Diversion and Informal Social Control

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Diversion, Reintegrative Shaming and Republican Criminology

John Braithwaite

It is appropriate to have someone from Australia contribute to an international conference on diversion since our country was the greatest diversion program in human history. Of course, from an English perspective, transportation to Australia was an exclusionary form of social control (to use Stan Cohen's, 1985, term); but from an Australian perspective it was inclusionary, a chance to join a country with a better cricket team. In some quite serious ways, I suspect transportation to Australia was not only the biggest, but also one of the more successful experiments in diversion (Braithwaite, 1991a). It had its horrors, for sure. But these were generally less than the alternative punishments of the time, because transportation was in practice reintegrative. The convicts were desperately needed to build the new Australia; so they were quickly pushed out into the community to work "on assignment" for free settlers and released convicts. There was an economic interest to make the assigned convicts feel "part of the team", and so economic imperatives resulted in transportation being the opposite of the exclusionary punishment its brutal architects had intended.

The boy convicts at Point Puer were pushed out into the Tasmanian workforce as soon as they had learnt skills that were needed in the new economy. Some of them became business leaders. And contrary to the predictions of everyone, the children of released convicts evidenced an extraordinarily low crime rate (Hughes, 1987: 357, 588). Twentieth century Tasmania enjoys lower crime rates than 20th century Britain. This when Tasmania was built on the most criminal of genetic stock: in the mid-19th century, almost half the population were still criminals under sentence, and almost half the free population were released convicts (Hughes, 1987: 551-552). Then one might count the children and grandchildren of convicts or former convicts. Citizen Toulongeon, a French advocate of the British experiment, described transportation as "the first time anyone has dared to fashion a society from all that is wicked in another" (*Moniteur*, 3 January, 1803). Toulongeon and I agree that the experiment was pretty much a success, because the stigmatization of the wicked was terminated by reintegration in a new community in which they were more accepted than in the old country and given economic opportunities. This will be a theme in this paper - that diversion works when it is reintegrative. But first, I will seek to embed this explanatory theme

within a normative theory of when we should view diversion as a good thing or a bad thing. This theory is republican. I shall explain what republican theory is, what it has to say about diversion, and what its connections are to the explanatory theory of reintegrative shaming. Finally, I will argue that pockets of republican criminological praxis are to be found throughout the world, though the progressive reform does not march under the republican banner.

1   Paradoxes of Diversion

When white-collar criminals are diverted from the criminal justice system, progressive criminologists tend to view this as undesirable regulatory capture. Diversion is our standard way of dealing with white-collar crime. I am a part-time Commissioner with Australia's national antitrust and consumer protection agency, the Trade Practices Commission. More than 99% of the allegations of law-breaking that come to us are dealt with by diversion, and we are arguably the most enforcement-oriented business regulatory agency in Australia (Grabosky and Braithwaite, 1986). When juvenile offenders are diverted, progressive criminologists tend to view this as undesirable net-widening. When domestic violence offenders are diverted, feminists view this as a manifestation of patriarchal domination. One would be excused for thinking that progressive criminologists are rather arbitrary in the way they switch such judgments. What I suggest we should aspire to is a coherent theoretical position on when diversion and net-widening are good and bad things.

It may be that we should take the view that diverting 99% of white-collar criminals is a good thing, and that progressive criminologists ought to be advocates for dealing with our blue-collar criminals along the lines of the white-collar crime control model, rather than the reverse. My own position is actually pretty close to that. At the same time, I am an aggressive advocate of net-widening for white-collar criminals. As both regulatory theorist and practitioner, I have pushed the strategy of negotiating settlements with corporate criminals against the background of severe sanctions should negotiations break down (Ayres and Braithwaite, 1992). What we seek to accomplish in such negotiations is a package of private justice responses that takes net-widening to the highest form of the art: private discipline of responsible executives (including foreign executives who are beyond the reach of national criminal law), implementation of internal corporate compliance systems designed to prevent future violations, audited independent reporting on the performance of those internal compliance systems, industry-wide compliance education campaigns funded by the offending firm, compensation to victims of the offence, research and development to discover technological solutions to compliance problems (e.g., improved environmental control technology), and so on.

