

The conversation, the journal, not the book

John Braithwaite*

Thank you, distinguished authors, editors and dear friends for these diverse and lively anniversary reflections.

1 When more and less shame is desirable

It is a shocking thought about justice and the rehabilitation of offenders that the world could be a better place with more shame. Yet this is one thing *Crime, shame and reintegration* proposes. It also proposes that the world could be a better place with less shame, and it seeks to help us understand what precisely is that kind of shame that we should want less of, and the good side of shame we might have more of.

This is no marginal debate for social scientists; understanding shame is relevant to preventing crime and achieving justice. I am inclined to the view that the survival of our grandchildren and their children depends on it. Genocide is an example of something human beings should be ashamed of contemplating. The criminal law contributes the moral compass to conceive genocide as evil. For the sake of argument, let us accept that international criminal courts rightly decided that the slaughter of people in Srebrenica and Rwanda was genocide. If so, should we not also think it genocidal to threaten another society with thousands of nuclear weapons after they threaten us? A threat to wipe out many cities, kill tens of millions of people, is surely a genocidal menace of larger dimensions than Srebrenica and Rwanda, that involves that same idea of mass extermination of a people who threaten us? Citizens of nuclear weapon states should be ashamed that they defend themselves from their enemies by threats of mass slaughter of enemy civilians. One virtue of the law of genocide is that it should prompt conversations about whether such nuclear deterrence is shameful, criminal, or both, or not. Many such conversations of less than fully acknowledged shame are needed; for example, whether the colonisation of Australia and the Americas was accomplished genocidally, by mass murder.

The theory of shame acknowledgement (Ahmed, Harris, Braithwaite & Braithwaite, 2001) says that we do not want people to be paralysed and helpless in dealing with shame they appropriately feel about contemplating terrible crimes. It is easy for a new US or Russian president to feel paralysed. An ethical president might think that during her four short years as president how can she

* John Braithwaite is an Emeritus Professor, Australian National University, Canberra, Australia. Contact author: John.Braithwaite@anu.edu.au.

unwind the Domsday Machine that a dozen presidents have so carefully put in place to protect her people? Indeed, it is almost impossible for a restorative president to do that. Yet there is the path to shame acknowledgement, repair and reintegration that Presidents Reagan and Gorbachev did take together. They acknowledged the shame that their generation, their societies, should feel for afflicting all future generations and all other societies with existential threats. They were big enough as leaders to effectively acknowledge that genocide and ecocide are at risk in nuclear competition, and especially at risk from accidental first use to pre-empt an attack that a state falsely believes another state has started. More than that, Reagan and Gorbachev took the path of reintegration, greatly reducing the ecocidal impacts that thousands of nuclear warheads would inflict, compared with the less totally ecocidal impacts of only hundreds of missiles probably reaching their targets. What difference would that make, we used to think? Now we know the difference it could make is the survival of the human species, perhaps survival of some civilisations in the southern hemisphere, and thousands of other species that eke out survival in regions least afflicted by the conflagration (Ellsberg, 2017).

Reagan and Gorbachev also cooperated to strengthen safeguards against accidental nuclear war. These safeguards have gravely eroded since thanks to accident risks associated with misinterpreting cyberwar threats (Beebe, 2019). They worked together to prevent other states from following their folly by strengthening the Nuclear Non-Proliferation regime, a regime now under threat. Serious debates about acquiring nuclear weapons are under way from Japan to Turkey, Australia, Iran, Saudi Arabia and beyond. Today, one might have hoped that the people of the United States and Russia would be ashamed of their leaders for expanding their genocidal/ecocidal nuclear capabilities. Instead, shamelessness seems rampant in both societies on the issue.

Shame acknowledgement and commitment to repair financial system harms was short-lived after the global financial crisis. The leaderships of the states most responsible for this crisis were keen to indulge a politics of denial. It was denial promoted by bankers who shared in criminal responsibility for the catastrophic losses of jobs and homes. The narrative of denial was that global imbalances between the USA and China that were hard for ordinary people to understand were responsible; an overheated property market that no one could prevent was responsible. This was fundamentally a false narrative, which was not without large grains of truth but which camouflaged the preventability of the crisis by good enforcement of good banking laws. Bankers, regulators and presidents did not acknowledge shame for this frenzy of financial crime and their responsibility for reforms to ensure it does not happen again. It will recur; there will be another cycle of denial; millions will lose their homes and jobs again because of weak reintegrative shaming and transformatively thin reparative reform.

