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Inequality and Republican Criminology

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In this chapter I show that the struggle for equality and checking of power is central to republican political theory. Although a republican normative theory of criminal justice does not prescribe maximum equality in criminal sentencing, it prescribes a principle of parsimony in sentencing that would have the effect of producing more egalitarian punishment practices than competing models, such as just deserts. Just as with republican normative theory, republican explanatory theory is strongly focused on inequality (as a cause of crime). Theories are most valuable when they help us to see a problem differently and to see changed and effective ways of responding to it. Republican criminology achieves this because it replaces pessimism that nothing works in reducing crime with an optimistic vision. Republican theory enables us to see that: (a) the most serious crime problems in contemporary societies are precisely the crime problems we are in the best position to reduce; and (b) the changes needed to effect these reductions have gathered considerable momentum in Western societies such as Australia since the mid-1970s. These changes are not so much in criminal justice policies as they are in the support for an effectiveness of social movements with egalitarian criminal justice agendas. Republican criminological praxis involves active support for social movements such as feminism, the environmental movement, the consumer movement, and the social movement against drunk driving and drug-promoting industries such as the alcohol, tobacco, and pharmaceutical industries.

This chapter explains that republicans have moral commitments to both political and economic equality and community involvement in disapproving of criminality. The objective is to show how it follows from these commitments that political support for certain progressive social move-

ments is the best way for republicans to respond to the crime problem. After setting out the basics of a republican normative framework, empirical foundations for the efficacy of this kind of response are hypothesized—that reintegrative shaming prevents crime and that stigmatization causes crime. Next we address the worry that even if these empirical foundations are right, they are foundations for a repressive response that is a threat to freedom. It is concluded that *republican* shaming constitutes freedom rather than threatens it. I show that shaming of our most serious crimes has been historically muted because these types of criminality have been sheltered from shame by concentrations of power. Then I show how progressive social movements are finally mobilizing community disapproval against our protected criminal species. Having made a case for the greater efficacy of community mobilization over criminal justice system mobilization, I then return to why republican normative commitments argue for political support for social movements such as feminism. Finally, I advance a model of the synergy republicans ought to seek between community mobilization against crime and state enforcement.

In my book with Philip Pettit, *Not Just Deserts*, we began a detailed fleshing out of why and how our criminology is republican (Braithwaite and Pettit 1990). Whereas this book advances a normative theory of criminal justice, *Crime, Shame and Reintegration* advances an explanatory theory of crime (Braithwaite 1989a). These theories may be found to be wrong in some important respects. My purpose here is not to defend them, but to go beyond the two books to show how the republican criminologist will view the state and the nature of the struggle against crime in a different way. *Not Just Deserts* is a normative analysis of how to design criminal justice policies. Yet in a way this emphasis is misplaced because the republican criminologist must see the best strategies for dealing with crime as outside the criminal justice system. In this chapter I seek to remedy the preoccupation with criminal justice institutions and to set forth what should be at the center of the political agenda of republican criminology.

For the benefit of readers who are unfamiliar with *Not Just Deserts*, I first explain the basic idea of that book—that the pursuit of dominion is a useful normative framework for criminologists. Then I explain the basic idea of *Crime, Shame and Reintegration*—that reintegrative shaming is the key to crime control.

What is Republicanism?

Republican normative commitments direct us to take both political and economic inequality (Montesquieu 1977, chaps. 3–4; Pettit 1989) and community disapproval (Braithwaite and Pettit 1990; Pocock 1977) seriously. Sunstein (1988) advances four commitments as basic to republicanism: (1) deliberation in governance in order to shape as well as balance interests (as opposed to deal making between prepolitical interests); (2) political equality; (3) universality, or debate to reconcile competing views, as a regulative ideal; and (4) citizenship, community participation in public life.

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

Dominion is a republican conception of liberty. Whereas the liberal conception of freedom is the freedom of an isolated atomistic individual, the republican conception of liberty is the freedom of a social world. Liberal freedom is objective and individualistic. Negative freedom for the liberal means the objective fact of individuals' being left alone by others. For the republican, however, freedom is defined socially and relationally. You only enjoy republican freedom—dominion—when you live in a social world that provides you with an intersubjective set of assurances of liberty. You must subjectively believe that you enjoy these assurances, and so must others believe. As a social, relational conception of liberty, by definition it also has a comparative dimension. To fully enjoy liberty, you must have equality-of-liberty prospects with other persons. If this is difficult to grasp, think of dominion as a conception of freedom that, by definition, incorporates the notions of *liberté*, *égalité*, and *fraternité*; then you have the basic idea.¹

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

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

quire minimalism in criminal justice policy alongside interventionism in economic policy.

