely the vehicles that can deliver changes that can lower the crime rate.

I will now sketch very briefly an argument to this end outlined in more detail elsewhere (Braithwaite, 1994). This is that republican criminology enables a decisively changed, and more optimistic, way of thinking about the crime problem. The theory enables us to see that (1) the most serious crime problems in contemporary societies are precisely the crime problems we are in the best position to reduce, and (2) the changes needed to effect these reductions have gathered considerable momentum in societies such as Australia during the past two decades.

In my own country, Australia, the crimes that cause greatest harm to persons are domestic violence (Scott, 1983; Hopkins and McGregor, 1991), corporate crimes of violence such as occupational health and safety offenses (Braithwaite and Grabosky, 1985: 1-41), and drunk driving (Horney, 1988). The property offenders that cause the overwhelming majority of criminal losses are white-collar criminals (Grabosky and Sutton, 1989).

There is a common structural reason why these particular offense types are Australia’s greatest crime problems. These are offender types that have all enjoyed a historical immunity from public disapproval of their crimes, and they have enjoyed this immunity because of the structural realities of power. The worst of Australia’s white-collar criminals have been unusually respectable men, and they are men who have been hailed as our greatest entrepreneurial heroes. Violent men have enjoyed historical immunity even from the disapproval of the police when they have engaged in acts of domestic assault (Scott, 1983: chapter 9; Hatty and Sutton, 1986; Wearing, 1990). This has been because of considerable sharing of common values between the offenders and the police about the prerogatives of men to engage in violence in the personal kingdoms of their homes. Since police who answer calls about domestic violence are the main window through which public disapproval might enter the domestic domain, this patriarchal collusion has been effective until very recently in preventing domestic violence from becoming a public issue.

Australian patriarchy takes the culturally specific form of a male mateship culture in which gender-segregated drinking is important (Sergeant, 1972). Women were not to be found in public bars in Australia until the 1970s. Pub and club drinking followed by driving is something that most Australian males have done many times, something that they regard as important to sustaining patterns of mateship and find difficult to regard as shameful. As a consequence of the strong support that drunk driving has enjoyed in such a patriarchal collusion, informal disapproval by mates and formal disapproval by the courts has been historically muted.

These then are the bases for my claim that the particular crime problems that do the most harm in Australia have been allowed to continue because of the muted or ambivalent disapproval they elicit, where this limited disapproval arose because of patterns of power. However, since the mid-1970s all of these forms of crime have been targeted by social movements concerned to engender community disapproval of them. The most important of these was the women’s movement. Domestic violence was an important issue for the Australian women’s movement of the late Nineteenth century (Allen, 1986). At first the resurgent women’s movement of the early 1970s did not give any significant priority to domestic violence (Hopkins and McGregor, 1991). By the mid-1970s, this was changing. Major conferences, including rather important conferences organized by feminists at the Australian Institute of Criminology, drew attention to the issue, as did subsequent criminological research (O’Donnell and Crane, 1982; Scott, 1983; Hatty, 1985; Stubbs and Wallace, 1988). The most important momentum, however, came from the feminist refugee movement, strategically supported by democrats working within the state (Hopkins and McGregor, 1991).

This social movement has had a considerable impact. Current affairs programs in the media now carry a regular fare of stories exposing the evils of domestic violence. Police education curricula, responding to feminist critiques (Hatty and Sutton, 1986; Scott, 1982), have begun to push the line that domestic violence is a crime and a priority concern for Australian police services (McDonald et al., 1990; see also Stubbs and Wallace, 1988). Domestic violence is now much more out in the open in Australia. Although private condemning of domestic violence continues, the public voices that are heard today are the voices of condemnation. And this is progress.

In a longer chapter of mine in another book (Braithwaite, 1994), I attempt to show that Australian social movements against white-collar crime and the consumer and environmental movements, though weaker than their American counterparts, have had effects on business and community attitudes on the shamefulness of problems like illicit pollution. And I suggest that the social movement against drunk driving has had a substantial effect in reducing death on the roads. Thus it is precisely with respect to our most serious crime problems in Australia—crimes against women, white-collar crime, and drunk driving—that social movements have been making greatest progress over the past two decades. I do not suggest that the progress has been decisive or overwhelming—patriarchy is not about to breathe its last gasp, the environment continues to collapse, and drunk driving is still a major killer.

