

In Hugh D. Barlow (ed.)
"Crime & Public Policy: Putting Theory
to Work", Boulder: Westview Press, 1995

11

Reintegrative Shaming, Republicanism, and Policy

John Braithwaite

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 on 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

deed. Prisons are the best places to see stigmatization at work; loving families are the best places to see reintegrative shaming. The parent reproaches the child for a serious misdeed and sends him to his room. Later, however, the parent goes to the room, hugs the child, letting him know through word and gesture that, although his deed is disapproved, he is approved, indeed loved, as a person.

Reintegrative shaming involves

- Disapproval while sustaining a relationship of respect
- Ceremonies to certify deviance (sent to room) terminated by ceremonies to decertify deviance (forgiving hug)
- Disapproval of the evil of the deed without labeling the persons as evil
- Deviance not being allowed to become a master status trait (e.g. junkie, bully)

Stigmatization involves

- Disrespectful disapproval, humiliation
- Ceremonies to certify deviance but no ceremonies to decertify deviance
- Labeling the person, not just the deed, as evil
- Deviance allowed to become a master status trait

At its worst, stigmatization drives offenders into criminal subcultures: The drug user labeled a junkie finds a subculture of drug use where junkies are able to reject their rejectors, mutually affirm drug-using identities, and learn practical things like where to buy and how to sell drugs.

The Normative Theory

Like deterrence theory and any other explanatory theory of social control, the theory of reintegrative shaming is likely to be politically dangerous unless it is combined with a normative theory of when it is morally right to apply it. Because shaming is a powerful form of social control, it can be oppressive. When we shame young girls for being assertive while shaming gentle boys for not being manly, this is a patriarchal patterning of shaming that reproduces the subordination of women and the domination of men. It is a patterning of shaming that seems oppressive and morally wrong. Yet when we shame boys for violence against girls and shame adults who forbid girls from being assertive, we have a patterning of shaming that seems liberating and morally right.

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 not 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 (1777) 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.

Dominion 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 reintegrative 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 influence 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 (Scutt, 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 (Homel, 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 (Scutt, 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, 1973). 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 Craney, 1982; Scutt, 1983; Hatty, 1985; Stubbs and Wallace, 1988). The most important momentum, however, came from the feminist refuge movement, strategically supported by femocrats 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; Scutt, 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 condoning 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 shameful 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 reintegrative shaming, I discovered that such conferences (and the theory of reintegrative 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 offenses 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 victim's 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 through these barriers—often not. Sometimes a shaft of shame from the victim will be deflected by the offender, only to spear 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 reintegrative 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 nonexperimental study suggests that reintegrative 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 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-based 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 individual. 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 Croatians (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 institutional 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 deterrence a chance to succeed and when deterrence fails, it is possible to try an incapacitation strategy (e.g., imprisonment, license cancellation) in the most intransigent cases (see Braithwaite, 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; Nagin and Paternoster, 1991).

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 respectful negotiation with the enemy by the American environmental movement, for example.

With regard to Communitarianism II, it seems reasonable to expect community 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 counterproductive 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

Europe the criminal is a luckless man fighting to save his head from the authorities; in a sense the population are mere spectators of the struggle. In America he is an enemy of the human race and every human being is against him. (Tocqueville, 1969:96).

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 judgement; even the judges in certain states are elected by the majority (Tocqueville, 1969:252)

Although Tocqueville's account of nineteenth century America is doubtless exaggerated here, I suspect it is still true that American citizens are both more agitable 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.

References

- Alder, Christine, and Joy Wundersitz. 1994. *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* Canberra: Australian Institute of Criminology.
- Allen, Judith. 1986. "Desperately Seeking Solutions: Changing Battered Women's Options Since 1880" in Suzanne E. Hatty (ed.), *National Conference on Domestic Violence*, vol. 1, Australian Institute of Criminology Seminar Proceeding no. 12. Canberra.
- Becker, Howard S. 1963. *Outsiders: Studies in the Sociology of Deviance*. New York: Free Press.
- Braithwaite, John. 1989. *Crime, Shame and Reintegration*. Cambridge: Cambridge University Press.
- Braithwaite, John. 1993. Beyond Positivism: Learning from Contextual, Integrated Strategies. *Journal of Research in Crime and Delinquency* 30:383-399.
- . 1994 "Inequality and Republican Criminology." In John Hagan and Ruth Peterson (eds.), *Inequality and Crime*. Palo Alto, CA: Stanford University Press.
- Braithwaite, John, and Peter Grabosky. 1985. *Occupational Health and Safety Enforcement in Australia*. Canberra: Australian Institute of Criminology.
- Braithwaite, John and Stephen Mugford. 1994. "Conditions of Successful Reintegration Ceremonies." *British Journal of Criminology* 34:2.