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

Not Just Deserts argues that a consequence of implementing this approach will be more equitable punishment practices than we have seen, or could ever see, by following competing philosophies—notably just deserts. We argue that even though the policy of just deserts is based on equal punishment for equal wrongs and republicanism is not, it is republicanism that in practice can deliver more egalitarian punishment practices. Because just deserts tend to be successfully imposed on the poor and unsuccessfully on the rich, a parsimonious policy will be more equitable than a policy of pursuing just deserts. Minimalist policies will tend to be more equitable because of the structural theorem that says where desert is greatest, punishment will be least.

The Explanatory Idea

The notion that shaming controls crime is an old one. But so is the seemingly contradictory notion that stigmatization makes crime problems worse. The only originality of *Crime, Shame and Reintegration* is in positing a theoretical resolution of this contradiction. Reintegrative shaming is posited as a shaming mechanism that prevents crime, stigmatization as a mechanism that increases the risks of crime by the shamed actor. Moreover, the partitioning of shaming mechanisms into two types with these opposite effects is advanced as a missing link in criminological theory. It enables us to integrate previously irreconcilable theories—control, subcultural, labeling, opportunity, and learning theories.

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

person rather than an evil one. Even the shaming of the deed is finite in duration, terminated by ceremonies of forgiveness-apology-repentance.

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

A Repressive Idea?

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

Even though reintegrative shaming is more respecting of persons than stigmatization, it can be oppressive. Just because it avoids the worst repressive excesses of the punitive state and the stigmatizing community, that is not to deny that reintegrative shaming is a dangerous game. Victims of violence, after all, are often ashamed of their victimization (Stanko 1990: 55, 67). Republicans cannot support reintegrative shaming as the dominant crime control strategy unless they have a clear moral position on what should and should not be shamed. Saying that all that is being advocated is the shaming of criminal conduct is not good enough, because this warrants the shaming of a soldier who refuses to fight in an evil war against Iraq. Pettit and I argue that conduct should never be criminalized unless we can be confident that its criminalization will increase dominion (the republican conception of liberty) in the community (Braithwaite and Pettit 1990). Our contention is that republicans must reserve the reprobation of criminal conduct for conduct that passes this test. Republicans are

therefore required to actively support the reintegrative shaming of conduct whose criminalization uncontroversially protects dominion (such as criminal acts of violence). They are also required to actively oppose the shaming of deviant conduct that poses no threat to dominion.

Republicanism is a consequentialist theory that motivates a strong concern about rights (Braithwaite and Pettit 1990). Yet rights have meaning only as claims that rich individuals and corporations can occasionally assert in courts of law unless community disapproval can be mobilized against those who trample on the rights of others. Liberals and republicans can agree that gay men and lesbian women have a right to be deviant outside the constraints of the criminal law. Yet because liberals are squeamish about mobilizing community disapproval against those who trample on the rights of others, liberalism lacks a practical political program for protecting gays from harassment by the police and other citizens. The liberal idea of a practical political program is that gays should be able to take the police to court when they harass them. Although the republican supports this, it must be viewed as a rather empty gesture. For the republican, rights to diversity acquire genuine power only when socializing institutions and community campaigns foster in citizens a concern to be rights-respecting. Liberal rights can be sterile legalist gestures; republican rights are active cultural accomplishments. Strong gay and lesbian rights movements are the medium for securing these accomplishments.

Another way to think about the dangers of shaming is in terms of Scheff and Retzinger's (1991) framework about the bipolar evils of isolation and engulfment. Engulfment, they claim, was responsible for the violence of Nazi Germany. According to Scheff and Retzinger, societies in which the group is everything (the individual is engulfed) as well as societies of rampant individualism (the individual is isolated) risk endemic violence. Engulfment entails individuals' giving up parts of self in order to be accepted by others; it means fusion of individual needs with the needs of the group, as opposed to differentiation of individual needs from the needs of the group.

