

## Appendix II

### *Parenting Styles*

#### Supportive Self-Regulatory Parenting (Authoritative)

1. I make sure my child knows that I appreciate what he/she tries to accomplish.
2. I encourage my child to be curious, to explore and question things.
3. My child and I have warm intimate times together.
4. I let my child make many decisions for him/herself.
5. I find some of my greatest satisfactions in my child.
6. I feel a child should have time to think, daydream, and even loaf sometimes.
7. I joke and play with my child.
8. I believe in praising a child when he/she is good and think it gets better results than punishing him/her when he/she is bad.
9. I encourage my child to wonder and think about life.
10. I am easy-going and relaxed with my child.

#### Command and Control Parenting (Authoritarian)

1. I try to stop my child from playing rough games or doing things where he/she might get hurt.
2. I do not allow my child to question my decisions.
3. I do not allow my child to say bad things about his/her teachers.
4. I teach my child to keep control of his/her feelings at all times.
5. I let my child know how ashamed and disappointed I am when he/she misbehaves.
6. I try to keep my child away from children of families who have different ideas or values from my own.
7. I believe my child should be aware of how much I sacrifice for him/her.
8. I expect my child to be grateful and appreciate all the advantages he/she has.
9. I believe children should not have secrets from their parents.
10. I do not allow my child to get angry with me.
11. I want my child to make a good impression on others.
12. I believe it is unwise to let children play a lot by themselves without supervision from grown-ups.
13. I expect a great deal from my child.
14. I think it is good practice for a child to perform in front of others.
15. I think a child should be encouraged to do things better than others.

## 9 Republicanism and Restorative Justice: An Explanatory and Normative Connection

JOHN BRAITHWAITE AND PHILIP PETTIT

Take any normative ideal for how society should be organised and directed. If its defenders wish to make a claim on its behalf, arguing that the ideal is of sufficient importance and attraction to command general allegiance, then they must presumably think that it is intimately related to the things for which people reveal a concern and capacity in their own actions and lives. But if a normative ideal can be shown to have a psychological resonance of this kind, then presumably it must point us towards a basis on which to explain many of the things that people individually do and many of the patterns to which they collectively give rise. It must point us towards a useful explanatory category.

If this thought is correct, then any normative proposal should be subjected to the test of seeing whether it points us towards a plausible explanatory category. Indeed, if the thought is correct, then equally any explanatory category - or at least any that is based in a story about human psychology - should be subjected to the corresponding test of seeing whether it directs us towards a plausible normative ideal: to an ideal that people can be brought, on reflection, to find significantly attractive.

But if an ideal or category proves persuasive on both normative and explanatory fronts, then presumably it may be equipped to serve in both roles to support certain institutional arrangements. It will provide a basis on which to argue that such an arrangement is normatively attractive and it will serve at the same time to show us why the arrangement should work well: it will be able to represent the behaviours required for the arrangement as explicable and reliable.

The paper is designed, following this pattern, to look at the explanatory aspect of the republican ideal of freedom as non-domination, and to explore how far the arrangement for which it provides a normative argument in the area of criminal justice - broadly,

a dispensation of restorative justice - is an arrangement for which it also provides explanatory support. The first section focuses on the two aspects of the ideal, comparing it with the two aspects of rival political ideals, and the second turns to the normative-cum-explanatory lessons of the ideal in the area of criminal justice.

### **Freedom as Non-Domination: Normative Ideal, Explanatory Category**

Before coming to the republican ideal and its normative-cum-explanatory dimensions, it may first be useful to look at how the two dimensions show up with some other social and political ideals. This will give us an idea of what we should be looking for with the ideal of freedom as non-domination.

#### *Utilitarianism*

Take the most familiar of political ideals to begin with: the utilitarian ideal of maximising overall happiness, in particular in its interpretation as the ideal of maximising overall preference-satisfaction. It is very striking that this ideal does indeed point us towards a more or less plausible explanatory category and that, to that extent at least, it has something to be said in its favour.

The utilitarian ideal, by most accounts, is not one of maximising the satisfaction of just any preferences that people may prove to have. Some of those preferences will be nosy preferences as to what others should do or will derive from non-utilitarian ideas as to how things should be (Dworkin, 1978). Others will be preferences that are formed on a self-sacrificing basis, as in the mannerly preference for giving the better of two options to another and taking the worse oneself (Sen, 1982). The ideal, most plausibly construed, is that of maximising the satisfaction of those preferences that people have which intuitively concern themselves rather than others and which are sourced in a concern for their own fortunes.

But why, a utilitarian may be asked, should we find this ideal even half-way persuasive? The answer that surfaces continually in the literature - most famously or infamously with J. S. Mill's 'proof' of utilitarianism (Mill, 1969) - is that people individually care about the satisfaction of such preferences in their own case. It may not follow from the fact of this self-centred care, contrary to some readings of Mill's argument, that all ought to care about the satisfaction of such preferences in their own case, let alone that all ought to care about the satisfaction of such preferences on the part of people generally. But

the existence of the self-centred care does at least make sense of why utilitarians might hope to carry people along with them. They can argue that in the cooperative efforts that people make with one another - particularly, in the cooperative efforts that a democratic state might be thought to represent - the guiding star should be something that all individually care about in their own case. There may be other things that all individually care about but utilitarians can claim that their ideal answers at least to one and that to that extent it proves to be an eligible ideal.

