

APPLYING SOME LESSONS FROM JAPANESE AND MAORI CULTURE TO THE
REINTEGRATIVE SHAMING OF CRIMINAL OFFENDERS

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It is a great honour to have been invited to speak to your Congress today and I thank you for this honour. It is a special pleasure because my criminological work has been greatly influenced by Japan. This has not been a direct influence as I do not speak Japanese and this is only my third visit to your country. My understanding of your culture is unsophisticated, limited to what I have been able to read in English language books and from talking to English speakers. Such limitations, however, should not prevent us from doing the least we can to develop criminological theories in ways that avoid not cultural myopia. Japan's considerable accomplishments in crime control put upon Western criminologists a special responsibility to seek to learn from Japanese experience.

In *Crime, Shame and Reintegration* I sought to do that. There are doubtless many reasons why Japan is a less violent society than the United States. One, I suspect, is that Japan has managed to avoid long-term unemployment for large proportions of the population, contrary to what we see in the U.S. and now Europe. As a result, Japan has not had to suffer the consequences of having a massive urban underclass, living in conditions of utter despair and hopelessness. My 1979 book *Inequality, Crime and Public Policy*, focused on the relationship of inequality in wealth and power to crime, and included some secondary analysis of Japanese data to illuminate the relationship.

Of course, the variable I focused upon in my 1989 book was shaming. My interpretation here was that Japan has less street crime than the United States or Australia because shaming against this kind of crime is more powerful and effective in Japan. It is more effective because Japanese shaming tends to be more reintegrative whereas American shaming tends to be more stigmatizing. A key empirical claim of the book is that it is the societies with strong capacities to shame reintegratively that will experience lower crime rates. So what is the difference between reintegrative shaming and stigmatization?

The distinguishing characteristics of the two types of shaming are as follows:

Reintegrative shaming

1. Disapproval while sustaining a relationship of respect

2. Ceremonies to certify deviance terminated by ceremonies to decertify deviance
3. Disapproves evil of deed without labelling person as evil.
4. Deviance not allowed to become a master status trait.

Stigmatization

1. Disrespectful shaming, humiliation.
2. Ceremonies to certify deviance NOT terminated by ceremonies to decertify deviance.
3. Evil person, not just evil deed.
4. Deviance allowed to become a master status trait.

I do not assert that stigmatization is uncommon in Japan, nor that reintegrative shaming is uncommon in the United States. In fact, my interpretation of the U.S. literature on child-rearing practices that prevent delinquency is that effective American families are those that disapprove of violent or exploitative conduct in loving ways; they are American families that shame reintegratively.

Later, I will mention how I have learnt a lot from New Zealand Maori shaming practices.

While Maori philosophy about shaming wrongdoing reintegratively impresses me, there is no doubt that stigmatic, outcasting modalities of shaming are common in Maori culture. Shaming and shame in my view are cultural universals and in all cultures that I know, I can see quite frequent resort to both reintegrative and disintegrative shaming. My claim is that cultures vary enormously in the balance between the two, however. And I am an advocate of social change to steer the balance of shaming practices away from stigmatization and toward reintegration. There is a great deal that all criminal justice systems, including the Japanese one, can do to become less stigmatizing. I will have more to say on how to do that a little later.

The theory in *Crime, Shame and Reintegration* is really a theory of differential shaming. Stigmatization is one factor that encourages the formation of criminal subcultures. Within subcultures, shaming may be deployed against participants who advocate *compliance* with the law.

The paradox here is that, in societies like Japan, where shaming has a lot of power, shaming to secure compliance with the norms of criminal subcultures also have more power. In *Crime, Shame and Reintegration*, I speculated that organised crime may be rather better organized in Japan for this reason and that subcultures of factional corruption in the Diet and corporate crime may also be difficult to counter because of the effective power of informal social control within those subcultures.

The implication of this complication at the level of implementing the theory is that one should look for ways of increasing capacities for reintegrative shaming within specific institutional contexts that can reduce crime rather than increase it. Community accountability conferences and social movement politics to mobilize disapproval against crimes of the powerful are the contexts I will discuss in this paper.

I suspect this focus on praxis also opens up the best prospects for testing the empirical claims of the theory. As I argued in *Crime, Shame and Reintegration*, testing the theory at the cross-national level of analysis is rather difficult to do with any credibility. Even if the claims I made earlier about the differences between the US and Japan could be shown to be absolutely correct in every way, it would still amount to no more than support for the theory based on an n of 2.