- Braithwaite, John, and Philip Pettit 1990. *Not Just Deserts: A Republican Theory of Criminal Justice*. Oxford: Oxford University.
- Grabosky, Peter, and Adam Sutton eds. 1989. *Stains on a White Collar*. Sydney: Federation Press.
- Hatty, Suzanne. 1985. *National Conference on Domestic Violence*. Canberra: Australian Institute of Criminology.
- Hatty, Suzanne, and Jeanne Sutton. 1986. "Policing Violence Against Women" in Suzanne E. Hatty (ed), *National Conference on Domestic Violence*, Vol. 2, Australian Institute of Criminology Seminar Proceeding no.12. Canberra.
- Homel, Ross. 1988. *Policing and Punishing the Drinking Driver: A Study of General and Specific Deterrence*. New York: Springer-Verlag.
- Hopkins, Andrew, and Heather McGregor. 1991. *Working for Change: The Movement Against Domestic Violence*. Sydney: Allen and Unwin.
- Karstedt, Susanne. 1992. "Liberté, Égalité, Sororité: Quelques Reflexions sur la Politique Criminelle Feministe." *Deviance et Societé* 16:287-296.
- Karstedt, Suzanne, Madison, James, Alexander Hamilton, and John Jay. 1987. *The Federalist Papers*. London: Penguin.
- McDonald, B., et al. 1990. *The New South Wales Police Recruit Education Programme: An Independent Evaluation*. Sydney: NSW Police Department.
- Madison, James, Alexander Hamilton, and John Jay. 1987. *The Federalist Papers*. London: Penguin.
- Makkai, Toni, and John Braithwaite. 1994. "Reintegrative Shaming and Compliance with Regulatory Standards." *Criminology* 32:361-385.
- Montesquieu, Baron de. 1977. *The Spirit of Laws*. abridged and edited by D. W. Carrithers. University of California Press.
- Maxwell, Gabrielle, and A. Morris. 1993. *Family Victims and Youth Justice in New Zealand Wellington*. Wellington: Institute of Criminology, University of Victoria.
- Moore, David, B. 1993. "Facing the Consequences: Conference and Juvenile Justice." Paper presented at the National Conference on Juvenile Justice of the Australian Institute of Criminology, Canberra.
- Morris, A., and G. Maxwell. 1992. "Juvenile Justice in New Zealand: A New Paradigm." *Australian and New Zealand Journal of Criminology*.
- Morris, Norval. 1966. "Impediments to Penal Reform." *University of Chicago Law Review* 33:627-656.
- Nagin, Daniel S., and Raymond Paternoster. 1991. "The Preventive Effects of Perceived Risk of Arrest: Testing and Expanding a Conception of Deterrence." *Criminology* 29:561-587.
- O'Connell, Terrence. 1993. "It May Be the Way to Go." Paper presented at the National Conference on Juvenile Justice of the Australian Institute of Criminology, Canberra.
- O'Connell, Terrence, and David Moore. 1992. "Wagga Juvenile Cautioning Process: The General Applicability of Family Group Conferences for Juvenile Offenders and their Victims." *Rural Society* 2:16-19.
- O'Donnell, J., and J. Craney, eds. 1982. *Family Violence in Australia*. Melbourne: Longman Cheshire.
- Sampson, Robert J. 1987. "Communities and Crime." In Michael R. Gottfredson and Travis Hirschi (eds.), *Positive Criminology*. Newbury Park, CA: Sage.
- . 1983. *Even in the Best of Homes*. Melbourne: Penguin.

- Sergeant, Margaret. 1973 *Alcoholism as a Social Problem*, Brisbane: University of Queensland Press: Brisbane.
- Sherman, Lawrence W. 1992. *Policing Domestic Violence*. New York: Free Press.
- Sherman, Lawrence W., John Braithwaite, and Heather Strang. 1994. "Reintegrative Shaming of Violence, Drink Driving and Property Crime: A Randomised Controlled Trial." Unpublished grant proposal. Australian National University, Canberra.
- Soltan, Karol Edward. 1993. "Generic Constitutionalism." In Stephen L. Elkin and Karol Edward Soltan (eds.), *A New Constitutionalism*. Chicago: University of Chicago Press.
- Stubbs, Julie, and D. Wallace. 1988. *Domestic Violence: Impact of Legal Reform in NSW Sydney*. New South Wales Bureau of Crime Statistics and Research.
- Sunstein, Cass. 1988. "Beyond the Republican Revival." *Yale Law Journal* 97:1539-1590.
- Tittle, Charles R. 1980. *Sanctions and Social Deviance*. New York: Praeger.
- Tocqueville, Alexis de. 1969. *Democracy in America*. New York: Anchor Books.
- Wearing, Rosemary. 1990 "A Longitudinal Analysis of the 1987 Crimes (Family Violence) Act in Victoria." Report to Criminology Research Council, Canberra.