Brent Fisse and I are finalizing a fundamental rethinking of corporate criminal law that amounts to a net-widening strategy for controlling corporate crime (Fisse and Braithwaite, 1992). It seems to me that one can base such radical postures on a coherent theoretical position that is not contradictory to progressive positions one might want to adopt with regard to juvenile crime and domestic violence. Moreover, it is possible to render the net-widening one favours publicly accountable and fortified against abuse (see Fisse and Braithwaite, 1992, chap. 6). I will place on the table for consideration one possibility for such a theoretical position - republicanism. I would not suggest it is a theory that has all the answers. But of course I would not advance it if I did not think it had some answers that are not being supplied within the framework of the contemporary theoretical impoverishment of our field. So what is republicanism?

2   Republicanism Defined

Republican normative commitments direct us to take both political and economic inequality (Montesquieu, 1977, chaps. 3-4; Pettit, 1989) and community disapproval (Braithwaite and Pettit, 1990; Pocock, 1977) seriously. Sunstein (1988) advances four commitments as basic to republicanism: (a) deliberation in governance which shapes as well as balances interests (as opposed to simply doing deals between pre-political interests); (b) political equality; (c) universality, or debate to reconcile competing views, as a regulative ideal; and (d) citizenship, community participation in public life.

Consistent with these commitments, in *Not Just Deserts* Pettit and I (Braithwaite and Pettit, 1990) seek to define in a more foundational way the political objective republicans pursue. We develop a consequentialist theory that posits the maximization of dominion as the yardstick against which to measure the adequacy of policy. What is this dominion that we wish to maximize?

Dominion is a republican conception of liberty. Whereas the liberal conception of freedom is the freedom of an isolated atomistic individual, the republican conception of liberty is the freedom of a social world. Liberal freedom is objective and individualistic. Negative freedom for the liberal means the objective fact of individuals being left alone by others. For the republican, however, freedom is defined socially and relationally. You only enjoy republican freedom - dominion - when you live in a social world that provides you with an intersubjective set of assurances of liberty. You must subjectively believe that you enjoy these assurances, and so must others believe. 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 of liberté, égalité and fraternité. Then you have the basic idea.[1]

This conception of dominion as a target for the criminal justice system has two attractive political features for progressive criminologists. First, we show that it motivates a minimalism in state criminal justice interventions. This is the principle of parsimony. If in doubt, do less by way of criminal justice intervention.

Second, at the same time, dominion requires a highly interventionist state policy to secure equality of liberty prospects. This is the relational element built into the definition. When women or people of colour enjoy lesser liberty prospects, affirmative action, redistributive tax and economic policies are commended by the theory. So we have a theory that can require minimalism in criminal justice policy alongside interventionism in economic policy.

The principle of parsimony does important theoretical work. Pettit and I show that it motivates a theoretically driven incrementalism in criminal justice policy - actually a decrementalism. Republicans, we argue, are required to struggle politically alongside the budget cutting economic rationalists for progressive reductions in criminal justice interventions. The right level of punishment is not determined by the just deserts of offenders. The right level of punishment, according to the theory, is as low as we can take it without clear evidence emerging that crime has increased significantly as a result of cuts to the system.

Not Just Deserts argues that a consequence of implementation of this approach will be more equitable punishment practices than we have seen, or could ever see, by following competing philosophies. We argue that even though just deserts is based on a philosophy of equal punishment for equal wrongs (and republicanism is not), it is republicanism that in practice can deliver more egalitarian punishment practices. Because just deserts tend to be imposed successfully on the poor and unsuccessfully on the rich, a parsimonious policy will be more equitable than a policy of pursuing just deserts. Among other things, it will be mostly poor people who will be released from jail under a minimalist policy. Minimalist policies will tend to be more equitable than liberal desert policies because of the structural theory which we defend: Where desert is greatest, punishment will be least (Braithwaite and Pettit, 1990: 180-201).

3   Republicanism and Diversion

It follows from the principle of parsimony that we should have a presumption in favour of diversion, where diversion is a less intrusive intervention than formal punishment. Whether, in fact, diversion will be a less intrusive intervention than conviction and punishment is a matter for detailed empirical investigation in each context in which the question arises. A corollary is that we should have a presumption against net-widening where net-widening is taken to mean more intrusive interventions than formal processing policies would have delivered.