The most important things we can do to control crime do not involve state criminal justice policies. Many of them involve social movements mobilizing shame to bring crime under control? The first point here is that this is not primarily through confronting particular criminals with shame which acts as a specific deterrent, though this is not unimportant. It is deeper cultural changes that are more important. What is critical is shaming as a cultural process that constitutes self-sanctioning consciences, that constitutes the unthinkable of a crime like homicide for most people most of the time.

Now I want to make some general points about where our greatest crime problems lie in Australia and why social movements are especially well placed to have an impact on these crimes. For most of the different ways that scholars might define harm to persons, I want to assert without justification that three types of crime are responsible for the greatest harm to persons in Australian society. These are domestic violence occupational health and safety and other corporate crimes of

violence and drink driving. Again I will not delay to argue this, but it is also easy to show that the property offenders that cause the overwhelming majority of criminal losses are white collar criminals.

There is a common structural reason why these particular offence types are Australia's greatest crime problems. These are offence types that have all enjoyed an historical immunity from public disapproval of their crimes, and they have enjoyed this immunity because of certain structural realities of power. The worst of Australia's white-collar criminals have not only been unusually respectable men, they are men who have been hailed as our greatest entrepreneurial heroes. Violent men have enjoyed historical immunity even from the disapproval of the police when they engaged in acts of domestic assault. This has been because of considerable sharing of common values between the offenders and the police about prerogatives to engage in violence in the personal kingdom of one's home.

Australian patriarchy takes the culturally specific form of a male mateship culture in which gender-segregated drinking is important. Pub and club drinking followed by driving is something that most Australian males have done many times, something which they have regarded as important to sustaining patterns of mateship and something they have found difficult to regard as shameful. As a consequence, informal disapproval of drink driving by mates and formal disapproval by the courts has been historically muted.

These then are the bases for my claim that the particular crime problems that do most harm in Australia have become our worst crime problems precisely because of the muted or ambivalent disapproval they elicit, where this limited disapproval arose because of patterns of power.

This is also true of white-collar crime and is true generally: when a form of crime becomes more shameful, the community discovers more instances of that form of crime. So if bank robbery is shameful and insider trading is not, the community will have the impression that bank robbery is the more common and more serious of these two problems. This when we know the fact of the matter to be that "the best way to rob a bank is to own it".

In another paper (Braithwaite, in press), it is argued that since the mid-1970s all of these forms of crime have been targeted by social movements concerned to engender community disapproval about them. With white-collar crime, the consumer movement, the environmental movement, the trade union movement and even criminologists have all played significant roles in constituting the shameful of white collar crime. Road safety and health professionals have been the key players, with grassroots community groups playing a lesser role, in a new social movement against drink driving that has rendered this offence shameful for the first time in our culture. With domestic violence, the women's movement — refuge workers, feminist criminologists and police officers and other femocrats working within the state—have had an effect. Media current affairs programs now carry a regular fare of stories exposing the evils of domestic violence. Police education curricula, responding to the critiques of feminist criminologists, have begun to push the line that domestic violence is a crime and a priority concern for Australian police services. While private condoning of domestic violence continues, the public voices that are heard today are increasingly the voices of condemnation. And this is progress.

All the social movements I have described became strong only from the mid-1970s onwards. What an irony this is for criminology when the mid-1970s was precisely the historical moment for the disillusionment of the "nothing works" era to set in. Perhaps nothing does work particularly well if our vision is limited to statist responses to the crime problem. Republican criminology opens our eyes to the limited relevance of statist criminology—the sort the state gives money to—to practical ongoing struggles to reduce the crime rate.

If I am right, it is precisely with respect to the crime problems that are the most severe we confront that social movements have been making the greatest progress during the past 15 years. I do not suggest that the progress has been decisive on overwhelming—patriarchy is not about to breathe its last gasp, the environment continues to collapse and drink driving remains one of Australia's most terrible problems. Moreover, I would argue that actors within all three social movements have made critical errors in failing to grasp the difference between the negative effects of stigmatization compared with the positive effects of reintegrative shaming of offenders. I refer to

feminists who stigmatize men, to white collar crime scholars who stigmatize pharmaceutical executives as structurally and irretrievably evil drug pushers.

But what should we do with criminal offenders once community shaming has failed?