The normative enterprise of utilitarianism may be expected, in view of this argument, to pair off with an explanatory enterprise that seeks to make sense of people's choices by reference to a concern for the satisfaction of their self-regarding preferences. And that enterprise is represented of course in the project of providing economic or rational choice explanations of people's behaviour in the market, in the polity and in social life more generally. While many economists maintain that they do not assume that the preferences by which behaviour can be explained are mainly self-regarding, this claim is flouted in practice; "homo economicus", in almost all plausible incarnations, proves to be precisely the relatively self-regarding creature that our argument would lead us to expect (Pettit, 1995). We do not pass judgment here on the effectiveness of rational choice theory but we do note that it is to the credit of utilitarianism that it can plausibly claim that its ideal satisfies the explanatory constraint that we have identified.

#### *Rawlsianism*

In contemporary political philosophy, the approach that is often set off most forcibly against utilitarianism is the sort of liberalism represented by John Rawls (1971). This breaks with utilitarianism in two ways. First of all, it notes that we may assess the basic structure of a society, not just for how much of something it produces, but also for how it distributes it among members of the society and it argues that the primary concern should be with fair distribution, not maximal production: the primary virtue of institutions, as Rawls puts it, is justice as fairness. And then it says, second, that in identifying the appropriate maximand or rather distribuend, we should not privilege any of the different conceptions of the good that prevail in most societies. We should rather take our starting point from those 'primary goods' that are supposed to be the sorts of things that people will need, no matter what else they happen to desire.

How does the Rawlsian theory of justice fare with the explanatory constraint? If the theory is well grounded - if it is likely to appeal to



people as something that they can cooperatively endorse - then two things must hold. First, people must care about how well they do relative to others, as well as about how they do in absolute terms: otherwise the focus on distribution would be misplaced. And second, people must care in particular about how they do in respect of the primary goods: the list that Rawls gives includes income and wealth, freedom and opportunity, and a basis for self-respect.

There is no particular explanatory theory that corresponds to Rawlsianism in the way that rational choice theory answers to utilitarianism. But there are resources in the psychological research tradition on distributive justice (Gergen et al., 1980) and in social science more generally (Cook and Hegtvedt, 1983) to support the claim that people care about how they compare with others as well as about how they do in absolute terms; Bob Frank (1985) has provided ample arguments, for example, in support of the thesis. And it is intuitively plausible to hold, as Rawls does, that people care in particular about how they do in respect of his rather heterogeneous list of primary goods. The only question we would raise here bears on how far they care for freedom in the way in which Rawls articulates it: essentially, in the mould of freedom as non-interference (Pettit, 1997: 50, 301). But that question will arise naturally in the context of our discussion of the republican ideal.

### *Republicanism*

And so, finally, to the republican ideal of freedom as non-domination. Think of how you feel when your welfare depends on the decision of another and you have no come-back against that decision. You are in a position where you will sink or swim, depending on the other's say-so. And you have no physical or legal recourse, no recourse even in a network of mutual friends, against that other. You are in the other's hands; you are at their mercy.

This experience of domination by another comes in many forms. Think of the child of the emotionally volatile parent; the wife of the occasionally violent husband; or the pupil of the teacher who forms arbitrary likes and dislikes. Think of the employee whose security requires keeping the boss or manager sweet; the debtor whose fortunes depend on the caprice of money-lender or bank-manager; or the small business owner whose viability depends on the attitude taken by a bigger competitor or a union boss. Think of the welfare recipient whose fortunes turn on the mood of the counter-clerk; the immigrant or indigenous person whose standing is vulnerable to the whims that rule politics and talk-back radio; or the public employee whose future depends, not on performance, but on the political profile that an

ambitious minister happens to find electorally most useful. Think of the older person who is vulnerable to the culturally and institutionally unrestrained gang of youths in her area. Or think indeed of the young offender whose level of punishment depends on how far politicians or newspapers choose to whip up a culture of vengeance.

In all of these cases someone lives at the mercy of others. That person is dominated by those others in the sense that even if they don't interfere in his or her life, they have the power to do so: there are few restraints or costs to inhibit them. If the dominated person escapes ill treatment, that is by the grace or favour of the powerful. The person lives in their power or under the mastery of those others: they occupy the position of a "dominus" - the Latin word for master - in his or her life.