But the twin presumptions in favour of diversion and against net-widening are rebuttable presumptions. Rebuttal occurs by weighing the benefits to dominion from rejecting the presumptions. If net-widening will increase dominion more than the costs to dominion for those caught in the net - something that can be argued to be clearly true for many areas of business regulation - then the presumption against net-widening should be abandoned in that domain. One of the interesting features of dominion is that it is reduced when people are caught in nets of social control. So it requires us to balance the effects on dominion of those who are protected from crime against the effects on dominion for those who in some way have their freedom disciplined. It provides us with no simple algorithm for doing this. The theory merely supplies a framework for conducting debate that forbids voracious preoccupation with consequences on one side of the equation to the neglect of the other. Having set down this normative framework, let us now consider an explanatory framework I apply to problems of crime control.

4   An Explanatory Framework

Diversion risks counterproductive effects on criminal behaviour (and therefore on the dominion of crime victims) when diversion is transacted in a way I call stigmatic. This is why I think Günter Albrecht's paper in this volume is tapping into the crucial issue when it is looking at the effect of diversion on stigmatization. If, on the other hand, diversion is transacted in a way I call reintegrative, prospects for crime control are more likely to be positive. The emotion of shame is central to the understanding of social control processes relating to crime. The notion that shaming controls crime is an old one. But so is the seemingly contradictory notion that stigmatization makes crime problems worse. My book *Crime, Shame and Reintegration* (Braithwaite, 1989) attempted a theoretical resolution of this contradiction. Reintegrative shaming is posited as a shaming mechanism that prevents crime; stigmatization as a mechanism that increases the risks of crime by the shamed actor. Moreover, the partitioning of shaming mechanisms into two types, with these opposite effects, is advanced as a missing link in criminological theory. It enables us to integrate previously irreconcilable theories - control, subcultural, labelling, opportunity and learning theories.

Reintegrative shaming is disapproval extended while a relationship of respect is sustained with the offender. Stigmatization is disrespectful, humiliating shaming in which degradation ceremonies are never terminated by gestures of reacceptance of the offender. The offender is branded an evil person and cast out in a permanent, open-ended way. Reintegrative shaming, in contrast, might shame an evil deed, but the offender is cast as a respected person rather than an evil one. Even the shaming of the deed is finite in duration, terminated by ceremonies of forgiveness-apology-repentance.

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.

Stigmatization
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.

A crucial preventive effect of reintegratively shaming criminals occurs when the offender recognizes the wrongdoing and shames himself. Hence, a particular type of crime will be less common in a community when that type of crime is subjected to extensive and intensive reintegrative shaming. Extensive stigmatization, in contrast, will have equivocal effects on crime. On the one hand, it will reduce crime through the general deterrent effects of social disapproval. On the other hand, specific deterrence will be worse than a failure, because stigmatization will foster the rejection of one's rejectors and the formation of subcultures of resistance to the law.

Seeking to bring crime under control by community shaming seems more benign than relying on the punitive state. Shaming is not as oppressive as imprisonment. Nevertheless, shame can be a tool of extraordinarily powerful oppression. The most common and profound concerns that come to mind are not about shaming of crime, but concerns about the shaming of forms of deviance that are not criminal - unconventional political and religious views or unconventional sexuality. And the types of shaming of criminals which are most often raised as unconscionable are examples of stigmatization rather than reintegrative shaming. Reintegrative shaming, as a communicative, dialogic form of shaming that seeks to persuade offenders to disapprove of their own criminal conduct is not equivalent to ridiculing wrongdoers as persons by putting them in the stocks.

Even though reintegrative shaming has the virtue of being more respecting of persons than stigmatization, it can be oppressive. Just because it avoids the worst repressive excesses of the punitive state and the stigmatizing community, that is not to deny that reintegrative shaming is a dangerous game. Victims of violence, after all, are often ashamed of their victimization (Stanko, 1990: 55, 67). Republicans cannot support reintegrative shaming as the dominant crime control strategy unless they have a clear moral position on what should and should not be shamed. Pettit and I argue that conduct should never be criminalized unless we can be confident that its criminalization will increase dominion (the republican conception of liberty)

in the community (Braithwaite and Pettit, 1990). Our contention is that republicans must reserve the reprobation of criminal conduct for conduct that passes this test. Republicans are therefore required to actively support the reintegrative shaming of conduct whose criminalization uncontroversially protects dominion (such as criminal acts of violence). They are also required to actively oppose the shaming of deviant conduct which poses no threat to dominion.