Elsewhere I have argued that our grandchildren are gravely at risk from the propensity of even local nuclear wars (particularly India-Pakistan) to cause a global financial crisis and for financial crises to cause war (e.g. Braithwaite, 2020). In turn, ecological crises are intertwined in the increasing tendency for financial, security and environmental crises to cascade into each other. The richest one-

third of the most developed economies, who account for most of the wealthiest one per cent on the planet, have culpabilities that they are not currently ashamed of. Consider the shame acknowledgement appropriate for flying business class internationally. When I have done that from Australia, I account for twice as much carbon than when I am packed into economy class. Those extra emissions from the business class ticket are more than twice as much carbon as I inflict from a year of driving my car (Hatch, 2019). I can better acknowledge shame for how much housing space I occupy, for the baubles and consumer durables that expand to fill it, compared with the housing space of the planet's poorest 99 per cent. These are not matters that we rich people feel much constructive shame about that drives behaviour change. Yet conversations about why we should feel more shame, and what we should do to repair the harm, matter for the kind of world we leave to our grandchildren.

We can think of reintegrative shaming theory, therefore, as not just a useful theory of predatory crime but useful for reflecting on other forms of predation that dominate the poor, the planet, its people and its endangered non-human species. Not all predation is crime, but my normative argument about the shamefulness of crime has always been that something should not be a crime unless it is predatory; non-predatory illegalities should be regulated civilly. So if predation is what should trigger imperatives for shame acknowledgement, then all crime should trigger it, if crime is properly narrowed to predation.

With crimes that are less global than those that lead to mutually entangled ecological, financial and security crises, there are also domains where more shame is needed. If rape is not shameful, a society will have more rape; if driving a car or flying aircraft under the influence of alcohol is not shameful, many die in crashes; if corruption is not shameful, whole states become criminalised. Many civilisations have made significant progress in rendering rape, drunk driving and corruption more shameful, with huge benefits for the control of these forms of crime. My argument has been that social movement politics, for example feminism with the shamefulness of rape, more than the criminal justice system, has been most responsible for these gains.¹ Kathleen Daly's contribution to this special issue shows the various ways that, contrary to some popular stereotypes of punitive, stigmatising feminism, the movement has been responsive to Daly's question: 'How do we treat wrongs with the seriousness they deserve without relying on harsh, exclusionary forms of punishment?' Indeed, I want to read Daly's essay as a kind of war story of both my misplaced fears of punitive feminism, her and my belief and hope for reintegrative feminist justice, with that hope prevailing more than the fear. Feminism is an example of a learning social movement that has prioritised the good side of shame, confronting gendered crime while increasingly averting stigmatisation, not without missteps along the way, of course. Feminism has got progressively better at distinguishing this from oppressive shame.

Debates about when something should be shameful and when not; about when cybercrime, defences against cybercrime and cyberwarfare are right and

1 See this J. Braithwaite lecture from 2012 and its reflections on Kathleen Daly's work: <https://www.youtube.com/watch?v=tSvv-bSP5R4> (last accessed 19 February 2020).

wrong; when they contribute to the survival of humankind and other species and when they do the opposite, go to how hard it is to be a contributor to macrocriminology without complementing explanatory theory with normative theory. Walgrave (2008) is one example of a scholar who rises to this challenge.

2 Reintegrative shaming and restorative justice

The commentators rightly point out that the words restorative justice do not appear in *Crime, shame and reintegration*. Subsequently, Braithwaite (2002) argued that understanding the stigmatisation effects of much traditional criminal enforcement and the reintegrative shaming effects of restorative justice offers one theory of why restorative justice might be effective and just. But in that book, reintegrative shaming is just one of a number of theories proffered as to why restorative justice might work. Given that reintegrative shaming theory is just one of many relevant theories, asking how to design restorative justice in a reintegrative shaming way is not a great question. Reintegrative shaming theory is, moreover, not critical to restorative justice training. In the kind of 3-day or one-week training that a large proportion of restorative justice facilitators get for their initial induction, my inclination would be not to discuss reintegrative shaming at all. For a semester-long course where there is time to reflect on the importance of shame and pride as emotions in a rounded way, then I hope it would be discussed. In short form training, shame is no more critical to discuss than the reasons why restorative and responsive justice sharpens deterrent capabilities of criminal law compared with crude overuse of punishment that blunts deterrence (Braithwaite, 2018).

Stigmatisation is avoided in restorative circles by treating people with respect, dignity and with love from loved ones and by actively listening to them. It is averted by putting the problem in the centre of the circle rather than the person. Shame acknowledgement is accomplished by enabling the offender to see the full complexity of the harm that has been caused by the crime, especially to the victim, but not only to the victim – to the offender’s family as well, for example. Simple approaches to delivering these anti-stigmatisation features of good restorative practice can be well taught without using the words shame or stigma.

Another important concern about the practical application of these ideas to gendered realities of victimisation was feminist concerns about the ‘communitarianism’ word much used in *Crime, shame and reintegration*, an issue discussed in Daly (this issue). Most ‘communities’ are appropriated as bases of male power. This was one reason I used communitarianism less in my writing as the 1990s progressed and collective efficacy more in my contemporary writing. At a more practical level, Daly (this issue) asked me 27 years ago in an email: ‘[are] men doing more talking and making decisions or in other ways silencing women?’ I responded to that question by asking Lawrence Sherman and Heather Strang to put it on the list of questions they sought to answer in the Canberra randomised controlled trials of restorative conferencing. They found that in Canberra courtrooms, men spoke more than women; while in restorative conferences women

had by a modest margin more minutes of speaking time than men. This data and this issue are discussed at greater length in Braithwaite (2002).