An important recent reform in our part of the world has been the New Zealand *Children, Young Persons and their Families Act 1989*. This act is about citizenship responsibilities as fundamental to the strategy for dealing with juvenile crime, as well as citizenship rights. What I love about this republican statute is its history. Its political motivation comes not from the Roman or Florentine or French or American republics, but from the great Maori republics. It was a reform from below, not a reform from the North. Reform had its roots in the frustration of Maori families with the way the Western state disempowered them through the criminal justice system. In the report prepared by Maori leaders that was the first step to the radical transformation of the New Zealand juvenile justice system, the Maori critique of Western criminal justice was forceful: "Imprisonment typified the Western response - the equation of individuals with animals distanced from their communities but later to be inflicted back on them" (Ministerial Advisory Committee, 1986).

The spirit of the New Zealand juvenile justice reforms is to get offenders and their communities, particularly their families, to take responsibility for offending. Crime victims have their rights as citizens taken more seriously. But they too are asked to shoulder the citizenship responsibility of participating in a constructive way in a deliberative process oriented to helping the offender to become a law-abiding, rights-respecting citizen. Under this model, both the offender and the victim are imputed the status of responsible citizen in a community, whereas under a liberal model their status is as individual subjects of state justice; the status of the victim is simply that of evidentiary cannon fodder, of witness or claimant, not of citizens with participation rights and obligations.

So how is this supposed to work in practice? The part of the New Zealand reforms that I find most exciting in this respect is the family group conference. Instead of dealing with an offender before a juvenile court, a youth justice coordinator convenes a conference to which are invited the offender, the offender's family (extending often to aunts, grandparents, cousins), other citizens who

are key supports in the offender's life (perhaps this might be a football coach he particularly respects), the victim, victim supporters (often family members), the police and in some contexts a youth justice advocate. Stephen Mugford and I (Braithwaite and Mugford, 1994) have conceived of these conferences as citizenship ceremonies of reintegrative shaming. The theory of the reform, not always translated into practice, is that the discussion of the harm and distress caused to both the victim and to the offender's family will communicate shame to the offender for what she has done. Secondly, the intention of assembling around the offender the people who care about and respect her most is to foster reintegration, or healing as they prefer to call it, healing of social relationships. In the traditional Maori way, the healing is often given a rather physical manifestation at the end of the conference through hugging, kissing on the cheek and nose pressing. Whatever the cultural form in which it is manifested, the objective is to avoid casting out, stigmatising the young person. A successful conference is one where the offender is brought to experience remorse for the effects of his crime and to understand that he can count on the continuing support, love and respect of his family and friends.

In *Crime, Shame and Reintegration*, I have argued that ceremonies which accomplish this are important to crime control (Braithwaite, 1989: 173). The trouble with the conventional liberal process is that it is stigmatising. Traditional courtrooms fail as a communicative and problem-solving forum. The denunciations of prosecutors, judges and police who enjoy no intimate bond of care and mutual respect with the offender are liable to degrade and stigmatise. Consequently, the young person is liable to reject his rejectors, and in the worst scenario, find comfort and symbolic distance from his rejectors in the world of a delinquent subculture. According to the theory, when the institutions of the courtroom and the detention centre take a liberal form, they not only fail to prevent crime, they cause it through the symbolic effects of stigmatisation.

Family group conferences also fail quite often as reintegrative ceremonies. Stephen Mugford and I have recently attempted to set down fourteen conditions that distinguish successful from unsuccessful reintegration ceremonies. I have attended highly stigmatising family group conferences. Ridding criminal justice ceremonies of stigma and replacing stigma with reintegrative shaming is a very big ask. Surprisingly, some of the parents of the young offenders brought before the

conferences I have observed seemed more stigmatic than the victims or the police. Perhaps this is a social selection effect. The parents who have histories with their children that lead them to a formal confrontation with the juvenile justice system may act in a more stigmatic way toward their children than the average parent. The sort of crime victim and police officer who agrees to participate in these conferences may be more nurturant than the average victim and the average cop. Actually, however, I suspect this may be more a social context effect than a social selection effect. When crime victims are asked to be good citizens by giving up their time for a conference in the hope that this will get the young offender's life back on track, so that other victims will not suffer the same fate, they do tend to treat their participation in the conference as a civic act. Certainly, they are often interested in getting compensation for losses they have suffered. But as Clifford Shearing remarked with surprise after observing two conferences in Wagga: "They all wanted to win the battle for his [the offender's] soul rather than his money". Shearing was alluding here to Nikolas Rose's (1990) influential book, *Governing the Soul*.

