



## Searching for Epistemologically Plural Criminology (And Finding Some)<sup>1</sup>

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There is some truth in Rob Watts' claim that 'Ultimately what Braithwaite has to offer is a warmed up plate of some of Durkheim's left-overs'. Moreover, on the question of the moral foundations of my work there is no doubt that the 'awkward gap between intention and achievement' (page 135) that Watts discerns in Durkheim is much more profound in my scholarship. There are a number of his criticisms of the theory in *Crime, Shame and Reintegration* that I accept. For example, I had never seen the error, so lucidly explained by Watts (page 130-1), in the way behaviour and action is distinguished in the theory. As I explain below, Watts' critique of the notion of criminal subcultures is one I take particularly seriously.

The article makes no case at all for the conclusion that 'Braithwaite's failures . . . belong also to the larger field of criminology'. Indeed, some of the silences in *Crime, Shame and Reintegration* to which Watts objects are not silences read even in the context of the larger field of John Braithwaite's criminology.

We are told that 'Central to Braithwaite's failure and to the more general failure of criminology has been an explicit refusal to develop a normative sociology able to engage in the substantive and contemporary identification of the good' (page 135). All social science fields, including criminology, can justifiably be criticised for their failure to devote sufficient attention to the moral foundations of their work. But it is hard to think of any field, apart from the discipline of philosophy itself, that takes the identification of the good more seriously than criminology. Good criminologists commit significant time in their professional reading to the literature on the moral justifications for criminal sanctions. Many have built reputations on contributions they have made to this literature, not least most of Australia's professorial criminologists, including Norval Morris, Gordon Hawkins, Brent Fisse and Arie Freiberg. Particularly important contributions have been made on the normative questions by Australian feminist criminologists including Jocelyne Scutt, Ngaire Naffine, Sharon Roach-Anleu, Sandra Eggar, Julie Stubbs and many others.

I know of no respected Australian or New Zealand criminologist who conflates social consensus with the moral in the way Rob Watts suggests. Certainly, some would agree with me that there are reasons why there is more likely to be a correspondence between consensus and moral truth on as foundational a value as human life (which grounds a law against murder) than on say an attitude to how murderers should be punished (Braithwaite 1995a). Very few criminologists will have any problem with Watts' (page 138) suggestion that the 'truly moral' can involve 'courageous acts of defiance'

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rather than compliance with unjust criminal laws. For my part, this defiance is justified when it increases liberty as non-domination, which is the way Philip Pettit and I conceive of republican liberty (Braithwaite & Pettit 1990; Pettit in press). In the moral philosophy which Pettit and I have articulated in many places, the good is not defined by the will of the majority, but in terms of what will do best by republican liberty or dominion. The correspondence between majority preference and the moral conceived in this republican way is high, though far from perfect, with respect to what should be a crime, low with respect to how we should deal with crime. There is no 'near complete identity between (i) the lawful and the moral, and (ii) the social consensus and the moral' (page 137). It may be flawed, but we have articulated 'a specific theory of the moral' (page 137) that enables us to distinguish shaming that is used for good and shaming that stultifies diversity in an undesirable way (Braithwaite & Pettit 1990; Braithwaite 1995b). Support for 'intolerance of diversity' is not 'unpretty' (page 127) when read in the context of the kind of diversity I argue we should be intolerant about; tolerance of rape is the 'unpretty conclusion'.

Normatively my work is not in the 'conservative communitarian' tradition which sees 'moral consensus', 'integration of "individuals" to "society"' (page 122) and societal homogeneity as desirable. As explanatory theory, it is explicit that societal homogeneity is not one of the conditions for reintegrative shaming to work (Braithwaite 1989:94-7). My aim is to engage with political struggles for 'unity within diversity', as the old feminist slogan goes, and hope for a multicultural Australia that is also strong on community and strong on difference. We can want this, believing that such a society can enjoy low levels of violence. A theme in my writing has been that there is no hydraulic relationship between difference and community — it is possible to be weak on both, or to be strong on one, weak on the other. For unity within diversity to work, it is important to struggle for consensus over a criminal law that secures liberty as non-domination and for informal practices of community disapproval of those who seek to crush diversity in ways that reduce liberty as non-domination (Braithwaite 1995b). There is a major difference here from Durkheim's social holism or Macintyre's communitarianism.

Just as Watts does not do justice to normative criminology, so with empirical criminology, which he sees as 'a criminology that grinds out data and regression analyses by the bucket' (page 139). That is an important part of empirical criminology, but as perusal of the pages of this journal demonstrates, regression analyses hardly comprise the majority product of the field in Australia and New Zealand.<sup>2</sup> The following claim by Watts cannot be based on a serious engagement with the intellectual tradition: 'there has been little interest on the part of criminologists . . . in asking, let alone explaining, why some particular people commit crime, or do violent things, and why others don't, or at least don't get caught' (page 132). It is a particularly strange comment to make about Australian criminology. In the area of corporate crime, Australian criminology has built an international reputation by eschewing statistical analysis in favour of interview-based research directed precisely at the questions Watts says have attracted little interest. I am thinking here of the work of Andrew Hopkins, Brent Fisse, Roman Tomasic, Brendan Pentony, Steve Bottomley, Peter Grabosky, Ken Polk and Fiona Haines,

among others. Ignoring the rich Australian and New Zealand contributions on the lived experience of criminal offenders, Watts asks why I have ignored one North American criminologist: 'Where in such an account is the exploration of what Katz has called the specific seductions and appeals of particular criminal activity?'. He will find an integration of the work of Katz into my theoretical framework in Volume 24 of this journal (Braithwaite 1991a).