We all know what a family that isolates its children is like and what one that engulfs its children is like. Interdependency, mutual respect, love, community are needed to avoid isolation in families. But paradoxically, interdependency and mutual respect are needed to avoid engulfment as well. An engulfing family, the members of which have traditionally gone into the professions, might ridicule or label as a drop-out a member who decides to be an artist. The individuating family, in contrast, while communicating honest disappointment and disagreement with a choice of art

over medicine, also communicates satisfaction that the child is capable of thinking for him- or herself, capable of breaking the mold set by parents and siblings. The individuating family uses interdependency and mutual respect as resources to ensure individuality; social bonds enable the constitution of a secure individual self that cannot be engulfed by a fascist or totalitarian state.

At the level of normative theory, individuating social bonds are one reason for rejecting a liberal conception of freedom (the freedom that isolated individuals perfectly enjoy) in favor of a republican conception of freedom (the freedom citizens enjoy in a social world where other citizens grant them social assurances of liberty) (Braithwaite and Pettit 1990: 55-69). A social world where individuals are what Scheff and Retzinger call "in attunement" with other human beings is not just a happy medium between isolation and engulfment. It is a world of social assurances and rights that secure individuation. Families in such an attuned social world will mobilize strong disapproval to protect one member from an act of violence by another; they will mobilize disapproval against a member who undermines another member's right to be deviant in ways that do not threaten dominion. What then is the crucial mechanism that guarantees individuation in families? Reintegrative shaming is that mechanism. Shaming is as essential to guaranteeing freedom as it is to preventing crime.

The republican does not struggle politically for a world in which shaming is used in a way that trades a reduction in freedom for a reduction in crime. Such a trade-off manifests a liberal way of thinking about crime. The republican struggles for a world where shame is used both to increase freedom and to reduce crime. The widespread liberal belief that a high crime rate is a price we pay for free society, that freedom and crime are locked into some hydraulic relationship, is wrong. Republican theory opens our eyes to this theoretical error.

A Useful or a Utopian Idea?

The explanatory theory of *Crime, Shame and Reintegration* is not alone in concluding that tinkering with criminal justice policies will not make a great difference to the crime rate (see, e.g., Gottfredson and Hirschi 1990: 272-73). Like Gottfredson and Hirschi's, my theory concludes that what families do is much more important to the causation and prevention of crime than what police forces do. Does this mean that the republican criminologist shares with theorists of this ilk a structurally impotent psychologism? Does this mean accepting the patriarchal family as our salvation? After all, *Crime, Shame and Reintegration* hypothesizes that it is

women much more than men who are susceptible to being both effective subjects and objects of reintegrative shaming (see Hagan et al. 1979). Does it follow, then, that we should struggle to keep women locked into the moral guardianship role within families, which they have demonstrably performed more effectively than men?

A proper republican answer to all three questions, I will argue, is no. For the republican, the family is not a man's castle, but part of a community of citizens. The family is not and should not be immune from outside disapproval resulting from the deliberative processes of an active democracy. The concern for equality of prospects for dominion that republicanism requires means that the republican must struggle against patriarchy (Pettit 1989). Patriarchy is an institutional order that secures systematically lesser prospects of dominion for women than for men. Thus patriarchy must be resisted by the republican. Furthermore, I argue later that patriarchy is a cause of crime.

Patriarchy surely means a gendered patterning of reintegrative shaming. But it is hardly an effective strategy of resistance for women to jettison the obligations they feel to disapprove the wrongdoing of family members as they continue to nurture those family members in bonds of love. For one thing, if my analysis is correct on what is required to secure rights, reintegrative shaming is needed to assure women of their right to equal prospects of dominion. The republican solution is to struggle for equality of obligation to engage in reintegrative shaming. The republican priority is to change men in this respect, not women.

On how to do this, the republican political theorist is anything but individualistic, even though the objective is to change individuals and families. As Sunstein (1988) has argued, active citizenship, community participation in public life, is fundamental to republican ideology. The republican must take seriously social movements of citizens, organized influence from below, as vehicles for progressive change. Such social movements are precisely the vehicles that can and do deliver the changes that will bring a lower crime rate. There is little prospect of top-down solutions to the problem of families that raise violent boys because they fail to disapprove of violent episodes when they first occur. If the state mandated parent effectiveness training, these families probably would not attend. Even if they did attend and understand, they still might not confront members who perpetrate violence (Wilson and Herrnstein 1985: 386-87).