3 Micro-empirical and macro-theoretical work

Heather Strang (this issue) is generous about my commitment to empirical work that tests and refines theoretical ideas. I do indeed think that if your ambition as a young criminologist is to make macro-theoretical contributions, it helps first to knuckle down to fine-grained, micro-empirical work. So if your interest is in restorative justice theory, it helps to spend hundreds of hours observing restorative justice, interviewing participants, or both, as Heather Strang did. The taste of most contemporary criminologists is neither for the micro nor the macro, but for middle-range work that is disconnected from micro-macro explanatory and normative currents. This is the predilection for pioneering some purportedly new intervention and research that shows that it makes the justice system better or worse in some way. There is nothing wrong with this, but complementary under-emphasis on the micro and macro that might make sense of middle-range interventions conduces to a criminology that fails to diagnose what are the design elements that make implementation of a fad fail in some places and succeed in others.

It is hard to think of a single person who has worked harder than Heather Strang at the micro-empirical work on restorative justice in different continents. Despite the foundational importance of this work, few of the major questions on which restorative practitioners have different views can be decided on the basis of evidence. Is it better to adjourn restorative conferences for private family time as the New Zealanders do before participants come back together to settle an agreement, or is it better to keep the momentum of a conference flowing and open to the presence of all participants? Is it better to train practitioners with a script of restorative questions or not? Is the facilitator training required three days, a month or a year? What policies work for weeding out facilitators who are unsuited to restorative facilitation? How should the preparation for a conference be done? How many participants in a restorative conference is too many? How many are not enough? While our research community is far from providing evidence-based answers to any of these questions and to many others, at least the empirical evidence we have improves the quality of the conversations that cannot be avoided about them. For example, as we set out on the RISE experiment in 1994, we feared that an upper limit on the number of participants might become visible, beyond which we would observe conferences spin out of control. We did not see that. So while we have no idea of optimum size, of what is too big a conference for meaningful, participatory, restorative justice to be possible, the RISE conversation leads us to expect that number is unlikely to be below 20.

Psychologists tend to have the disciplinary interest to push forward the frontiers of fine-grained empirical work on the effects of shame and guilt on compliance with laws and other norms. Recent meta-analyses suggest that they have been making progress. Braithwaite (2020) argues that the meta-analyses and sys-

tematic reviews (e.g. Spruit, Schalkwijk, van Vugt & Stams, 2016) are now consistent with reintegrative shaming and shame management theory insights around the core idea that shame is contingently damaging and contingently helpful to people and to crime prevention. While the psychologists dominate the shame literatures, many of the most distinguished living criminologists have contributed to it beyond Heather Strang and Lawrence Sherman, including those with a psychological orientation, such as David Farrington (Ttofi & Farrington, 2008), and those with a sociological bent, such as the Piqueros (Rebellion, Piquero, Piquero & Tibbetts, 2010). It is also a literature with interdisciplinary teams, such as the experimental support for reintegrative shaming theory in the work of Coricelli, Rusconi and Villeva (2014), a team distinguished in behavioural economics and neuroscience. The shame and remorse literature continues to engage the most distinguished of philosophers as well, as it has from Plato to Bernard Williams, Martha Nussbaum, Nicola Lacey, Victoria McGeer and Philip Pettit. And, of course, it continues to engage legal scholars, especially with 'regulatory shaming' (Yadin, 2019), for example of environmental crimes.

The fact that there remain many fertile niches for young scholars to do fine-grained empirical work in is evident in the tables in Heather Strang's contribution to this special issue. Indeed, the entire literature is strewn with such niche opportunities for future researchers. Consider, for example, the result in Strang's Table 2 that there was significantly more 'moral lecturing' in RISE conferences than in Canberra court cases. All restorative practitioners of all theoretical persuasions would say these data reflect a bad restorative practice. There is just no excuse for there being more moral lecturing in restorative conferences than in court cases. Critics of police doing restorative justice might jump in and say that this result illustrates why it is bad practice to have police facilitating restorative conferences. Another reaction is that there is no reason why training of police facilitators cannot secure commitments that assure moral lecturing does not persist beyond the momentary in conferences, when combined with good procedures for selecting a programme's conferencing facilitators. In 1994, when most of these Canberra police were trained, we were just learning how to do training and how to select facilitators. A prior question to all this argumentation about the trainability of police facilitators is to first ask some simple micro questions of the RISE data. Do the quantitative outcomes suggest that conference outcomes were worse when moral lecturing occurred? In what ways did this make a difference, and in what ways did it not? Do observational and interview data have insights on preventability and trainability to avert moral lecturing? This is just one example of countless niche opportunities for fine-grained empirical work that beckon.