The republican ideal of freedom as non-domination is the ideal of organising society and politics in such a way that this domination - this subjection to the arbitrary will of another - is minimised. A republican arrangement will have to struggle to ensure non-domination on two fronts: first, by restraining the private power associated with "dominium", as the Romans called it; and second, by restraining the public power - the "imperium" - of those in government. On the first front the republican ideal provides a basis for devising policies whereby people can be effectively protected, informed and empowered in relation to one another. On the second it provides a basis for devising constitutional and democratic constraints whereby people can be assured of not being dominated by the very government that is supposed to protect them from domination by others. Such an assurance of non-domination will be forthcoming to the extent and only to the extent - a big and difficult qualification - that government is forced, when it interferes in people's lives, to do so in a way that is not arbitrary: in a way that tracks their common perceived interests.

So much for the nature of the republican ideal of non-domination that we endorse (Braithwaite and Pettit, 1990; Pettit, 1997). The question that we now want to ask is how far it points us towards a plausible explanatory category: how far it satisfies the sort of explanatory constraint that we think any plausible ideal should be able to satisfy.

If freedom as non-domination is maximised in a society then, for reasons given elsewhere, we think that it will also tend to be equally distributed (Braithwaite and Pettit, 1990: Ch. 5; Pettit, 1999: Ch. 4). The main thread in the argument goes roughly like this. Suppose that people fare equally well in non-domination terms, enjoying equivalent resources of empowerment relative to each other. It is extremely unlikely that the quantum of non-domination can be increased overall by giving one of these people further resources still, thereby

introducing an inequality. For any move that gives one person extra resources will affect others negatively and will reduce their freedom as non-domination at the very moment that it increases the freedom as non-domination of the original person.

If this claim about maximisation and equalisation is sound, as we think it is, then there is no issue raised for the approach as to whether people are as fundamentally concerned with distribution as with overall production of non-domination. Let people be concerned about either, or about both, and our approach will be to that extent vindicated.

But the more telling question is whether it is plausible to think that people are concerned, each in his or her own case, with how far they enjoy non-domination. Enjoying non-domination will have two sides to it. On the one hand, it will mean not having another agent or agency stand over you, in a position to interfere in your life without regard to your perceived interests. And on the other hand, it will mean not being so constrained by non-dominating restrictions - natural obstacles and limitations, and the restraints of a non-dominating law or culture - that there is very little undominated choice to enjoy. So the question is whether people care in their own case, first for the absence of the domination of others, and second for the presence of opportunities in which undominated choice can be exercised. Almost everyone nowadays is happy to assume that people care about the second sort of factor and we shall concentrate here on the first.

We have a three-stage argument for holding that people care very deeply about not being dominated by others (cf. Pettit, 1997: Ch. 3). The first stage in the argument is that people care much more about a harm that they suffer at the hands of another than they care about a harm that they suffer as a result of natural misfortune. The consideration that reveals the depth of that care is this: that in such cases people generally feel resentment at the action of the other as well as the loss that they would feel had the cause been just a natural accident. And resentment, by a long tradition of thought, is one of the very deepest and most disturbing of human emotions (Strawson, 1982). There are many theories as to why resentment at harm done by others is nearly universal among humans. Alfred Adler, for example, argues that the will to struggle against inferiority and to escape adult domination is born of the need to survive at the stage when dependency on parents ends and we are left to our own resources (Ansbacher and Ansbacher, 1956). But we do not need to pronounce on the origins of resentment; it is sufficient for our purposes that we can plausibly postulate it.

As against this emphasis on resentment, some may point out we don't feel resentment if the person who interferes in our life is not negligent or deliberate, or if the interference has in some way been

licensed by us: if we are like Ulysses in relation to the sailors who keep him bound. But that is no objection in the present case, because interference will not be an exercise of domination if it is not intentional or negligent. And neither will it be an exercise of domination if it tracks the perceived interests of the interfeeree, as it would in the Ulysses-type case. Indeed that is why republicans think that the law, if it is a proper republican law, will not dominate those in whose lives it interferes.

The first stage of argument gives grounds for thinking that we care much more about the sort of actual interference that domination makes possible than we would care about a corresponding natural restriction. But we need also to show that we care about domination, even when there is no restriction imposed: even when the "dominus" in our lives happens not to use their power against us.

The second stage in our argument says that we do indeed care about such domination and for just the same reason: it too gives rise to resentment; or at least it gives rise to resentment in anyone of the kind we are likely to admire. Think about how you must feel towards another to the extent that there is no physical difficulty, no legal risk, no cultural inhibition, no moral commitment, and no prospect of retaliation that might stop them from exercising a certain form of arbitrary interference in your life. You may be able to escape such interference, say by means of keeping your head down, or by currying the favour of that person, by cultivating in yourself the sorts of preferences they approve of, or by being lucky enough to have achieved such results without trying. But even if you do those things, you are surely likely to resent the need to do them. Certainly you will resent the need to do them unless you are the servile sort who has lost a sense of self, as we would say: the sort of person who has internalised their subjection and identified with someone on whose mercy they depend.

The upshot of these two stages of argument is that the ideal of freedom as non-domination has deep psychological roots in the resentment that we would all feel, short of being self-abasing types, at another's having arbitrary power to interfere in our lives in some way and at our being required therefore to take precautionary measures. The third stage in the argument complements this conclusion about the negative resonance of domination by drawing attention to the positive resonance that non-domination, in particular conscious non-domination, has in our psychology.