Social Movement Activism

Deeper cultural changes are needed. For these, we must look to social movements like feminism. To the extent the state can make a contribution, it can do so by cutting the budgets of police and prison services somewhat and handing these resources over to feminist women's refuges. The women's movement may be the most important social movement engaged in the struggle for a society more free of crime, but it is not the only one.² Before briefly discussing some of these other social movements, I will make some general points about where our greatest crime problems lie and why social movements are especially well placed to have an impact on these crimes.

In Australia, the types of crimes that cause the greatest harm to persons are domestic violence (Hopkins and McGregor 1991; Scutt 1983), occupational health and safety and other corporate crimes of violence such as those of the pharmaceutical industry (Braithwaite 1984; Braithwaite and Grabosky 1985: 1-41), and drunk driving (Homel 1988). The property offenders who cause the majority of criminal losses are white-collar criminals (Braithwaite 1979; Grabosky and Sutton 1989; Wilson and Braithwaite 1978).

There is a common structural reason why these particular offense types are Australia's greatest crime problems. All have enjoyed a historical immunity from public disapproval because of certain structural realities of power. The worst of Australia's white-collar criminals have been not only unusually respectable men, but also men who have been hailed as great entrepreneurial heroes. Violent men have enjoyed historical immunity even from the disapproval of the police when they engaged in acts of domestic assault (Hatty and Sutton 1986; Scutt 1983: chap. 9; Wearing 1990). This has been because of shared values between the offenders and the police about the prerogatives of men to engage in violence in the personal kingdoms of their homes. Since police who answer calls about domestic violence are the main window through which public disapproval might enter the domestic domain, this patriarchal collusion has been effective until very recently in preventing domestic violence from becoming a public issue.

Australian patriarchy takes the culturally specific form of a male mateship culture in which gender-segregated drinking is important (Sergeant 1973).³ Women were not to be found in public bars in Australia until the 1970s. Pub and club drinking followed by driving is something that most Australian males have done many times, something which they regard as important to sustaining patterns of mateship, and something which they find difficult to regard as shameful. As a consequence of the strong sup-

port drunk driving has enjoyed in such a patriarchal context, informal disapproval by friends 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 been allowed to continue because of the muted or ambivalent disapproval they elicit, where this limited disapproval arose because of patterns of power. However, since the mid-1970s all of these forms of crime have been targeted by social movements concerned to engender community disapproval about them. The most important of these was the women's movement. Domestic violence was an important issue for the Australian women's movement in the late nineteenth century (Allen 1986). At first the resurgent women's movement of the early 1970s did not give any significant priority to domestic violence (Hopkins and McGregor 1991). By the mid-1970s, this was changing. Major conferences, including rather important conferences organized by feminists at the Australian Institute of Criminology, drew attention to the issue, as did subsequent criminological research (Hatty 1985; O'Donnell and Craney 1982; Scutt 1983; Stubbs and Powell 1989). The most important momentum, however, came from the feminist refuge movement, strategically supported by "femocrats" working within the state (Hopkins and McGregor 1991).

This social movement has had a considerable impact. Media current affairs programs now carry a regular fare of stories exposing the evils of domestic violence. Police education curricula, responding to feminist critiques (Hatty and Sutton 1986; Scutt 1982), have begun to push the line that domestic violence is a crime and a priority concern for Australian police services (McDonald et al. 1990; see also Stubbs and Powell 1989). Domestic violence is now much more out in the open in Australia. While private condoning of domestic violence continues, the public voices heard today are the voices of condemnation. And this is progress.

The social movement against white-collar crime in Australia has not been as vigorous as that in the United States (Ayres and Braithwaite 1992: chap. 1; Cullen et al. 1987; Katz 1980). However, in the 1970s and 1980s, the Australian consumer movement took up the issue with a vigor that had not been seen in previous decades. The specific issues that provoked high-profile public campaigns ranged from nursing home malpractice to used car fraud, tax scams, unsafe consumer products, and finance company rip-offs and misrepresentations. The Australian criminological research community has also given the issue a priority higher than it has been given in any other country.