In Heather Strang's Table 3 we see a different kind of opportunity. The first two rows of the table show 60 per cent of restorative conference participants saying they felt their offence was wrong and feeling bad that the offence could have hurt others, versus 40 per cent for cases randomly assigned to court. Neither difference is statistically significant. So there is a statistical power problem; the sample size is insufficient for percentage differences of that magnitude to be significant. Then consider the only result in this table that is counter-theoretical, the last item 'Those close to me have given more support'. A 2.4 per cent higher num-

ber of respondents said this in court than in conference cases! The psychometrician would look at this table and suspect that this last item is measuring something different from all the other items. It does not take much reflection to consider why our Canberra team might have written measurement error into this item. The question might mean that as a result of the restorative conference those close to offenders failed to rally around them to give them more support. Or it might mean that the police officer was perceived by offenders to have lent more support than their family, or their friends more support than their family or their grandparents more support than their parents.

The trouble with single items is that they always have unknowable degrees of this kind of error variance in measuring the construct they are intended to measure. A way to deal with this is to factor analyse or scale items such as those in Table 3, to see whether dropping this last item from the scale improves Cronbach's alpha coefficient in a multi-item reintegrative shaming scale more driven by the shared variance that actually does measure the concept of reintegrative shaming, a scale less driven by the error variance in each single item. The scaling of the items in Tables 1 and 3 might well overcome the statistical power limitations in the data and show significant effects of both reintegrative shaming scales. Multi-item scales would also fail to show significant effects of both the stigmatic shaming scales that could be derived from Tables 2 and 4. As Strang (this issue) points out from the RISE data, and as Forsyth and Braithwaite (this issue) discuss, reintegrative shaming and stigmatisation factors are usually not found to be opposite poles of the same dimension. The original theory may mostly be wrong in this respect. In the same sentence a family member can say something stigmatising and something reintegrative to the offender. Yet here in Strang's Tables 1-4, one concept seems to be delivering a pro-theoretical result and the other a counter-theoretical result. A question that suggests itself in pursuing these empirical puzzles more deeply is to ask whether justice encounters (be they in courtrooms or in restorative conferences) that have a high ratio of reintegrative shaming to stigmatisation scores have better outcomes on a great variety of dimensions. This is only one possible innovative alternative line of inquiry into such data sets. Others are discussed in Ahmed et al. (2001). We can encourage future generations of researchers to pursue that wide variety of opportunities for micro understanding hidden inside many extant data sets.

4 Shame and domination of women

Shadd Maruna and Bruna Pali (this issue) are justified, according to the theory of freedom as non-domination, to emphasise the insights of feminist philosophers who have argued that 'the subordination of emotions subordinates simultaneously the feminine and the body'. The feminist project is not to suppress emotion but to rewrite scripts about emotions, as is deftly explicated in the Maruna and Pali article. This is particularly imperative with shame as an emotion. I do hope that Maruna and Pali are right that *Shame management through reintegration*

(Ahmed et al., 2001) helps us to distinguish good from bad contributions that have occurred under the umbrella of the #MeToo movement.

Whether an act of domination is perpetrated by a man or a woman, reintegration that lays bare, and reforms, institutionalised cover-up of domination, reintegration that enables shame acknowledgement in respect of that act of domination, that includes efforts to repair the harm of the domination, is in the interests of the perpetrator and the survivor of the domination. At least this is so according to the theory of reintegrative shaming, revised as the theory of shame acknowledgement. In contrast, stigmatising shaming, according to the theory, is bad for people, whether they are men or women. Stigmatising conduct when that conduct is non-dominating is especially harmful. Societies that can manage a cultural transformation to increase the ratio of reintegrative to stigmatising shaming will therefore leave people better off, whether they are men or women, according to the theory. If Maruna and Pali are right that women are more vulnerable to stigmatisation than men because they are more dominated, then women will benefit more than men from increasing the ratio of reintegrative to stigmatising shaming. More reintegrative shaming, particularly against the most brutal tactics of male domination, such as rape, benefit women. Less stigmatising shaming benefits women because, if Maruna and Pali are right, women suffer from it more.

Of course, it might not be true that women suffer stigmatising shaming more than men. It is hard to have any evidence-based certainty about this because men and women suffer stigma about different things and react in different ways. Women attempt suicide more than men, for example, especially indigenous women in white settler societies; yet men succeed at suicide more than women in many Western societies, especially indigenous men in white settler societies (e.g. Department of Health Australia, 2013: Figures 2 and 3). Even if in some cultures it is not true that women suffer stigmatisation more acutely than men, a world with less stigmatisation will still benefit both women and men, indigenous and non-indigenous people. At least that will be true to the extent that the theory of reintegrative shaming is right.