The now considerable literature on public attitudes to crime shows that while citizens are extremely punitive and unforgiving in the abstracted attitudes they express in public opinion surveys, as citizens get closer and closer to making judgements about particular offenders based on a detailed understanding of the background to the offence, they get less and less punitive (Doob, and Roberts 1983; Heinz and Kerstetter, 1979; Kigin and Novack, 1980; Shapland, Willmore and Duff, 1985; Wierlekamp, 1989: 83-4). While the victims movement may be a rather punitive one, individual victims empowered in dealings where they are given some detailed insight into the life circumstances of their offender can be surprisingly non-punitive (Ashworth, 1986: 118).

Actually, the Wagga program of family group conferences is probably more a success in its dealings with victims than the New Zealand program. The satisfaction level of police, Youth Justice Coordinators, parents and young offenders were very high in a recent evaluation of New Zealand conferences - 91%, 86%, 85% and 84% respectively (Morris and Maxwell, 1992). But victim satisfaction with the outcome of the conference was only 48%. Of course, one might interpret this as a good result compared with victim satisfaction with traditional courts. But we must combine this negative result with the fact that only half the family group conferences in New Zealand succeeded in getting

victims or victim representatives along to the conference. The Wagga program is yet to receive the kind of systematic evaluation undertaken by the Victoria University team in New Zealand, but it seems clear that the Wagga program is being considerably more successful at getting the attendance of victims and victim supporters. David Moore's evaluation work in Wagga also suggests a high level of victim satisfaction. I suspect this is because the Wagga program puts in a lot of work, in the words of Senior Sergeant Terry O'Connell, to "make the victim feel important". One might say that the philosophy of the Wagga program is more victim-centred, while the philosophy of the New Zealand program is more centred on the young person. With regard to reintegrative shaming, being victim-centred has advantages from an *offender* point of view. The objective of focusing on the act and the problems it has caused for the victim can steer the ceremony away from a stigmatising preoccupation with the badness of the young person. In other words, being victim-centred fosters shaming that is focused on specific deeds rather than whole persons. While the Wagga reforms have learned so much from New Zealand, this is where there is something that the New Zealanders can learn from Wagga. Every Australian state is now putting in place some sort of conferencing program - some more like New Zealand, some more like Wagga, some rather different from both. A lot of research is under way that will enable us to learn from this diversity.

There is a political dimension to the victim-orientation as well. Conservative law and order politicians constantly hammer two themes: the decay of the family as an institution in contemporary societies and the crime victim as the forgotten player in offender-centred criminal justice systems. The political feasibility of the family group conference is that it empowers families and sharpens family responsibilities (as well as offender responsibilities) to come up with solutions to the problem at the same time as it empowers victims. The process is an opportunity for politicians to match their rhetoric with political support for a family-centred, victim-centred program. Conservative politicians can also find that their traditional allies in law and order campaigns, the police, are enthusiasts for family group conferences, witness the 91 per cent police satisfaction with conference outcomes in New Zealand. Witness also the fact that in New South Wales, it was the police who became the leading force for progressive reform and that the Australian and New Zealand Police Federation carried a resolution at its 1991 conference in support of the New Zealand program. This is a program

that, through being republican in its philosophical foundation, not only muddies the liberal/authoritarian divide, it also muddies the divide between the constituencies who support law and order and those who oppose net widening. The net that is widened is not the net of state control, it is the net of community control. Both the New Zealand and Wagga programs have, on balance, done much more to narrow than to widen nets of state control (see Morris and Maxwell, 1992).

The ingredients of this approach to juvenile justice reform are therefore really pretty simple:

1. Convene a conference to which the key invitees are the offender, the people who are most supportive of the offender (usually his family), the victim and people to support the victim.
2. Give all participants an opportunity to explain how the offence affected their lives and to put forward proposals for a plan of action.
3. After the offender and his family have listened to the other speakers, empower them to propose final plans until they come up with a plan that is agreeable to all participants in the conference (including the police).
4. Monitor implementation of the plan, particularly those elements involving compensation to victims and community work.

My empirical claim is that such a criminal justice procedure encourages reintegrative and discourages stigmatic forms of shaming; it tends to nurture acceptance of responsibility by individuals and families, apology, restitution and forgiveness; it discourages exclusionary forms of punishment and outcasting. This, of course, is a claim that can be rebutted by well-designed evaluation research. With Professor Lawrence Sherman and Mrs Heather Strang, a random assignment experiment commencing soon to test the effect of conferences and reintegrative shaming on crime.