In the area that has been of greatest interest to me, corporate crime in

the pharmaceutical industry (Braithwaite 1984), social movement activism took some big strides in the 1980s. The Australian Consumers' Association and the Australian Federation of Consumer Organizations took much more interest in the issue. A national peak council, The Consumers' Health Forum, was established in 1985, which also gave considerable priority to malpractice in the pharmaceutical industry. These groups linked up with Health Action International and the International Organization of Consumers' Unions to deal with the transnational character of the problems they were confronting. Consumer Interpol began in the 1980s to send out alerts from Penang in Malaysia about dangerous pharmaceuticals that had been dumped in other parts of the world so that national consumer groups could draw attention to the problem if the product was being distributed in their own country. A particularly important development in the 1980s was the establishment in Adelaide of the Medical Lobby for Appropriate Marketing. This group organized letter-writing campaigns and adverse publicity among doctors when pharmaceutical companies were found to be making promotional claims about drugs that were untrue or that covered up side effects, particularly when it was third world consumers who were being victimized. The international reach of the social movement against pharmaceutical industry malpractice indicates a strength that social movement activism enjoys as an approach to transnational crime, a strength not shared by state law enforcement. Intriguingly, the pharmaceutical industry's counterstrategy today is to recruit the social movement against AIDS to resist "unreasonable regulation of the industry" in the forlorn hope that this will speed the desperate search for a cure of AIDS.

The late 1970s and early 1980s saw a social movement against occupational health and safety offenses organized by the trade union movement. Today this movement has almost run out of steam because its vision was limited in most states to achieving legislative reforms. When these were achieved in the mid-1980s, the movement lost focus and direction. Even so, in the state of Victoria over 14,000 workplace health and safety representatives have been appointed and trained by the trade union movement, giving an ongoing, if rather quiescent, grass-roots basis for a continuing movement (Carson et al. 1990).

The environmental movement has cultivated a strong surge in community support since the mid-1970s (McAllister 1991). In terms of organization, resources, and ideological coherence, it is certainly the most politically impressive social movement in Australia. It has, however, been less focused on violations of environmental laws by business than environmental movements in other countries. Instead, it has been more concerned

with Australia's biggest environmental problem—soil erosion caused by agricultural practices—and with struggles to declare national parks beyond the reach of the logging and mining industries. Nevertheless, the organization of community disapproval against environmental degradation has changed to the point where powerful business leaders can no longer afford to be shameless about acts of environmental despoliation (McAllister 1991). Moreover, substantial internalization of genuine respect for the environment is evident among many in the business elite.

Both the consumer movement and conservative women's groups such as the Country Women's Association were among several community organizations that made small contributions to the social movement against alcohol abuse in Australia during the 1970s and 1980s. Australia lacked the focused, organized anti-drunk-driving movement that emerged in the late 1970s in the United States—Remove Intoxicated Drivers (RID), Mothers Against Drunk Driving (MADD), and Students Against Drunk Driving (SADD) (Jacobs 1989: xv)—though there is a MADD chapter in Australia. Although the Australian movement against drunk driving was more diffuse than the American movement, this diffuseness may not have been a weakness since changes in Australian attitudes in this area have been dramatic. This movement has less of a grass-roots quality than the others we have discussed; many of the key players were employees of the state or activists from the professions. The medical profession, the road safety research community, and the alcohol and drug education and research community played the leadership roles in this social movement which, for all its diffuseness, attracted widespread public support. Random breath testing to detect drunk driving was supported by only 37 percent of the people of New South Wales in 1973 but by 91 percent in 1983, the year of its introduction (Homel 1988: 114). The punishment of drunk driving is less severe in Australia than in many, perhaps most, other countries, with resort to imprisonment being extremely rare, but the intensity of detection efforts through the use of random breath testing in the states of New South Wales and Tasmania exceeds that to be found anywhere else in the world (Homel 1988). Perhaps because of this, the evidence of the effect of random breath testing (and the associated public campaigning against drunk driving in these states) is of a substantial impact in reducing alcohol-related road fatalities (Homel 1988), in contrast to the equivocal results of evaluation studies on the effect of more halfhearted American experiments (Ross 1982; 1984). Surprisingly, in the late 1980s we had survey evidence suggesting that drunk driving is somewhat more shameful in Australia than the

United States, though considerably less so than in Norway (Berger et al. 1990: 461).