Imagine that you are in a position where no one else is able to interfere on an arbitrary basis in your life, or at least where you are as well off as anyone else in this respect. Imagine that you are aware of this, that it is a matter of which you may expect others to be aware, and



indeed that it is likely to be a matter of common or mutual awareness. Since being non-dominated requires public resources of empowerment, it is by no means unlikely that those conditions will be fulfilled (Pettit, 1997: Ch. 2). In such a case you will enjoy what is most properly described as standing or status in the eyes of others. You will not just be treated respectfully by them; you will command their respect, so far as they are forced to recognise your power. You will be able to look each of them in the eye, in a shared awareness that you cannot be denied a voice or a hearing or a response in the general run of exchanges that constitute social life. You will be a somebody, not a nobody.

So much for the motivational roots that make it plausible for republicans like us to say that an ideal for social and political life is that things be organised so that domination is minimised, and minimised in such a way that people retain significant room for the enjoyment of undominated choice (on the balance between these dimensions see Pettit, 1999: Ch. 3). If those roots have a real hold in human psychology, then we should expect that there will be an explanatory category or categories corresponding to the republican ideal. And of course that category is not hard to find. It is marked in the widespread recognition of the desire for empowerment - having control over one's life with others - and of the aversion to powerlessness and subordination. The literature of psychology and sociology, history and political theory gives sustained testimony to the importance of this desire and this aversion in human life.

To sum up, then, the connection between being dominated and feeling resentful, and the emotional power of resentment in our lives, makes it entirely plausible by our lights to claim that the republican ideal has deep psychological roots. That in turn implies, then, that it ought to prove possible to explain many human responses by the desire to express or avoid resentment and its associated ailments. And this, we think, is borne out in much contemporary work in the psychological and social sciences, as well as in the wisdom - and common sense - of the ages.

### **The Normative and Explanatory Connection to Restorative Justice**

We have looked elsewhere at the normative implications of the republican standpoint for the design of a criminal justice system (Braithwaite and Pettit, 1990). While we didn't make a case for a system of restorative justice as such, the features that we said should be incorporated in any republican system of criminal justice are all characteristic of restorative justice. In this second section what we

would like to do is show that not only does republicanism provide a normative case for promoting those features (and make thereby for a normative connection with restorative justice) but also that the case is supported by empirical considerations in a way that makes equally for an explanatory connection between republicanism and restorative justice.

The features that we identified as essential to any republican system of criminal justice are: a preference for parsimony in criminal justice interventions, particularly in the sanctions imposed on offenders; a commitment to seeing that whatever power is given within the criminal justice system to different agents and agencies, that power is never arbitrary but is subject to systematic checks; and an orientation towards reprobation of offending and towards the ultimate reintegration of both offenders and victims. We propose to look at each of these headings in turn, showing in each case how the normative argument that republicanism provides is buttressed or likely to be buttressed by an argument that derives from the explanatory significance of the republican ideal of non-domination.

#### *Parsimony*

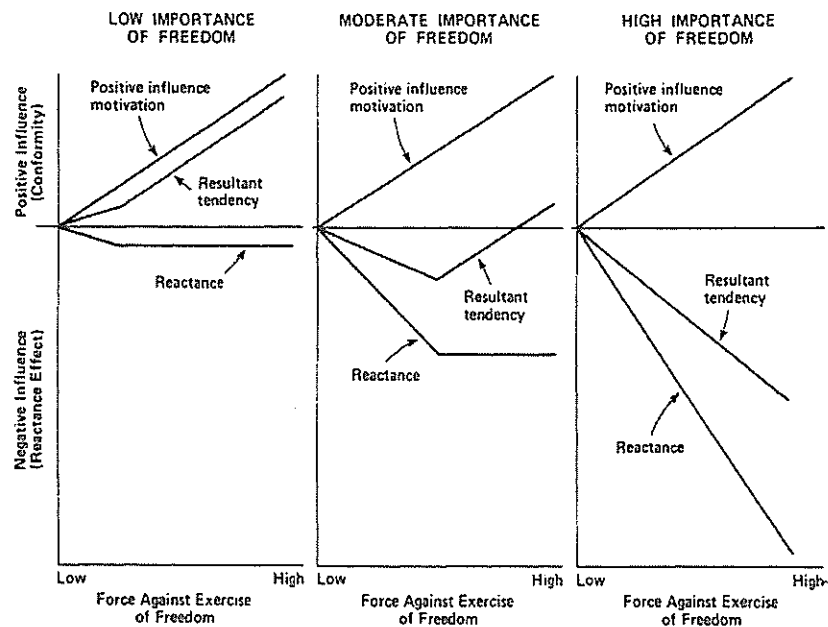
The normative preference for parsimony arises because any criminal justice intervention involves initial and near-certain costs to freedom as non-domination. This is true of criminalisation, surveillance, arrest or punishment. In contrast, the benefits of such interventions are more distant and probabilistic. Hence the prescription: if in doubt, intervene less in peoples' lives. Where intervention is parsimonious, people are likely to feel and be less dominated (Braithwaite and Pettit, 1990: 87).