These simple principles and procedures could be viewed as rather similar in their community policing philosophy to community aid panels or as similar to dyadic victim-offender reconciliation programs that have enjoyed some popularity in the Northern hemisphere for decades.

Actually, however, they involve a conceptual leap beyond these ideas. A community aid panel of Aboriginal elders is a significant step toward community policing for dealing with Aboriginal offenders. However, in an urban setting, the Aboriginal elders will not necessarily be people the young Aborigine will know or respect. The idea of family group conferences is to assemble in the room the particular Aboriginal people who care about a particular Aboriginal young person. It mobilises a communitarian process on both the victim and the offender side, not simply a dyadic victim-offender reconciliation between two individuals. But it is a form of communitarianism that can and does work in large multicultural cities. It is a practical form of communitarianism because it is individual-centred. Instead of citizens being asked to participate on behalf of an abstract goal like community crime prevention (as with Neighbourhood Watch), they are asked to come along to help a particular young person or a particular victim. My observation is that citizens are flattered to be nominated as someone who enjoys the respect of a young person in trouble or a victim experiencing trauma. So they participate when the approach is made in these terms.

Restorative justice on the Maori model is a meeting of two communities, whereas the Western model of restorative justice has tended to be of a meeting of two individuals (with a mediator). The Maori approach has a number of virtuous implications. For example, power imbalance between men and women, adults and children, is a different matter with a meeting of two communities of care, both of which include men and women, children and adults.

Australian republican criminologists have been greatly influenced by New Zealand Maori philosophy and practice on why dialogue between communities of care is superior to mediation between individuals. According to Maori thinking, the Western practice of having a defendant stand alone in a trial, physically separated from his family, is barbaric. The extended family must be enabled both to stand by the exposed defendant and to share in the responsibility for the harm done. Otherwise, the justice process poses a fatal threat for the self-worth of the offender. Maori philosophy rejects Western notions of individual guilt in favour of collective experience of "shame" and "restoration of balance" or "healing" (equivalent to reintegration). The Maori sense of shame is the shame (whakama) of letting down your community of care; it is not borne by an isolated

individual. This conduces to Maori shaming being reintegrative, just as Western guilt conduces to self-destruction:

The predominant Pakeha [Western] response to wrongdoing, law-breaking, or injury is to try to make the offender feel guilty. The trouble with this is that it is likely either to fail entirely or to continue well after the matter has been settled. That is damaging to the offender: in the former case the offender takes no responsibility at all for the offence, in the latter the sense of responsibility continues when the actual responsibility has been discharged. Likewise in the case of the injured party, where the predominant Pakeha response is to conjure up a sense of resentment which also is likely to continue after the matter has been settled. The supposed settlement is not really a settlement at all (Patterson, 1992: 14)

Of course the Maori way also rejects Western mediation because of distaste for the notion that you need a formally trained mediator before communities can get on with solving their problems. Pakeha professionals make things worse because they push communities away from centre-stage during reintegration ceremonies in favour of themselves as professionals and the defendant as individual. Australian republicans have learnt from Maori justice that neither mediation professionals nor offenders should be in the spotlight at community accountability conferences. If any, it is communities of care for victims that should be most in the spotlight.

The New Zealand Maoris have shown us the path to a form of communitarian control that, within broad principles, can be flexible enough to accommodate not only a Maori minority and a white majority, but a great plurality of cultures and subcultures. Pacific Islander communities in New Zealand, just like the Aboriginal community in Wagga, have adapted the model to accommodate their cultural forms. New Zealand is showing the world how communitarian crime control can work in individualistic capitalist metropolises through the practical expedient of constructing an individual-centred communitarianism. But like all beautiful theories, it can be and is corrupted by ugly practices. Women are often dominated by patriarchal family structures in these conferences. Sometimes when families are effectively empowered by the conference process, they use that power to further crush a

young person whose voice is barely heard during the conference (see Morris and Maxwell, 1992). Sometimes racism flares between victims and offenders of different backgrounds.

Even when the process works well, a one or two-hour conference rarely gives any sign of turning around problems that have been festering for many years. Yet the theory of the conference is not that the conference itself will transform lives, but that the conference could be a catalyst for communities to commit to taking responsibility for ongoing action plans. Even more modestly, the conferences can be construed as a means for the community to ritually signify the fact that it takes crime seriously, without doing the harm that characterises the alternative rituals of courtroom trials and incarceration.

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