In spite of some spirited opposition from the pub and club industry in New South Wales (Homel 1988: 117), which suffered from reduced alcohol sales, nervous politicians held firm with the reforms. In the end, the alcohol industry was in a sense co-opted by the movement against drunk driving via the introduction and aggressive marketing for the first time in Australia of low-alcohol beers. The marketing campaigns for the new products were notable for their reference to the risks of drunk driving, as in Toohey's "breathe easy" advertising campaign for low-alcohol beer.

Beyond Statist Criminology

All of the social movements I have described became strong only from the mid-1970s onward. 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. In the late 1970s, criminologists deserted utilitarianism in droves to join the "just deserts" movement that ultimately became a "get tough" movement (S. Cohen 1985; Cullen and Gilbert 1982). Perhaps nothing does work particularly well if our vision is limited to statist responses to the crime problem.⁴ 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 the most severe crime problems Australians confront that social movements have been making the greatest progress against over the past fifteen years. I do not suggest that the progress has been decisive or overwhelming: patriarchy is not about to breathe its last gasp; the environment continues to collapse; even if some pharmaceutical companies have adopted a markedly more responsible attitude today, most corporate cowboys do not yet seem overwhelmed by remorse; drunk driving is not a problem of the past.

If some progress is being made in the places that count most, statist criminology is tied to statist statistical methodologies that leave it blind to such changes. The methodologies of statist criminology churn out data that are artifacts of the very patterns of power at the heart of my argument. Crimes of domestic violence were not counted very seriously by patriarchal police forces before the social movement against domestic violence, which gained momentum in the mid-1970s. Similarly, victim surveys conducted by the Australian government provided a doubtful baseline because

interviews were conducted in the households where domestic violence occurred, presumably in many cases within sight or sound of the persons who committed the violent acts. In fact, statist methodologies show that the problem is getting worse because the social movement against domestic violence has made police more sensitive to domestic violence and has provided support to women who wish to lodge complaints against violent spouses (Hopkins and McGregor 1991).

This is also true of white-collar crime and of crime 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."

Taking state statistics on white-collar crime seriously is a similarly foolish enterprise. Criminologists such as Hirschi and Gottfredson (1987) have done just this and reached startling conclusions, such as that white-collar criminals in the United States are disproportionately black! Statist criminology is an edifice built on methodological foundations that render it incapable of knowing the things most worth knowing about crime.⁵

One response to directing shame against specific forms of crime is that this is a utopian enterprise, because shaming is not an effective mechanism of social control in modern, urbanized, heterogeneous societies. Elsewhere I have argued that there is no unidirectional historical trend either toward or away from the effectiveness of shame-based social control (Braithwaite 1991a). Like Elias (1982) and Goffman (1956), I contend that there are some features of interdependency in modern urban societies that actually increase our vulnerability to shame, and others that reduce it.

It is more important to address the specific forms of crime that are the locus of my argument here. I have already said that criminological research gives us no way of knowing whether there is more or less domestic violence today than in the past. What we can say with some confidence, however, is that domestic violence has become more shameful in the nineteenth and twentieth centuries. The following description of the shamelessness of male violence in fifteenth-century England could not be regarded as an accurate description of the situation in that country today.

Wife-beating was a recognized right of man and was practiced without shame by high as well as low. Similarly, the daughter who refused to marry the gentleman of her parents' choice was liable to be locked up, beaten, and flung about the room, without any shock being inflicted upon public opinion. (Trevelyan 1985: 196)

This fact is not only recorded in the history books, but in the courts as well. Even after World War II, there is evidence of English lower courts finding domestic assault to be legitimate as a punishment for a wife who had disobeyed her husband (Stratmann 1982: 121), and indeed it was a matter of right rather than shame in English law until 1891 that a husband could beat his wife. At least in public forums, the beating of wives and daughters today surely does invoke more shame. Public outcry would surely ensue if a ducking stool for the disciplining of nagging wives were installed in any English town today.

More generally, the American evidence shows that concern about white-collar crime and mistrust of business has increased substantially since the mid-1970s (see the studies cited by Cullen et al. 1987: 43). When Edwin Sutherland (1983) wrote in 1949 that white-collar crime flourished because of a lack of organized community resentment against respectable criminals, he may have been right. But contemporary American and Australian data, as well as data from many other countries, suggests that this is no longer true (Grabosky et al. 1987).