5 Shaming in restorative justice

Forsyth and Braithwaite (this issue) emphasise that replacing shame for a bad deed with pride for being a good person is a sign of reintegration. Yet pride has a negative and a positive face, just as does shame. Narcissistic pride (pride as hubris) conduces to domination, for example to bullying in schools and workplaces (Ahmed et al., 2001). This is vaunting pride, where people think of themselves as better than others, put themselves above the other. Humble pride, in contrast, prevents domination and crime in Eliza Ahmed's programme of research in Australia and Bangladesh. Humble pride is about taking pride in things accomplished together with others. The virtue of humble pride is that it strengthens social bonds and works together with shame acknowledgement to strengthen shaken ethical identities. The combination of shame acknowledgement and humble pride

in who we are, in how we act together to solve problems, can allow even genocidal offenders to re-narrate themselves as good people who have done bad deeds.

Forsyth and Braithwaite review some of Eliza Ahmed and Nathan Harris's studies on the positive and preventive effects of shame acknowledgement and humble pride that strengthens ethical identities; and the negative effects of stigma, shame displacement onto others and narcissistic pride. Nathan Harris's work, in particular, tempers some of the empirically overblown and conceptually simplistic distinctions between shame (bad) and guilt (good) in some psychological literatures. In another paper I have argued that, like shame and pride, guilt has a negative and a positive side. Guilt's positive side arises when it is 'reintegrative guilt' that acknowledges wrongdoing and seeks to repair harm (Braithwaite, 2020). The latest empirical evidence is increasingly supportive of the Nathan Harris perspective that reintegrative shame-guilt can heal and prevent, while stigmatising shame-guilt hurts and worsens problems.

6 Forgiveness

Forsyth and Braithwaite (this issue) discuss the central empirical contributions of Eliza Ahmed's studies on the preventive and reintegrative benefits of forgiveness. Empirically, it now appears that they might be more profound than those of reintegrative shaming.

Jacques Claessen (this issue) argues that forgiveness and loving kindness may not be explicit objectives of restorative justice but that restorative justice should at least provide 'room' for them to be emergent and, better still, provide a suitable context for their development. I admire Claessen's nuance in traversing the options for allowing for forgiveness, without prescribing it or expecting it, building on prior work such as that of Bas Van Stokkom.

Claessen and Martha Nussbaum conceive respect as too emotionally thin an ambition for relational healing. Relational healing in restorative justice may require stronger emotions more akin to loving kindness and compassion. Criminal justice officials cannot deliver that, but the love of loved mothers and our dearest friends can, as Nathan Harris's research shows (Ahmed et al., 2001). Most of this emotional work with those we most love is backstage, not inside the restorative conference, a reflection that must complement the powerful insights of Meredith Rossner (2013) on emotional dynamics inside conferences.

For all that, Claessen has identified a weakness or a paradox in my openness to view compassion, but not forgiveness, as a maximising standard for restorative justice. Perhaps my response to his question should be to favour a longer list of the emergent values of restorative justice that Claessen discusses to include compassion, and a shorter list of maximising values. At the same time, it might be argued that in combination, the emergent values are more important than the maximising values. The evidence might continue to suggest that we are unlikely to maximise forgiveness by attempting to maximise or demand it, yet when it does emerge it is more potent than values we do prioritise to maximise. Hence,

emergent values, and emergence that occurs backstage with loved ones, should attract more attention from evaluation researchers.

Claessen finds Wittgensteinian family resemblances in the ways ancient Greek, Roman, Judeo-Christian, Islamic, Hindu, Jain, Buddhist and Confucian ethics think, respectively, about clemency, mercy, justice with love, forgiveness, non-violence (as in Hindu, Buddhist and Jain's *ahimsa*), loving kindness (as in Buddhist and Vedic, *maitri*), compassion and self-compassion (as in Buddhism and Jainism's, *karuna*), and seeking to enlarge and protect others through loving kindness (as in Confucian *ren*). Later, Claessen refers to the Persian Zoroastrian philosophy of Zarathustra who thus spoke that 'law must be governed by love'. Some would criticise such a long list of family resemblances as tedious, whereas I might say it is not long enough in learning only from family resemblances among Northern hemisphere philosophies.

I concur with Claessen that his plurality of conceptions of emotionally meaningful justice can be distinguished but not separated. Justice is immanently holistic. Restorative justice is a modality of justice that can provide relational glue for that holism. Yet holism does not deny the value of distinguishing different facets of restorative, relational, procedural and distributive justice. In some ways, the art of justice is one of distinguishing, while also enabling a suitable context for the holism of justice to emerge. Without grasping the distinctions, we cannot grapple with a question like that asked by Daly (this issue): 'How do we "do justice" in an unequal society?' The holism arises, as Claessen argues, from the universal fact that humans are relational animals who face dangers to their survival and seek to put them right by the way they frame their storytelling about harms. This would be my way of answering Claessen's third question.

Just as scholars can overanalyse distinctions between guilt and shame that are not helpful to justice practitioners, so we can overanalyse distinctions between different facets of justice and different types of emotions in justice. This perspective always made it possible for me to follow the sage advice of my children, when I trialled lectures on them, to 'cut out the hippy stuff about love, dad'. One can do that while still suspecting that restorative justice is at its best when it is justice administered with love. The rose of restorative justice can smell as sweet to those who by other names love, restore and act justly.