But is this prescription really a sensible approach? Isn't it likely to err always on the side of leniency, confronting potential offenders with lower expected costs that are needed to dissuade them from crime? The theory of rational choice that is associated with utilitarianism would argue that we ought to go straight for those interventions that would have the effect of making the expected costs of a life of crime exceed the expected benefits. Thus, many will say that while parsimony may have a normative appeal for republicans, the likelihood is that it will not work as well in practice as a policy that is more firmly rooted in an explanatory theory such as rational choice.

This line of thought, however, is profoundly mistaken. For it turns out that the empirical evidence supports a presumption - an overridable presumption - in favour of parsimony; and that this evidence fits with the explanatory perspective provided by republicanism.

The relevant evidence is best encapsulated in Brehm and Brehm's (1981) theory of psychological reactance. Figure 9.1 summarises the patterns of results from a number of experiments on the effect of force against the exercise of a freedom. More force produces more deterrence. However, it simultaneously produces more "reactance". Reactance is loosely what the criminological literature refers to as defiance effects (Sherman, 1992). What is the net effect - the net social control - secured by a given use of force. That is given by measuring the deterrence effect and then subtracting from it the reactance effect of the intervention in question.

**Figure 9.1: The Interaction between the Importance of a Freedom and the Contest between Deterrence and Reactance**  
(from Brehm and Brehm, 1981: 60)



What Figure 9.1 illustrates is that reactance is greatest when controlling force is used against a freedom of high importance to the citizen, as in the right hand panel. Let freedom of religion be involved, for example, and any attempt at regulation is likely to have enormous reactance effects: throwing more Christians to the lions may only increase the resolve of Christians. In the left hand panel, the freedom

that is subjected to regulation is of low importance to the citizen: it may be the freedom to park a car wherever one wants. As the force used against the exercise of that freedom increases - as parking fines are raised, for example - reactance is low and the net social control achieved by the intervention will be mainly determined by its deterrence effect and the result will be as rational choice theory would predict.

These results should not be surprising, in light of the explanatory category to which republicanism points us: the concern of people not to be stood over by others. For it is precisely in cases where freedom is important to people, that any attempt to regulate it will have the aspect of domination. From their point of view, it will represent the presence in their lives of an arbitrary power of interference that is not itself forced to track their common perceived interests. And the results that support this lesson are not an isolated set of findings. More than 50 studies in a related tradition of psychological research shows that extrinsic rewards or punishments that are viewed as dominating or controlling tend to undermine intrinsic motivation to act in the direction commended by the incentives (Boggiano et al., 1987: 867).

The presumption in favour of parsimony is supported, then, not just by normative republican arguments but also by the explanatory considerations to which republicanism points us. That presumption is well respected in the idea of a restorative justice conference of a sort that republicanism commends and so we see here a tight explanatory as well as normative connection between republicanism and restorative justice. The idea behind the conference is that it should reach a non-dominated consensus as to what the offender or offenders should have to do, in the circle of all those affected by a crime: victim, offenders, family, peers, police and so on. To be non-dominated, it should be a consensus reached by moral reasoning, in particular moral reasoning about the harm that has been suffered as a result of the crime. To the extent that this is achieved by restorative justice, the prediction is that restorative justice should be more effective at securing subsequent compliance with the law than coercion that involves no attempt to persuade the offender. Deliberative regulation of crime will not only be more normatively decent, but partly because it is more decent, it will be more effective.

Of course Figure 9.1 also reveals that there will be contexts where this will not be true. For example, in the context of the middle panel of Figure 9.1 (moderate importance of freedom) it can be seen that if dialogue and low-level sanctions have failed, escalating to tough deterrent sanctions may have a positive influence on compliance. The reason for this is the shape of the reactance curve when freedoms are moderately important. With an escalating threat people dig their heels

in more and more until the point is reached where the coercive force confronting them becomes so severe that they give up on escalating their resistance. As deterrence effects then outstrip reactance effects, we find a context where escalating deterrence works. With the right hand panel, we find contexts where no amount of persuasion nor any amount of deterrence will work: the man who views it as his inalienable right of fatherhood to physically abuse his children may be unpersuadable and undeterrable. Then we may need to incapacitate his criminality by taking his children away from him or even locking him up.

Parsimony is commended by the results of the reactance experiments and the experiments on extrinsic threat and intrinsic motivation. They show why coercion is more likely to be counterproductive than productive, complementing criminological research on the various counterproductive effects of imprisonment and other forms of degradation (Gendreau, Goggin and Cullen, 1999), of punitive authoritarian parenting compared to authoritative parenting (Baumrind, 1978; Sampson and Laub, 1995). However, the pattern of the results of the reactance experiments also shows why there will be contexts where deterrence will work when the deliberative regulation of restorative justice fails and contexts where incapacitation will be needed because both deliberation and deterrence fail. So we see the empirical evidence as grounding a normative preference for parsimony as a presumption that can be overridden. If in doubt about what to do, our presumption will be to try deliberative regulation (restorative justice) first even with very serious kinds of crime. We will only opt for deterrent regulation in light of clear evidence that restorative justice will fail, or direct experience of trying it and failing. Similarly, we will be parsimonious in escalating from deterrence to more draconian incapacitative regulation. Both the normative story and the explanatory story about parsimony can ultimately be traced back to the fact that freedom as non-domination is an idea with both explanatory and normative purchase.