'Braithwaite's project' we are told is 'the positivist project of concerning (sic) the identity between explanation and prediction and the reliance on statistical generalisations is (sic) a valid epistemic objective' (page 132). Like most criminologists, I do think explanation as prediction is important, but I see no 'identity' between explanation and prediction because, as exemplified by *Crime, Shame and Reintegration*, I perceive other kinds of understanding, such as historical understanding, as important. Ultimately, I am less interested in criminological theory for its predictive value than for its uses in supplying metaphors for appreciating specific situations in which crime control policy options arise (Braithwaite 1993). I do see statistical generalisation as 'a valid epistemic objective', though not one on which I would want to be primarily reliant. By some lights that position might put me in the positivist pigeon-hole, though it does not according to Watts's characterisation of positivism. I do agree with Watts that criminology places too much emphasis on prediction and probably that is true of the text of *Crime, Shame and Reintegration* as well.

However, unlike Watts I do see considerable value in statistical analyses of crime. Watts ponders: 'Why criminologists would wish to explain something that is by any ordinary test not "real" is a real puzzle' (page 134). For reasons I explain in *Crime, Shame and Reintegration* (Braithwaite 1989:2-3), I think crime is real. I also think two crimes is the sum of two real things and therefore counting them can be a sensible and illuminating activity.

Another difference is over structure and agency. Watts and I can agree that we each take both agency and structure seriously. Yet Watts thinks I don't take agency seriously enough and I don't think he takes structure seriously enough. Notwithstanding my concessions to agency, it is alleged that, like Durkheim, my work ultimately 'privileges the structural' (page 130). This is probably fair. While I am an explanatory pessimist about the statistical power of the structural, if structure can explain 20% of the variance in a pattern of crime, and agency most of the rest, then I do think the structural 20% is more worth knowing about than the rest of the variance. This reflects my republican way of thinking about liberty; I am interested in a public reason focused on getting our institutions right, or rather getting them better, and then nurturing maximum diversity of agency under the incentive and enabling effects (and the socialising constraints) imposed by those institutions. Preeminently, I have been concerned with the effect of structures of local, national and global economic opportunities on both crime in the streets and crime in the suites and concerned to engage actively with social movement politics, statist politics and the politics of global institutions on these questions.<sup>3</sup>

It is important to resist Rob Watts' style of anti-structuralism. This is not to say that we cannot learn from his critique: it is to say do not surrender to it. So how might we respond to Watts when he says: '[T]here is no single dominant social logic or singular meaning encapsulated in notions like "the logic of capitalism" in any social setting but rather a multiplicity of meanings,

logics of action and forms of social relationship which do not "add up" to anything that is conspicuously coherent' (page 129)? We might respond by agreeing with all of the statement up to the point where it says that all of this does not add up to anything especially coherent. It does add up to oppression, structured inequality, and a set of threats to the planet of conspicuous biological coherence, threats with which we as intellectuals have profound responsibilities to engage.

The strongest critique in the Watts paper concerns the issue of subculturalism. Is it really helpful to view drink driving, family violence or crooked business practices as subcultural? Probably Watts is right that often it is not. As I have argued elsewhere, these may be among our deepest crime problems precisely because they are shielded from shame as a result of deeply embedded patterns in the structuring of social disapproval (Braithwaite 1995b). It may have been better if the theory had been framed in terms of multiple cultures existing in any society, some of them more majoritarian, some having a sufficiently minority status to justify the label subculture, some providing more support for law breaking of a particular kind than support for compliance, some doing the opposite. The combination of my conclusion that there is substantial consensus on the wrongfulness of predatory crime and my use of the word subcultures conveys a misleading impression that Watts rightly takes to task. This is that it makes sense to think of a society as having a single dominant culture under which are nested a set of subcultures. Such a conception would be decidedly unhelpful way of making sense of the kind of ethnographic literature on culture and crime cited in the book. It may be more fruitful to speak of a plurality of cultures which vary in the degree of support they attract in the community and that vary in the differential shaming they communicate for compliance versus non-compliance with criminal laws. I am grateful to Rob Watts' critique for helping me to see this more clearly.

### Notes

1. My thanks to Christine Parker for comments on a draft of this piece.
2. Quite a small minority of my own work includes regression analyses; most of my empirical research has been based on interviews with business executives and observation of regulatory encounters without any recourse to counting crime.
3. I hope my political activism has not been devoted to promoting my utility 'to the state and to the forces of order by expounding on the "horribleness" of the "lower orders" and the need for a spot of social control' (page 127). As both a criminologist writing in the pages of this journal (see my 'The Criminal Class and the Making and Breaking of Australia', Braithwaite 1991b) and as politically active citizen, most of my energy has been devoted to being a nuisance to the state 'by expounding on the horribleness of the higher orders'. At the same time, it is important to have the character to point out that the extraordinarily high rate of homicide perpetrated by, for example, Aboriginal men, much of it against Aboriginal women, is a horrible fact we must confront, and for which some structural remedies can be pursued (eg land rights, self-determination, job compacts, resuscitation of

indigenous traditions of restorative justice, recognition for the rights of Aboriginal women, a welfare state that genuinely redistributes wealth).

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