Yet if some progress has been made in the places that count most, mainstream criminological methods are likely to leave us blind to any accomplishment. Crime statistics suggest that domestic violence is getting worse, because some accomplishments of the social movement against domestic violence have been to make the police more sensitive to the problem and to provide support to
women who wish to lodge complaints against violent spouses (Hopkins and McGregor, 1991).

This is true of white-collar crime and is true generally: When a form of crime becomes more shameful, the community and the police discover more instances of that form of crime. So if bank robbery is shameful and insider trading is not, the community and the police will have the impression that bank robbery is the more common and more serious of these two problems. This is so even when we know that "the best way to rob a bank is to own it."

Communitarianism II: Community Accountability Conferences

Contemporary republicans cannot long nostalgically for the communitarianism of the Eighteenth century New England town meeting. Social movement politics is one form of communitarianism that can affect crime and that can work in the Twenty-First century (Soltan, 1993). Now I consider another more micro form of communitarianism that can also work in the age of the automobile and into the future: community accountability conferences.

Although the idea of community accountability conferences was deduced from the theory of retributive shaming, I discovered that such conferences (and the theory of retributive shaming, for that matter) had been invented by Maori tribes hundreds of years ago. The New Zealand state has adapted and institutionalized Maori thinking through the Children, Young Persons and their Families Act of 1989. This statute enables both white and Maori juvenile offenders to be dealt with through "family group conferences" instead of juvenile courts. A youth justice coordinator convenes a conference to which are invited the offender, the offender's family (extending often to aunts, grandparents, and cousins), other citizens who are key supports in the offender's life (perhaps this might be a football coach he particularly respects), the victim, the victims supporters (often family members), the police, and in some contexts a youth justice advocate.

This kind of conference, which often accommodates twenty or more participants, is more radically communitarian than Northern Hemisphere models of victim-offender reconciliation, which tend to be more dyadic encounters mediated by a mediation professional who sits between the parties. More important, the community accountability conferences, particularly as adapted from New Zealand in New South Wales and Canberra, have a different theoretical rationale from Northern victim-offender reconciliation. The selection principle with conference invitations is designed to structure two ingredients into the conference. Inviting the victim and victim supporters to confront the offender with the harm they suffered is designed to structure shaming into the conference. Inviting as offender supporters the people who care most about (and are respected most by) the offender structures reintegration into the conference.

The agenda of the conference is also structured around these two ingredients. First, the offender is empowered to describe the incident in his or her own terms. Then, the victim, victim supporters, and the offender's family have the opportunity to describe the harm the incident caused them. Offenders are often very good at erecting barriers to protect themselves from the shame over the consequences of what they have done. Making them face the people who have suffered those consequences often breaks these barriers—often not. Sometimes a shaft of shame from the victim will be deflected by the offender, only to speak like a stake through the heart of the offender's mother, sitting beside the offender, causing her to sob. Then it can be the tears of the mother—her disappointment, her shame, her public ordeal—that pierce the offenders' defenses against shame.

When the offender does confront the consequences of what he or she has done, the citizens present invariably implicitly or explicitly invite him to take responsibility for it. In every conference I have observed, this has evoked an apology to the victim. Most victims then reciprocate with some gesture or utterance of forgiveness. It is in fact rather hard for human beings who receive a face-to-face apology in public not to respond with some sort of gesture of forgiveness. Hence, the agenda also structures reintegration into the conference through the simple device of being victim-centered. The job of the conference is to come up with a solution to the problems the victim has suffered. This will often involve the payment of restitution. The conference also seeks to avoid stigmatization through being problem-centered rather than offender-centered. The conference also seeks agreement on a plan of action to ensure that the problem does not recur. Usually, the offender will take responsibility for important parts of this plan, but typically the responsibility will be shared with other participants.

Hence, we have an uncomplicated procedure that structures both shame and reintegration into a community conference through both simple selection principles for conference invitations and a victim-centered agenda that conduces to a sequence of confrontation—remorse—apology—forgiveness—help. Of course, it is an empirical question whether retributive shaming occurs at these conferences and whether that particular version reduces crime. Preliminary qualitative studies are to varying degrees encouraging on the first question but silent on the second (Alder and Wundersitz, 1994; Braithwaite and Mugford, 1994; Maxwell and Morris, 1993; O'Connell and Moore, 1992). One non-experimental study suggests that retributive shaming increases compliance with the law (Makkai and Braithwaite, 1994), and more definitive experimental evaluations of conferencing are planned (Sherman, Braithwaite, and Strang, 1994).