It is also important to respect alternative names in the Global South for what Westerners might call restorative justice because they do fit different Western definitions of restorative justice. This is part of a healthy North-South hybridity (Forsyth & Braithwaite, this issue).

7 Post-conflict restorative justice

Kieran McEvoy and Allely Albert (this issue) are overly generous about my tiny contributions in the years after the Good Friday (Belfast) Agreement. The reality was that all the restorative justice work that mattered was by Northern Ireland natives like Kieran, with help from a few important outsiders like Harry Mika. One memory of the post-conflict conferences they discussed arose when I chatted

with a group of ex-combatants from both Northern Ireland sides. They said *Crime, shame and reintegration* was one of the few books they were allowed to read in prison. We laughed at my shame that the book was so politically tame as to be acceptable for political prisoners.

McEvoy and Albert are right that the 'battered but intact' Northern Ireland peace process is testimony to the useful role that restorative principles and practices can play in peacemaking, reconciliation and reintegration. And it is testimony to how restorative encounters between enemy combatants and political prisoners inside a prison can germinate peacebuilding outside the walls. I visited Northern Ireland five times in twenty years. Each visit affirmed my inclination to think that, for all the frustrations and disappointments, the quality of restorative practices and the self-critical restorative conversation continues to be richer in Northern Ireland than elsewhere. This may be connected to the more healthily politicised contest between state and civil society models of restorative justice that is a fallout from armed conflict, as discussed by McEvoy and Albert. War puts more pressure on the conversation about what are the principles that should inform the justice of the peace; it drives a restorative justice conversation that is less absorbed in restorative technique and more profoundly engaged with walking the talk of restorative values.

Societies that have not been blessed by the birth of a restorative justice movement in the aftermath of war do well to look across and learn from those that have. This is more than a point about a nod North-West from Europe to Northern Ireland. It is about the West scanning to the Global South. Partly this is the methodological pluralism discussed in Sparks (this issue) and Forsyth and Braithwaite (this issue) and the creative search for workable local hybridities in institutional design. It is, as Forsyth and Braithwaite put it, understanding restorative justice as a vine with deep roots that bears distinctive fruits in different places. It is also about the view that societies that have most experience of war often have profound experience of how to make peace. Cultures that institutionalise tribal warfare, for example, are also adept at institutionalising restorative peacemaking that saves lives on a large scale (Wiessner & Papu, 2012).

As Sparks (this issue) expresses it, and embodies in his own oeuvre, this shift is about stepping 'away from a central focus on criminology' and towards a more pluralist social science of conflict. Sparks is evocative and right that the 'definitions and sometimes slightly tortured formal propositions' of *Crime, shame and reintegration* are at times in tension with the work's pluralist ideals. The formal propositions failed to attract legions of positivist criminologists to the project of 'testing the propositions', perhaps because they were puzzling for positivists in their juxtaposition to my methodological pluralism. I am pleased that the pluralism did attract some criminologists of the generation and calibre of the young Richard Sparks, who found theoretical curiosity in work that 'smelled a lot like politics'. There probably were more like Sparks who took a snort of this than quantitative scholars who coded data on the propositions. My hopes are less about propositions in the book proving correct than in contributing to conversations about different ways of doing social science that provoke new generations to be theoretically bold in completely new ways, and in ways that contradict some

of my conclusions. I do not think that taking this path is as hard as Sparks suggests, so long as we take humble pride in our work, rather than narcissistic pride. It is easy enough so long as we see our own contribution as partial, as a journey of 'doing with' a community of scholars and reformers.

8 The republican normative framework

The first of Claessen's (this issue) three questions was 'What, in your opinion, is the most important general and universal value behind restorative justice?' Freedom is my answer. The job of the criminal law is to make humans freer from domination by others, and other species freer from the ecological dominations of the Anthropocene that threaten their extinction. This is the adapted republican conception of freedom as non-domination first developed in my writing under the guiding hand of Philip Pettit (Braithwaite & Pettit, 1990) and subsequently in more refined ways by Pettit (1997) in two further decades of profound work on republicanism. Normatively, I defend restorative practices like relational justice because a relational society has better prospects of being free, and relational justice is a way of living with better prospects of preventing dominating harms.