It follows that the republican will be required to support some forms of net-widening that amount to reintegrative shaming of offences that should be shamed. Let me give a case in point from Australian juvenile offending. In my home town of Canberra, domestic violence workers tell me we have a terrible, widespread, hidden problem of teenage sons assaulting their mothers. These days we talk a lot about domestic violence conceived as husbands bashing wives and children, but discussions at criminological conferences and in the popular press rarely focus on the shamefulness of sons who bash their mothers. Why is this? My hypothesis is that mothers tend to be the ones who are ashamed when it is their own sons who turn on them, and that we as a community are pretty supportive of this interpretation. The son's assault seems to the mother her own fault in a way that she may not perceive assault by the man she married as her fault. In a patriarchal culture, it is the job of the mother to rear her children right; so when they turn on her, that is as much a reflection on her as the son. There are three reasons, in my view, why a republican must support net-widening to mobilize community disapproval against sons who bash their mothers: (a) to tolerate this violence is to leave mothers unprotected against a very serious source of harm; (b) to tolerate this violence is to tolerate a patriarchy that strips mothers of dominion in the most fundamental way - there can be no equality of liberty prospects in a society in which mothers, but not other family members, must bear the responsibility and the consequences of violent children; (c) to ignore the violence of older sons is to leave unchallenged in the eyes of younger siblings the notion that violence is something about which we are allowed to be tolerant. These three reasons seem so profound in their implications for dominion that the adverse consequences of net-widening for the dominion of violent sons on the other side of the equation will be clearly less.

This does not mean that the republican has the green light for the most extreme vilification and punishment of violent sons. The principle of parsimony is still in play. The obligation of the republican is to find the least punitive, most-dominion-respecting way possible for protecting the mothers, while communicating the message that son-mother assault is a serious criminal matter (see Mugford and Mugford, 1991). If my explanatory theory is right, and of course it will not be in many particular contexts, that way will be reintegrative shaming rather than stigmatization or punishment. We as a community should seek to bring home to these sons that their behaviour is intolerable. This is not going to be accomplished if the police give the message that mother-son violence is something they tolerate by walking away from the problem, or by treating it as a matter for private dispute resolution rather

than something which should mobilize public concern. But nor will mandatory arrest that risks stigmatization be a clever policy. Nor will putting him with a group of other violent sons to be lectured by a feminist on the evils of violence against women. To do this brings the criminogenic consequences of stigmatization together with the conditions for subcultural support from the other violent boys who are likely to reject their rejector (the feminist lecturer).

What reintegrative shaming recommends is mobilizing respectful disapproval from people whose positive regard the violent boy values. The job of the domestic violence caseworker, according to this strategy, is to find out who these significant others are, and to get them together in a problem-solving conference with the young offender. The objective of such a caseworker is to confront the unacceptability of violence, to discuss solutions to the situational problems that lead to the violence, to reason with the young person about exploitative attitudes towards his mother that underpin the violence, to give the young offender a dignified way of coming to accept that the violence is something about which he should feel genuinely remorseful and that he should want to change. The way to avoid a stigmatizing quality to the encounter is, in the words of Heinz Steinert's paper (this volume), to focus on the situation more than on reforming the person. When schoolmates are offering to take steps to avert the enraging situations at school that lead him to come home and take it out on his mother, when mates from the disco are offering to ensure that they cut down on their drinking to help with the problem, when the mother is promising to listen rather than provoke him when he comes home angry, when little sister is undertaking to interrupt him when his anger escalates and remind him of his promise to take time out to calm down, the risk that this will be seen as a degradation ceremony will be reduced. Even if some of the situational solutions are really not very fundamental to the causes of the violence, they help change the quality of the encounter away from a direct assault on the character of the offender. The message is communicated by the mobilizing of concern and help: "We still like lots about your character. We like you but we don't like this behaviour." So they work together on the situations that lead this essentially good person to do such a terrible thing. One respect, indeed, in which we do need to focus on the person (rather than the situation), contrary to Heinz Steinert's advice, is to assure the person that he is loved and/or respected. Moreover, we must be careful not to focus so exclusively on the situation that we communicate the message that we are morally neutral about the violence. Just as, according to Nils Christie's (1977) advice, we do not want our conflicts to be stolen by the police, nor do we want them to be stolen by a morally neutral situational crime prevention (see, also, Hackler and Garapon, 1987).

Really, I think Heinz Steinert was conceding all of this during the discussions at the conference when he referred to the importance of honour. The challenge is to analyse simultaneously the evil of the deed, the honour of the person and the ways of transforming the situation that leads to the evil deed. Competent human

beings know how to manage this complex and subtle task. They do not need a degree in social work to be able to do it. The least competent of us have our moments of competence when we accomplish it. The most socially accomplished of us have our moments when we torpedo our own objectives by the contemptuous moralizing of the person-reformer. Let us next consider some places where reintegrative juvenile justice practices have made some headway.