### *Checking of Power*

Freedom as non-domination achieves its full value for those who possess it to the extent that it is common knowledge in their society that they do indeed possess the relative immunity it confers against arbitrary interference. To that extent it will require the provision of both objective and subjective assurance that those who have power in the society - in particular, power that comes from public office - cannot exercise that power arbitrarily against others. There are checks on the exercise of the power that guarantee or militate against arbitrariness.

It is this line of thought that motivates one of the most striking institutional prescriptions associated with the republican tradition: that public power should be placed in many hands, so far as that is possible, and not given in monopoly measure to any one individual or group (Pettit, 1997: Ch. 2). This prescription lies behind the age-old republican preference for having more than one assembly - Rome had four; for having a representation of different classes within those assemblies; for dividing up public responsibilities between different officials, even investing some officials or bodies with a power of challenging or vetoing or reviewing the actions of others; and for separating out the basic government functions: the functions, as identified in Montesquieu's (1989) magisterial and distinctively republican work, of legislation, administration and adjudication.

In our original analysis of the normative significance of republicanism for criminal justice, we emphasised the need to introduce this emphasis on the importance of checking public power to the design of the criminal justice system (Braithwaite and Pettit, 1990) and in later work one of us extended this emphasis to separating and mutual checking of private powers (Braithwaite, 1997). Not only should it be invoked in arguing against unchecked power on the part of police, prosecutors, and prison warders, for example; it should also be invoked in considering how we can guard against crime in the world of potential offenders, particularly the corporate world.

State power is often less profound than private corporate power, especially in weaker states than France, the United Kingdom and the United States, where so much republican theory has been written. If we want to check the criminal abuse of power, therefore, we must pluralise our conception of the separation of powers and look for devices for checking corporate power and, in particular, for guarding against collusion between business and government. The introduction of independent accountants and auditors - in particular, auditors who had statutory duties beyond responsibilities to their clients - was a nineteenth century innovation that carried the principle of the separation of powers into the corporate world, after the English Registered Companies Act of 1862. Independent auditors may be a weak force in themselves but they are not negligible, especially when they are one strand in a web of controls. It was Arthur Young, the auditors, who effectively blew the whistle when the Lockheed corporation was bribing the Prime Minister of Japan and others to buy military aircraft (Boulton, 1978).

So much for the normative connection between the republican ideal of non-domination and the need for checking power in the world of criminal justice, broadly conceived. But that connection, it now transpires, is reinforced by an explanatory connection in just the way

that the connection with a presumption in favour of parsimony is reinforced. Some critics might have thought that enforcing procedures for checking power would hamper the state's attempt to regulate and reduce crime and that, notwithstanding the normative republican case for doing so, it would not represent a sensible policy. But that, it turns out, is not so, at least by some evidence currently available in criminology.

There are many types of criminological literatures which suggest both that powerlessness over one's own life promotes crime and that extreme levels of unchecked power over the lives of others is a cause of a different kind of crime (see particularly the debates around Charles Tittle's (1995) control balance theory) (Piquero and Hickman, 1999). The key idea of our republican reading of this criminological tradition is that extremes of unchecked power engender two kinds of crime problems. First, crimes of exploitation that are made possible by the unchecked power of those who dominate; and, second, crimes on the part of those who suffer from this domination to such an extent that they feel they have little to lose and much to resent. In the worst cases of domination, we find intergenerational criminality in families so deflated by their powerlessness that they give up on the idea that they can regulate their children (Weatherburn, forthcoming) or even perhaps themselves. These twin explanatory stories explain why republican checks on the wealth and power of the powerful can simultaneously help control crimes of exploitation and crimes of the exploited (see Braithwaite, 1991).

These results should not be surprising, if we are persuaded of the importance of the explanatory category highlighted in republicanism. If people are averse to being stood over, then a chronic exposure to such domination is likely to demoralise them so that they no longer care about the costs associated with crime. And if people are allowed dominating power, then it will be no surprise for a republican if they exercise it. The emphasis on the importance of ensuring against domination is inspired by a belief that domination represents an attractive temptation for those who can have it. Lord Acton was drawing on deep themes in the republican tradition when he said that all power corrupts and that absolute power corrupts absolutely.