The practical application of republican political theory to restorative justice can be illustrated with the concerns raised by Wemmers (this issue) about the marginalisation of victims (also by Maruna & Pali, this issue). Wemmers says 'early studies revealed a clear lack of attention for the victim'. To the extent this is true, restorative justice fails the test of maximising freedom as non-domination. It may be fair for Wemmers to say that 'a reintegrative circle "uses" the victim in order to achieve a specific goal with respect to the offender', actually to achieve the many specific goals defined by restorative values. It would also be fair to say that restorative justice uses offenders and community members to achieve restorative values for victims. The aim is to advance freedom as non-domination for all stakeholders in an injustice. Of course, stakeholders are asked to forge agreement where there might be trade-offs among the needs of different stakeholders. Normatively, it is wrong for restorative justice to be either offender-centred or victim-centred. Rather, restorative justice requires 'equal concern' for the justice claims of all stakeholders in the injustice, recognising that victim claims are qualitatively different from offender claims. Crafting a resolution that does well by both kinds of incommensurable claims is a challenge for deliberative creativity in the restorative circle. Thus, there is a genuine difference and a normative choice between Wemmers' reparative justice, which is victim-centred, and restorative justice in this regard. Moving from normative to explanatory theories of effectiveness, reintegrative shaming theory also argues for putting the problem, the harms, the needs in the centre of the circle. Do not put either the victim or the offender in the centre of the circle. As Wemmers contends, however, both her reparative approach and the restorative approach conceive healing, after war or crime, as difficult without recognition and acknowledgement of victimisation.

Clifford Shearing (this issue) sees freedom as non-domination to be unlikely without active citizenship, contestatory citizenship, as Pettit (1997) puts it. So,

says Shearing, tracking Pettit, one of the ways we must evaluate restorative justice is in terms of how effective it is in delivering contestation. Shearing expresses the ambition of active citizenship in contesting practical ideas about: ‘How do we prevent war? How do we prevent crime? How do we prevent domination by big businesses, governments and other actors?’

Shearing in his international work with Jennifer Wood and others has enlivened the idea that the denizenship of a particular local place, or of a particular node of governance (such as a restorative circle), can govern in a more deliberative and participatory fashion than the governance of a central state. Nodal governance can also be more effective because it is closer to local knowledge and is designed to connect up to local knowledges. This is an advantage nodal governance has over the Hayekian solution to the poverty of local understanding in central state planning – neoliberal markets that connect myopically to one knowledge, knowledge of price.² While active citizenship of a state might be mainly about contestation; active denizenship of one of the South African peace committees Shearing studied, of a workplace conference, a school bullying conference or a family group conference about child protection, can be simultaneously contestatory democracy and participatory democracy. Contestatory state governance combined with deliberative and participatory nodal governance may be the republican ideal. Nodes inside state governance, such as cabinet rooms and party rooms, can also be deliberative in their denizenship of those rooms. Shearing helps us to see how we need to see variegation in how democracy can enrich freedom across governance landscapes that are more complex than at first glance.

Phillip Pettit’s contribution to this volume goes to perhaps the trickiest challenge for republican theory. If contestatory democracy is a key republican good, can polities have too much of a good thing, too much mix in the mixed Constitution? Pettit answers yes. Badly designed separations of powers can deliver indecisive government. Unfortunately, I agree so strongly with what Pettit has to say here that it caused one of my more embarrassing moments. It was around 1995, and I had spent a day in Canberra with US Supreme Court Justice Antonin Scalia. Scalia was getting on my nerves, endlessly hectoring others about their failures to appreciate the genius of the US Constitution. When he fired another salvo at a dinner hosted by the US Ambassador, I behaved non-restoratively. Scalia was the lead conservative on the Supreme Court; I unkindly got under his skin by alleging that the US Constitutional architecture was bad at enabling fiscal discipline because of recurrent gridlock driven by the president and the Congress each blaming the other for failures to discipline the budget. A minor diplomatic incident ensued, with the Ambassador writing to everyone at the dinner, correcting certain things I said, and, surprisingly, correcting even more things that Justice Scalia said, about the political reasons for gridlock. The argument was about Pet-

2 This is not to say that we must take sides between Hayek and Shearing. We can have a world where markets do better at, for example, reflecting the full costs of carbon, and a world that has more restorative nodes of climate governance that confront specific acts of pollution in locally attuned ways at local restorative circle nodes of environmental governance.

tit's key point of ensuring that the separation of powers is not so badly crafted that gridlock paralyses problem-solving government.

There is complexity in this debate, however. Both Scalia and I were too opinionated about it in 1995. Complexity arises from the reality that a written Constitution does not cut it without an unwritten Constitution of norms and conventions. Restorative justice advocates mostly are not engaged with rewriting Constitutions and separations of powers. Yet restorative advocates do want a legal architecture and informal norms of case processing that enable the kind of deliberative denizenship discussed by Shearing (this issue). This means governance norms that accept that it is not a corruption of the rule of law for police to divert criminal cases rather than proceed to arrest, and for prosecutors and judges to divert cases to restorative conferences. What restorative justice advocates want is tens of thousands of extra micro-nodes of governance called restorative justice circles. When this reform is well designed it can reduce gridlock and backlog in the courts.

These nodes of deliberative democracy can redeem distrust in democracy for the most disenfranchised (Dzur, 2012). For example, for Indigenous Australians, white social worker decisions to remove children from their families is one of the most devastating encroachments of the colonial state on the authority of Indigenous elders. Overreach by the state can be clawed back by Aboriginal yarning circles convened by the elders that make decisions on what needs to be done in child protection cases. When separation of powers' gridlocks are broken in the United States, it tends to happen by Republicans and Democrats circling around a table into a cross-party node of governance.