5   Lessons from Wagga Wagga

In *Crime, Shame and Reintegration* I talked about reintegrative shaming and the successes of Japanese criminal justice. But successful pockets of reintegrative practice are to be found in all parts of the world. The communication of disapproval of violence within a continuum of love, respect and honour for young people is something that effective families accomplish probably in all Western countries. Reintegrative shaming, as I have said above, is not something that any of us is incapable of doing. While we have all done it successfully at some time, we are surrounded by a world of institutional practices that destroy reintegrative shaming with stigma, disrespect, humiliation and degradation ceremonies.

Some of the most interesting examples of institutionalizing reintegrative practices are to be found in the periphery of the world system. An Afghan criminologist at the University of Edinburgh, A. Ali Serisht, has told me of the institution of Nananate among the Pushtoon, the largest ethnic group in Afghanistan. The Nananate is a ceremony of reintegrative shaming where the criminal offender brings flour and other food and kills a sheep for a community feast. Often this will be held at the victim's house, where the victim will participate in cooking the food the offender brings. At the ceremonial part of the event, the offender will not be told that he is bad and in need of reform, but rather that "You have done an injustice to this person". However, the offender will be assured that "you are one of us and we accept you back among us". The police and courts have virtually no presence in communities that rely on the Nananate.

In my own region of the world, the Pacific, there are some strong instances of reintegrative shaming. Jim Hackler (1992) has written an interesting article on the reliance on reintegrative shaming in Fiji. New Zealand is the preeminent case of an industrialized society that has changed direction, jettisoning the institutions of stigmatic juvenile justice in 1989 to replace them with reintegrative institutions. The *Children, Young Persons and Their Families Act* of 1989 was landmark legislation that warrants the attention of all juvenile justice scholars (Office of the Commissioner for Children, 1991). It institutionalized diversion. During January-May 1989, 10,528 informations to take matters before the juvenile court were laid in New Zealand. For January to May 1990, this had dropped to 3,514 (unpublished

police statistics quoted in Maxwell and Morris, 1990). There are fewer than a quarter of the institutional beds for young offenders that there were prior to the Act.

An important innovation under the Act is "family group conferences" as an alternative to the juvenile court. A total of 3,898 were held during the first 9 months of the Act. Even more interesting is that wherever the word "family" appears in the Act, Maori words for different types of kin groups also appear. The family group conference brings together the offender, the offender's family group, police, the victim and victim supporters where they are willing to participate. In the following discussion, I rely heavily on notes of conversations I have had with John McDonald, who was reporting on research conducted with Steve Ireland and Michael Hogan, and with Warren Young. I am told that wide interpretation of what constitutes a family group is allowed. Any type of friend or supporter of the offender might attend under this category, at the discretion of the Youth Justice Coordinator.

At these conferences, there is a lot of emphasis on ensuring that children who commit offences are held accountable. The word shame sometimes even comes up, I am told, quite an unusual phenomenon in the context of contemporary Western cultures where we are ashamed to be ashamed (Scheff and Retzinger, 1991). Shame is not the word used in official talk justifying the reform. "Encouraging young people to accept responsibility for their behaviour" is the preferred discourse. Obviously, it is a superior discourse to the discourse of shame for practical political purposes. It has been an important part of the surprising level of acceptance this reform has attracted from police in our part of the world, though not without considerable resistance as well. The Australian and New Zealand Police Federation carried a resolution at its 1991 conference supporting the New Zealand juvenile justice reforms. The philosophy of the conferences is to focus on the best outcome for the society, the victim and the offender - in Heinz Steinert's terms, to focus on the situation more than directly on reforming the person. Much of the talk about the situation, however, is about the offender "facing the consequences" of his or her actions, including the possibility of having to face the feelings of the victim. Stigmatization for past deeds is also avoided by a positive future orientation - reparation, community work, changes in patterns of leisure-time behaviour assisted by others at the conference are often agreed. Finally, ceremonies of apology and reconciliation with victims are regarded as important.