I have shown that the policy implications of the theory are clear, but no one has shown that they are right. I have tried to suggest at least that they are practical. Many versions of communitarianism and community policing amount
to a utopian yearning for a lost geographical community that is not to be found in
the contemporary metropolis. Even simple programs such as Neighborhood
Watch do not work very well because most people are not interested in making
the minimal commitment to their neighborhood that it requires. Most people in
Australian and New Zealand cities do, in contrast, respond to invitations to
participate in community accountability conferences. We are flattered when a
young person in trouble nominates us as one of the people in the neighborhood,
the school, or the extended family whom she respects most and we respond by
coming along to support her. Equally, we are flattered when a victim nominates
us as someone he would like to have support him, so we come. When participants
fail to show up, it is more through administrative incompetence than failure of
community. In the modern metropolis, community has not been lost so
much as transformed from a geographical basis to a multitude of interest-
oriented communities (Sampson, 1987). So the conference is a practical sort of
communitarianism designed to tap these diffuse and multiplex bases of
community; it is an individual-centered communitarianism. Community is constructed
on the basis of a practical appeal to bonds of care toward a particular individ-
ual. The theory assumes that if citizens cannot be found who care about a
particular individual—the aunt who lives in another city, the respected football
coach, the one teacher who gave the kid an even break, the friend on the
street—then we have an incompetent conference coordinator, not an individual
totally devoid of social bonds.

Finally, the model is attractive for multicultural cities like Auckland and
Sydney because it rejects the court-based notion of a single right way of doing
justice that must be transacted consistently according to this correct model.
Aboriginal or Croatian citizens can run conferences in ways that seem culturally
appropriate to them as Aborigines or Croatsians (see Braithwaite and Mugford,
1994).

Like all models grounded in criminological theory, this one will fail for many
types of cases. This is inherent in the application of criminological theories that
will ever be only partial in their explanatory power. The challenge of institu-
tional design is to cover the weaknesses of one intervention with the strengths
of another. Hence, we need to design criminal justice institutions such that when
reintegrative shaming fails, we can give deference a chance to succeed and
when deference fails, it is possible to try an incapacitation strategy (e.g.,
imprisonment, license cancellation) in the most intransigent cases (see Braith-
waite, 1993, 1994, for a republican analysis of how to maximize dominion with
such a dynamic strategy).

Can It Work in America?

As a criminological theorist, I seek to write things of some interest to
criminologists from many countries. As a policy analyst, however, I try to limit

my prescriptive writing to Australia, leaving it to Russians to think about
whether the theories have any application to Russia. In this chapter I will break
this rule to make a few remarks to American readers who constantly ask if these
ideas can work in America. Of course, we will never truly know if they would
work until someone does some empirical work to find out.

It can be said that the United States is no less multicultural a society than
Australia and New Zealand, so that the pluralist analysis of the abject failure of
the univocal justice of courtrooms in multicultural societies seems no less
apposite. The foundational empirical claims of the theory of reintegrative
shaming are probably no less true. Indeed, the body of empirical findings about
the patterning of crime that the theory sets out to explain are mainly American
empirical findings, not Australian ones. For example, the findings from
perceptual deterrence studies that informal disapproval has more effect in
reducing crime than formal sanctions are almost entirely American (Tittle, 1980;

Although the loss of geographical community is obviously more profound in
America than in Japan or Wagga Wagga, the prescription of Communitarianism
I, social movement politics, surely has more, not less, force in America than in
such places. I can think of no country that has a social movement politics as
vital as the United States. The problem with American social movement politics,
from my theoretical perspective, is that it can be so stigmatizing. Many in the
consumer movement want to lock up corporate criminals and throw away the
key; many in the women’s movement want to fight men’s violence with the
violence of a criminal justice system that degrades misogynists in the way they
“deserve.” Equally, many in American social movement politics reject strategies
based on the degradation of adversaries. Increasingly we do see practices of
responsible negotiation with the enemy by the American environmental move-
ment, for example.