What is the lesson for restorative justice? As we have seen in other contributions in this book, the restorative justice approach holds to the regulative ideal that all stakeholders affected by a breach of the law have an opportunity to participate in deciding what to do about it. This implies a major difference from old-fashioned statist regulation: from a regime, for example, where a nursing home inspector meets with the manager of the facility at the end of an inspection to tell her what has to be done to come into compliance and whether there will be any

prosecution. At a restorative exit conference, there can be representatives present from nursing home residents, relatives, staff, advocacy groups, outside directors as well as different levels of management. Resolving matters through the payment of a business-government bribe is more difficult in the context of these more richly separated powers that inhere in a more deliberative restorative justice process. In the best case, it would be necessary to bribe a roomful of people all digging into what went on, all with a more direct stake in a decent outcome than the government inspector.

This line of thought shows that in this respect, as in respect of the presumption in favour of parsimony, republicanism gives explanatory as well as normative support to restorative justice. It shows that restorative justice can serve to prevent the abuse of power. And it probably helps to explain why the empirical research shows that citizens mostly prefer restorative justice conferences to the courtroom adjudication of disputes (Braithwaite, 1999). It may be that consensus decisionmaking in restorative justice is a reason for this, though there is no empirical evidence to support this yet. That is, if participants keep talking until a consensus agreement is reached that they all will voluntarily sign, they are likely to feel less dominated than if the judge slams his hammer at some point to impose a decision. Process control (e.g. the control of the offender and victim over who is to be invited to the conference) is particularly important in driving citizen perceptions of fairness here. Indeed, process control may also be the facet of procedural justice that best explains subsequent compliance with the law by offenders (Makkai and Braithwaite, 1996; see generally Tyler, 1990). Empowerment prevents crime; dominated process causes it.

### *Reprobation and Reintegration*

The reprobative ideal in criminal justice is that whatever process someone charged with an offence receives, and whatever remedy is meted out to an offender, it should be designed to communicate in the fashion of a piece of moral reasoning the grounds for taking the offence seriously and condemning it (Duff, 1986). The process and the remedy should not be mechanical or merely punitive procedures, without moral significance. The reintegrative ideal, closely tied to this, is that whatever process and treatment is involved, it should so far as possible promote the prospect that the victim and the offender are each reintegrated into society as recognised, respected members.

These ideals derive straightforwardly from the republican ideal of non-domination. For criminal process and criminal punishment will succeed in avoiding domination only so far as it is clear to all that they are guided by perceived interests that the offender shares with others in



the society. And it is only so far as victim and offender are fully reintegrated into society that either can hope to enjoy their status as non-dominated members. Unless offenders can return to a situation where they can enjoy social support from those they care about, for example, their prospects of not being dominated and of not trying to dominate others are poor. Frank Cullen (1984) has reviewed the considerable empirical evidence that social support is associated with reduced prospects of reoffending.

In supporting the ideals of reprobation and reintegration, republicanism makes its closest normative contact with restorative justice. Restorative justice conferences offer the best prospect of achieving a process, and an agreed outcome, that will communicate the reason why the offence is objectionable. And they also promise the best chance of reintegration. They are designed to maximise social support for both offenders and victims, particularly through selecting for attendance those supporters enjoying the strongest relationships of trust or love with them.

But are restorative justice conferences likely to be effective? From the perspective of rational choice theory, it may seem not; after all, they would seem to reduce the expected costs of committing those crimes that will go to conference. Here once again, however, it turns out that the empirical evidence on restorative justice, while preliminary, is encouraging (Braithwaite, 1999) and that the explanatory category to which republicanism points us - the importance for people of not being stood over by others - helps to make sense of that evidence.

Nathan Harris's (1999) research, for example, shows that the only kind of disapproval arising from court and conference cases that arouses shame is perceived disapproval of the act by those whose respect the offender values very highly. The disapproval of judges, policemen or other people the offender does not greatly respect fails to induce remorse. One reason may be that their attempts at control are (rightly) seen as motivated by domination rather than by love or friendship. It follows that a restorative conference design that assures the attendance of those who love and respect the offender most has the best chance of inducing remorse.

The impact of restorative justice conferences will be particularly positive if reintegrative shaming theory is correct (Braithwaite, 1989). And there is some evidence that reintegrative shaming does reduce lawbreaking (Braithwaite, 1999). But it is early days in the empirical assessment of this theory; in fact, our Restorative Justice Group colleagues at ANU will over the next two years publish data that will demonstrate a need for some important revisions to the theory of reintegrative shaming, while still supporting many key aspects of its explanatory claims.

## Conclusion

Freedom as non-domination is a compelling normative ideal for a criminal justice system and domination is also important to explaining crime and what kind of crime prevention works. The republican normative theory of non-domination commends restorative justice as an attractive way of dealing with known criminal offenders and victims. The explanatory theory of domination and crime explains why restorative justice may be more effective in preventing crime than punishment by courts. Restorative justice is of course neither the most important implication of republican normative theory nor the most important implication of explanatory theories of domination and crime. But its convergence as a corollary of potent normative and explanatory theories speaks to the importance of restorative justice.

But our paper also underlines a more general conclusion. This is that in doing social theory we should look for an adjustment between normative and explanatory categories of analysis and that, if we do so, we are likely to reach a higher level of performance on both fronts (Parker, 1999). Any normative theory that works with a category that lacks explanatory resonance is likely to be utopian and it will serve our policy-making badly. Any explanatory theory that fails to connect with a normative concern is likely to be unguided and it will be incapable of serving policy-making at all. Normative theory without explanatory theory is empty; explanatory theory without normative theory is blind, often dangerously so.