There are some innovative approaches to victim-offender reconciliation and community crime control. One case involved a Cambodian refugee who had experienced the horrors of Pol Pot. He felt he was being harassed and taunted by a young female who, with two others, broke into and damaged his restaurant, from which he was barely making a living. In addition to reparation to the Cambodian victim agreed at the family group conference, the young offender agreed to watch a video of "The Killing Fields", after which she agreed to "pass the word on the street" that there should be no more break-ins at the restaurant.

In my own country, reintegrative approaches to dealing with juvenile offending are not in the mainstream of criminal justice policy in the way they are in New Zealand. However, there have always been pockets of progressive practice - for example, juvenile court judges in central and western Australia dealing with young aboriginal offenders by diverting them to problem-solving with the elders of their community. A recent pocket of progressive practice has been in Wagga Wagga, the largest inland city in the vast expanses of Western New South Wales. Two case studies of reintegrative police cautioning in the Wagga Wagga police district written by Sergeant Terry O'Connell of the New South Wales Police appear in the appendix to this paper. These are both cases in which a family conference approach was used. Even more interesting, in that it breaks further from the limits of a "family" conference, is the approach the Wagga police adopted during a community furore over damage to property in high school senior breakup activity. The tradition of "muckup" activities for high school graduates got a little out of hand in 1991. A scavenger hunt was held in which a variety of types of property were stolen from local businesses.

The worst victim was a car-wash operator who suffered damage to advertising signs valued at $A3,000. The signs could not be repaired, had to be imported from the United States, and, as a result, a promotional campaign was cancelled, causing a person to miss out on a casual job for the duration of the campaign. When the local media picked up the story and the furious car-wash operator had his solicitor write to the police demanding action, some police felt they were under such community pressure that nothing short of laying charges would suffice. Instead, what the police tried first was to convene a meeting of all final year students at the school. At this meeting, the police explained the impact their actions had on the victim and was likely to have on a young worker who would miss out on employment. A representative of local businesses then addressed the students about how he and others felt about what had happened. The meeting led to the following procedure being written on a large blackboard:

1. Elect 5 representatives from the 240 students.
2. Report to a nominated location by 5 p.m. that day.
3. Return 3 outstanding signs.
4. Be prepared to meet with the victim, the company workers and police to work out an acceptable outcome.

The five elected students arrived at the car-wash, bringing three teachers and a parent with them. The dialogue occurred seated on the grass in front of the car-wash, in full view of an intrigued passing public. The police reported that

"The meeting dynamics could be described in the beginning as somewhat tense but by the end of the 1 hour session, the atmosphere was one of light hearted interactions and relief.

It appears after the Police left the school, the students have accepted collective responsibility, even though only about 10 students had actually removed the signs. They had also agreed to pay compensation with each student paying $15. They also agreed that it was necessary to issue an apology to the victim and the Wagga Wagga community."

At the meeting, it was agreed compensation of $A3,107.43 would be paid by the students (it was paid within two days), and that each student would work a minimum of 2 hours at one of the car-wash locations cleaning walls. The victim was fully satisfied with the outcome and delighted at the positive community support their business received for adopting such a conciliatory approach to the young people. The local newspaper ran a front-page story, "Students Apologise for Muck-Up Pranks", which fuelled a general community reaction of being impressed at the maturity of the students' response to the havoc they had caused. Apology and reparation transformed an angry community into a forgiving one, indeed one in whose opinion the stature of the students had grown. As the police report on the incident said: "The element of shaming effected all the students and the school. The positive affirmation within the community and the media to the students' response contributed significantly towards restoring the school and students' standing within the community."

Police standing in the community was also enhanced by the incident. The primary victim was so impressed that he made a donation to the Police-Citizens Youth Club in appreciation. The students and the school also expressed their thanks to the police and the media reaction was favourable. Of course, not all attempts at reintegrative shaming will have such win-win-win outcomes for offenders, victims and police. The purpose of the case study is merely to show that alternative models of reintegrative practice can be found and shown to be not only practical but capable of producing superior outcomes to traditional law enforcement. Demonstrating that they are capable of doing so in particular cases is no substitute for demonstrating empirically that they more consistently deliver protection of dominion than traditional enforcement.