With regard to Communitarianism II, it seems reasonable to expect commu-
nity accountability conferences to work better in Wagga Wagga than in South
Central Los Angeles. Yet it seems reasonable to expect almost any strategy to
fail more often in South Central Los Angeles. But that is not the crucial
prediction of the theory. The theoretical effect is about the size of the gap (in
crime) between stigmatizing and reintegrative strategies. My prediction would
be that a randomized controlled trial of conferencing versus court processing in
South Central Los Angeles would produce a bigger difference in reoffending
rates than in Wagga Wagga. Why? Because the negative effects of traditional
stigmatic criminal justice processing are likely to be dramatically greater in Los
Angeles than in the comparatively caring criminal justice system of Wagga
Wagga.

The theoretical logic here is the same as that which predicts that the gap in
domestic violence reoffending rates between processing by stigmatizing arrest
versus nonarrest will be greater for black, unmarried, unemployed men than for
respectable, well-bonded (married, employed) white men. This is because we should predict that the effects of stigmatic processing in increasing crime to be much worse for black, unemployed men who are deeply resentful of the racism they believe have suffered at the hands of an alien system. Broadly, this prediction is supported by the results of American experiments on the effect of arrest on domestic violence (Sherman, 1992). Hence the prediction that the comparative advantage of conferencing over court will be greater in a multicultural metropolis suffering high unemployment than in a homogeneous white town with little unemployment. The counterpart productive effects of criminal justice degradation ceremonies in escalating defiance and anger should be so much greater in communities with oppressed minorities. Thus, the increased capacity to do good. These are predictions that can be, and should be, tested empirically.

Neither Communitarianism I nor Communitarianism II seems contemporarily impractical in the way that a Jeffersonian rural republicanism does. Although Jefferson deserves his status as a civic republican icon, in this respect Madison's republicanism is more contemporarily relevant than Jefferson's. Madison argued in the Federalist Papers against nostalgic small-town communitarianism because of the way liberty is at threat from an engulfing tyranny of the majority in a tight rural community (Madison, Hamilton, and Jay, 1987). Liberty would be enhanced by enlarging the republic, enabling the tyrannies of local majorities over nonconformists to be contested in wider communities.

Madison's worry about American civic republicanism was not so much about citizens not being active enough to make it work but about them being overactive in oppressing and stigmatizing nonconformists. If there is a distinctive worry about making republican ideas work in America compared with other nations, it still seems to be Madison's worry. America does not seem to have less active citizens than other democracies—quite the contrary. Tocqueville, foreshadowing the posse/Batman/Terminator as the leitmotif of America's greatest cultural export, at the same time saw America as having an unusually active citizenry on matters of crime control and an unusually stigmatizing one:

In America the means available to the authorities for the discovery of crimes and arrest are few. There is no administrative police force, and passports are unknown. The criminal police in the United States cannot be compared to that of France; the officers of the public prosecutor's office are few, and the initiative in prosecutions is not always theirs; and the examination of prisoners is rapid and oral. Nevertheless, I doubt whether in any other country crime so seldom escapes punishment.

The reason is that everyone thinks he has an interest in furnishing proofs of an offense and in arresting the guilty man.

During my stay in the United States I have seen the inhabitants of a county where a serious crime had been committed spontaneously forming committees with the object of catching the criminal and handing him over to the courts. In

References


Tocqueville concludes that the outcome of participatory justice against these "enemies of the human race" was a tyranny of the majority:

When a man or a party suffers an injustice in the United States, to whom can he turn? To public opinion? That is what forms the majority. To the legislative body? It represents the majority and obeys it blindly. To the executive power? It is appointed by the majority and serves as its passive instrument. To the police? They are nothing but the majority under arms. A jury? The jury is the majority vested with the right to pronounce judgment; even the judges in certain states are elected by the majority (Tocqueville, 1969:252)

Although Tocqueville's account of nineteenth century America is double exaggerated here, I suspect it is still true that American citizens are both more agitated and more stigmatizing about crime than West Europeans, who continue to show no signs of joining either posses or social movements for the reintroduction of capital punishment. If this is true, then policies to direct institutional practices away from stigmatizing agitation toward more reintegrative citizen participation should have comparatively more payoff in America than elsewhere in the West.