The design issue is not so much the quantity of modules of separated governance but whether their design contests arbitrary power in ways that increase freedom as non-domination. We also know that tying the hands of politicians against meddling in the decisions of judges on whether to convict offenders, generals in how to deploy defences at times of war and central banks on when to lift and lower interest rates can actually improve decisiveness and effectiveness in criminal justice, war fighting and combating of inflation and unemployment.

9 Conclusions, beginnings

No more than Pettit do I have answers on what is the optimum quantum of contestation, the right degree and kinds of separations of powers. These are big and consequential questions of political philosophy on which *Crime, shame and reintegration* has nothing to say, even as it so clearly opens up their importance as normative questions. Pettit's suite of republicanism books have cast so much light on them. His contribution to this special issue has added an Antipodean twist. For all that, no recipe is in sight for how much contestation, how separated the powers should be, to optimise domination reduction. The best we can do is enrich that conversation and localise it to our political context with ever more nuance. For such complex questions, we can hope to avoid the worst governance mistakes by taking our conversations seriously. We should never take one book very seriously,

however. It contributes slightly to the conversation at one point in a conversation's trajectory.

Thank you, dear contributors, for the rich ways you have engaged and for contributing to this journal that so embodies our community of conversation. We can safely enough allow *Crime, shame and reintegration* to gather dust on a shelf. At the same time, we can enjoy humble pride together in making the contemporary conversation better through *The International Journal of Restorative Justice*.

References

- Ahmed, E., Harris, N., Braithwaite, J. & Braithwaite, V. (2001). *Shame management through reintegration*. Melbourne: Cambridge University Press.
- Australian Department of Health (2013). *Aboriginal and Torres Strait Islander suicide: origins, trends and incidence*. Canberra: Department of Health. Retrieved from <https://www1.health.gov.au/internet/publications/publishing.nsf/Content/mental-natsisps-strat-toc~mental-natsisps-strat-1~mental-natsisps-strat-1-ab> (last accessed 26 December 2019).
- Beebe, G.S. (2019). *The Russia trap: how our shadow war with Russia could spiral into nuclear catastrophe*. New York: Thomas Dunne.
- Braithwaite, J. (2002). *Restorative justice and responsive regulation*. New York: Oxford University Press.
- Braithwaite, J. (2018). Minimally sufficient deterrence. *Crime and Justice*, 47, 69-118. doi: 10.1086/696043.
- Braithwaite, J. (forthcoming 2020). Restorative justice and reintegrative shaming. In C. Chouhy, J.C. Cochran & C.L. Jonson (eds.), *Criminal justice theory: explanation and effects* (vol. 26). New York: Routledge.
- Braithwaite, J. & Pettit, P. (1990). *Not just deserts: a republican theory of criminal justice*. Oxford: Oxford University Press.
- Coricelli, G., Rusconi, E. & Villeval, M. C. (2014). Tax evasion and emotions: an empirical test of re-integrative shaming theory. *Journal of Economic Psychology*, 40, 49-61. doi: 10.1016/j.joep.2012.12.002.
- Dzur, A.W. (2012). Participatory democracy and criminal justice. *Criminal Law and Philosophy*, 6(2), 115-129. doi: 10.1007/s11572-012-9149-x.
- Ellsberg, D. (2017). *The doomsday machine*. New York: Bloomsbury.
- Hatch, P. (28 November 2019). These people say they'll never fly again. So just how bad is flying for the environment? *Sydney Morning Herald*.
- Pettit, P. (1997) *Republicanism: a theory of freedom and government*. Oxford: Oxford University Press.
- Rebellion, C., Piquero, N., Piquero, A. & Tibbetts, S. (2010). Anticipated shaming and criminal offending. *Journal of Criminal Justice*, 38, 988-997. doi:10.1016/j.jcrimjus.2010.06.016.
- Rossner, M. (2013). *Just emotions: rituals of restorative justice*. Oxford: Oxford University Press.
- Spruit, A., Schalkwijk, F., van Vugt, E. & Stams, G. (2016). The relations between self-conscious emotions and delinquency: a meta analysis. *Aggression and Violent Behavior*, 28, 12-20. doi: 10.1016/j.avb.2016.03.009.

- Ttofi, M.M. & Farrington, D.P. (2008). Reintegrative shaming theory, moral emotions and bullying. *Aggressive Behavior: Official Journal of the International Society for Research on Aggression*, 34(4), 352-368. doi: 10.1002/ab.20257.
- Walgrave, L. (2008). *Restorative justice, self-interest, responsible citizenship*. Cullompton: Willan Publishing.
- Wiessner, P. & Papu, N. (2012). Toward peace: foreign arms and indigenous institutions in a Papua New Guinea society. *Science*, 337(6102), 1651-1654. doi: 10.1126/science.1221685.
- Yadin, S. (2019). Regulatory shaming. *Environmental Law*, 49(2), 407-451. Retrieved from www.jstor.org/stable/26794289 (last accessed 26 December 2019).