6   Diversion in Perspective

I trust this paper will not create the impression that the most important policy implication of republican theory is diversion of the kind we have illustrated in Wagga Wagga. This is certainly a significant implication but far from the most significant one. The importance of shaming, according to the theory, is in preventing crime before offenders come to the attention of the criminal justice system. The importance of avoiding stigmatization is that stigmatization fosters criminal subculture formation. Elsewhere, I have argued that criminology places too much emphasis on state policies for dealing with offenders, once they have been so identified, as solutions to the crime problem (Braithwaite, 1991b). There I have argued that the

types of crime that have become our deepest crime problems - domestic violence, white-collar crime and drink driving - have become the crimes that cause greatest harm because they are crimes that have been subjected to muted or ambivalent community disapproval. Fostering vibrant social movements against these forms of crime is the highest priority for reform. Ultimately, deeper cultural changes in respect for the autonomy of women that can be accomplished by the women's movement (and are beginning to be accomplished) are more important to responding to the problem of domestic violence than policing policies. The accomplishments of an environmental movement in constituting the shamefulness of environmental crimes is more important to protecting the environment than increasing the number of environmental inspectors, important as the latter is.

Progressive social movements are the important vehicles for crime control because they can tackle simultaneously the structures of inequality that cause exploitative conduct such as criminal violence and oligopolistic price-fixing (Braithwaite, 1991c; Dinnen, 1991) and the muted shame that allows offenders to excuse their crime. Moreover, there is a connection between the inequality effect and the shaming effect. The types of shame that have been most shielded from shame have been so shielded because of concentrations of power (Braithwaite, 1991b).

Even if long-term struggles for prevention via deeper cultural and structural change should be regarded as the main game, it is important that we have a theoretical position with some clear things to say about what to do with offenders after the event, when prevention has failed. I have argued in this paper that twin presumptions in favour of diversion and against net-widening are starting points for reaching such conclusions, so long as we are clear on the philosophy that should guide selective discarding of these presumptions. Then I have contended that diversion is likely to be an effective and desirable policy to the extent that the parameters of its implementation are reintegrative. Finally, I have given some practical illustrations of how diversion can be managed in a way that avoids stigmatization, while engaging offenders in a dialogue about the harm of their wrongdoing and how that harm can be remediated for the past and prevented for the future. Wagga Wagga, where England's dangerous classes and their descendants toiled during the 19th century to create one of the most efficient agricultural industries in the world, continues to be the centre of the criminological universe in the late 20th century! It is through spadework at sites like Wagga Wagga that one can begin to specify the conditions for successful reintegration ceremonies, a task to which Stephen Mugford and I are turning our attention.

Note

1 For the philosophers who are shocked by such a casual definitional gestalt, here is a formal definition:
"A person enjoys full dominion, we say, if and only if:
1. she enjoys no less a prospect of liberty than is available to other citizens;
2. it is common knowledge among citizens that this condition obtains, so that she and nearly everyone else knows that she enjoys the prospect mentioned, she and nearly everyone else knows that the others generally know this too, and so on;
3. she enjoys no less a prospect of liberty than the best that is compatible with the same prospect for all citizens."

Appendix

POLICE CAUTIONS IN WAGGA WAGGA
Prepared by Sergeant Terry O'Connell, 21 November, 1991.

1. WAGGA WAGGA INCIDENT

BACKGROUND:
15-year-old male offender was with a group of young people outside a Wagga High School, waiting to catch a bus. An incident in which the offender was hit on the foot with a stone by the 15-year-old female victim's brother resulted in an altercation between the offender and victim. The offender lost his temper and punched the victim in the face causing a black eye and swelling.

TYPE OF INCIDENT:
Assault Occasioning Actual Bodily Harm S.59.

POLICE INTERVENTION:
Statements were taken from the offender and victim. Offender admitted to the offence. The Detective in charge of the matter felt that in spite of the seriousness of the incident, there were a number of factors that supported the use of a formal caution. These were:
1. both families were well-known to each other, and in fact the offender's family had helped the victim's family over the years;
2. the offender had admitted the offence;
3. the offender had not been previously charged or cautioned;
4. the victim, the victim's family wanted the matter to be dealt with by way of conference;
5. it was felt more would be achieved for the offender, victim and their respective families than to proceed by way of formal sanction, i.e., charging.

CAUTION PROCESS:
The cautioning conference involved the following:
1. the offender, offender's mother, father and young brother;
2. the victim, the victim's mother, father and young brother;
3. the reporting Police Officer (Detective);
4. a Senior Constable as an observer;
5. Sergeant as the Cautioning Sergeant.
The offender was confronted about his actions, which he admitted publicly within the group. Everyone was provided with an opportunity of expressing what they felt about the incident and how in particular it impacted upon them. The offender's parents expressed embarrassment and shame about their son's actions. There was considerable emotion, blaming and excuses from both parties. Approximately 1 hour into the discussion, the victim's family started to express supportive sentiments about the offender, which basically said, "we still like him, we just didn't like what he did."