## References

- Ansbacher, H. and Ansbacher, R. (1956), *The Individual Psychology of Alfred Adler*, Basic Books, New York.
- Baumrind, D. (1978), 'Parental Disciplinary Patterns and Social Competence in Children', *Youth and Society*, vol. 9, pp. 239-76.
- Boggiano, Ann K., Barrett, Mary, Weiher, Anne W., McLelland, Anne W. and Lusk, Cynthia M. (1987), 'Use of the Maximal Operant Principle to Motivate Children's Intrinsic Interest', *Journal of Personality and Social Psychology*, vol. 53, pp. 866-79.
- Boulton, D. (1978), *The Grease Machine*, Harper and Row, New York.
- Braithwaite, J. (1989), *Crime, Shame and Reintegration*, Cambridge University Press, Cambridge.
- Braithwaite, J. (1997), 'On Speaking Softly and Carrying Big Sticks: Neglected Dimensions of a Republican Separation of Powers', *University of Toronto Law Journal*, vol. 47, pp. 305-61.

- Braithwaite, John (1999), 'Restorative Justice: Assessing Optimistic and Pessimistic Accounts', in M. Tonry (ed.), *Crime and Justice: A Review of Research*, vol. 25, University of Chicago Press, Chicago.
- Braithwaite, J. and Pettit, P. (1990), *Not Just Deserts: A Republican Theory of Criminal Justice*, Oxford University Press, Oxford.
- Brehm, Sharon S. and Brehm, Jack W. (1981), *Psychological Reactance: A Theory of Freedom and Control*, Academic Press, New York.
- Cook, K. S. and Hegvedt, K. A. (1983), 'Distributive Justice, Equity, and Equality', *Annual Review of Sociology*, vol. 9, pp. 217-41.
- Cullen, Francis T. (1994), 'Social Support as an Organizing Concept for Criminology: Presidential Address to the Academy of Criminal Justice Sciences', *Justice Quarterly*, vol. 11, pp. 527-59.
- Duff, R. A. (1986), *Trials and Punishments*, Cambridge University Press, Cambridge.
- Dworkin, R. (1978), *Taking Rights Seriously*, Duckworth, London.
- Frank, R. (1985), *Choosing the Right Pond*, Oxford University Press, New York.
- Gendreau, Paul, Goggin, Claire and Cullen, Francis T. (1999), *The Effects of Prison Sentences on Recidivism*, A Report to the Corrections Research and Development and Aboriginal Policy Branch, Solicitor General of Canada, Ottawa.
- Gergen, K. J., Greenberg, M. S. and Willis, R. H. (1980), *Social Exchange: Advances in Theory and Research*, Plenum, New York.
- Harris, Nathan (1999), 'Shame and Shaming: An Empirical Analysis', PhD Dissertation, Law Program, Australian National University.
- Makkai, Toni and Braithwaite, John (1996), 'Procedural Justice and Regulatory Compliance', *Law and Human Behavior*, vol. 20, pp. 83-98.
- Mill, J. S. (1969), *Essays on Ethics, Religion and Society (Collected Works, Vol. 10)*, Routledge, London.
- Montesquieu, C. d. S. (1989), *The Spirit of the Laws*, Cambridge University Press, Cambridge.
- Parker, Christine (1999), *Just Lawyers*, Oxford University Press, Oxford.
- Pettit, P. (1995), 'The Virtual Reality of Homo Economicus', *Monist*, vol. 78, pp. 308-29.
- Pettit, P. (1997), *Republicanism: A Theory of Freedom and Government*, Oxford University Press, Oxford.
- Piquero, Alex R., Hickman, Matthew (1999), 'An Empirical Test of Tittle's Control Balance Theory', *Criminology*, vol. 37, pp. 319-43.
- Rawls, J. (1971), *A Theory of Justice*, Oxford University Press, Oxford.
- Sampson, Robert and Laub, John H. (1995), *Crime in the Making: Pathways and Turning Points Through Life*, Harvard University Press, Cambridge, Mass.
- Sen, A. (1982), *Choice, Welfare and Measurement*, Blackwell, Oxford.
- Sherman, L. W. (1992), *Policing Domestic Violence*, Free Press, New York.
- Strawson, P. (1974), *Freedom and Resentment, and Other Essays*, Methuen, London.
- Tittle, Charles (1995), *Control Balance: Toward a General Theory of Deviance*, Westview Press, Boulder, Co.
- Tyler, Tom, (1990), *Why People Obey the Law*, Yale University Press, New Haven, CT.

- Watson, G. (1982), *Free Will*, Oxford University Press, Oxford.
- Weatherburn, Don and Lind, Bronwyn (forthcoming), *The Economic and Social Antecedents of Delinquent-Prone Communities*, Cambridge University Press, Cambridge.