The mood of the discussions had turned from blaming and anger to one of support for both families.

OUTCOMES:
1. the young offender publicly apologized to the victim;
2. the victim was happy that she was able to tell the offender exactly how she felt;
3. both families believed that their relationships were greatly strengthened;
4. the young offender acknowledged that he needed to better manage his anger;
5. the young offender agreed to attend the Police Citizens' Youth Club for 20 hours to seek assistance with developing better skills and strategies for coping with his anger.

ISSUES:
1. it was likely that if the matter had been dealt with by way of charging it would have destroyed the family relationships;
2. the conference had the opposite effect in that it had strengthened these relationships;
3. there are considerable savings in not using the Courts;
4. the young offender is more likely to benefit from this type of intervention;
5. the victim and her family would have received far greater satisfaction than would have been possible at Court;
6. the Police involved have gained a valuable insight into how effective cautioning can be.

2. JUNEE INCIDENT

BACKGROUND:
The 12 year old male offender has a long history of problems that have involved school, family and Police. He is a product of a highly dysfunctional family and has experienced violence and trauma throughout his life. He is a fat boy and this becomes an issue at school because he is targeted by other children. On all the occasions he has come under notice, the young offender has been attempting to assault a teacher, other children or, as happened on the recent occasion, his mother. Many people within the Junee community were concerned about his behaviour and it has been suggested that the Police were not prepared to do anything.

The young offender had been seen by a number of welfare counsellors and other workers but generally this was ad hoc. The Police had a number of incidents which could have amounted to a caution, then charges, but because of the offender's young age, were reluctant to do so. The last incident which involved an assault on his mother, in which the offender threw a small iron bar, was yet another occasion when he was very angry and was not able to control this.

The Sergeant involved in this incident felt that the time had arrived when some formal process should be used.

TYPE OF INCIDENT:
Assault.

POLICE INTERVENTION:
Statements were taken from the offender, the offender's mother and the Family Support worker who had attended shortly after the incident. The Sergeant decided that the matter would proceed to a formal caution, even though the offender's mother was the victim. The caution was justified because:

1. there were a number of prior incidents which technically could have been dealt with by formal caution;
2. the young offender had not been previously cautioned;
3. the offender's mother wanted some formal Police intervention;
4. it provided a mechanism to involve other workers.

CAUTION PROCESS:
The cautioning conference involved the following:

1. the offender, the offender's mother and grandmother;
2. a school teacher, the school gardener;
3. two shopkeepers;
4. a Family Support Counsellor;
5. two workers from Department of Community Services;
6. an Army Major;
7. the Cautioning Sergeant;
8. a Co-ordinating Sergeant;
9. 4 other local Police who have dealings with the offender.

There was an attempt to assure the young offender that all of the "adults" involved shared a common interest, that is, they were concerned about his behaviour and the consequences that this behaviour was beginning to have on a number of different people within the community. All involved spoke about their experiences with the young offender, and, in the main, most of these experiences were very positive and supportive of the young offender. The issue for the young person was about handling his anger in a more appropriate way, and he acknowledged that he was not good at this. Whilst it does appear that, on the sheer weight of numbers, the experience would have been "daunting" for the young offender, it was a positive and useful experience because all those who attended were genuinely interested in the young person.

OUTCOMES:
1. the Army Major is to arrange a visit to Kapooka Army Camp (the offender has just joined the Army Cadets);
2. the Sergeant is to take the offender to the Riverina Youth Detention Centre to meet with other young offenders;
3. all the local people at the meeting offered to act as a reference point for the young offender;
4. the mother agreed to liaise on a regular basis with a newly developed network of people;
5. it has brought together all those involved with this young person but were acting alone.

ISSUES:
1. it provided the local community with an insight into the problems Police experience when dealing with difficult children;
2. it provided Police with an insight into how to effectively utilize resources within the community to assist with difficult young offenders;
3. it allowed the "gossiping" process to be turned about from a destructive to a constructive process, because a number of significant people were involved and this has ensured that only positive aspects would be promoted;
4. greatly enhanced the Police standing within the community;
5. has provided other Police with a range of new options in dealing with young offenders;
6. it demonstrated to all those involved that there is a high level of concern and commitment for young people within the community.

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