Community attitudes toward white-collar crime today should be a worry for the republican, but not for lack of shame; rather my concern is that attitudes can be so stigmatic and punitive. In a study of eight countries (the United States, the United Kingdom, Finland, Sweden, Norway, Denmark, the Netherlands, and Kuwait), Scott and Al-Thakeb (1977) found that in every country the recommended sentence for the manufacture and sale of potentially harmful pharmaceuticals was more severe than for auto theft, larceny (felony), burglary, aggravated assault, and robbery. When this study was replicated some years later in Australia, respondents were even more punitive on this item ("The offender is an executive of a drug company who allows his company to manufacture and sell a drug knowing that it may produce harmful side effects for most individuals"), recommending an average of nine years' imprisonment for the offense (Broadhurst and Indemauro 1982). Some respondents in an Australian Institute of Criminology survey even recommended capital punishment for serious environmental and industrial safety offenses (Grabosky et al. 1987). When I visited Ralph Nader's office in 1990, they had recently lost the services of a person who supported the death penalty for business executives who sold consumer products that caused loss of life. He believed that such convicted corporate criminals should not be executed in the normal way, but in a defective electric chair. I am pleased to report that Ralph Nader was not persuaded by this idea.

Similarly, as I reported above, in Australia at least, community atti-

cludes have become more intolerant of drunk driving. So it seems that the types of crime that are our most serious problems in Australia have become more shameful during the last fifteen years. Levi's (1988) study and recent annual reports of the Australian Commissioner for Taxation even suggest that for tax evasion, an offense low in moral opprobrium the world over, but seemingly even less shameful in Australia than in a number of other countries (Grabosky et al. 1987: 37), the extraordinary moral crusade of the 1970s and 1980s against tax dishonesty has improved tax compliance among the wealthy and brought to an end the era when wealthy Australians openly bragged about tax evasion.⁶

While we need much more systematic data on these questions, we have enough to suggest that social movements can affect attitudes in a way that increases social disapproval and causes pangs of conscience in those contemplating breaking the law. The empirical point applies equally to types of offenses that republicans should not regard as a high priority. Take drug use, an offense that Pettit and I contend republicans should not regard as a crime at all (Braithwaite and Pettit 1990: 97-99). The conventional wisdom of criminology might lead one to believe that drug use is an unsolvable problem. This view seems unduly pessimistic in light of what I would hypothesize to be the contribution the temperance movement made to the dramatic reduction in English-speaking countries of drunkenness and excessive drinking during the nineteenth century right up until its Pyrrhic victory in securing prohibition in the United States. In Australia, the long period of falling alcohol consumption from the mid-nineteenth century corresponds with the rise of the temperance movement, and the long rise in alcohol consumption from the 1930s to the 1970s corresponds with the decline and virtual demise of the old temperance movement (Powell 1988).⁷ The decline of alcohol consumption since the mid-eighties (McAllister et al. 1991) may be associated with the rise of a new social movement against the alcohol industry grounded in the consumer and health education movements. In the late nineteenth and early twentieth centuries, the temperance movement was a movement of both Christians and feminists who were involved in the women's franchise campaign and who were deeply concerned about prostitution in public houses and domestic violence (Beresford 1984; Gusfield 1963; Tyrell 1984). Just as contemporary Alcoholics Anonymous meetings rely heavily on self-shaming in a nurturant collectivity (Trice and Roman 1970), so the nineteenth-century American temperance movement gave pride of place to the reintegrative power of the reformed (Powell 1988: 46). Similarly, the Australian temperance movement of the first half of the nineteenth century was oriented to per-

suading the wayward to "sign the pledge," rejecting at that time the idea of reform through government intervention (Beresford 1984: 3).

Within the narrow ahistoricism of contemporary social science, researchers wax pessimistic at the results of drug education programs of very short duration because of the rather small or insignificant preventive effects they secure (Ogborne 1988; Wragg 1987; 1990). Yet any plausible model of how social movements might transform community attitudes to drugs (and consumption patterns of drugs) would surely involve gradual cumulative change over a historical period of many years such as we have observed with male consumption of tobacco since World War II. A change strategist operating with a model of gradual change over a long historical haul would take comfort from American data on small but significant annual reductions in consumption of drugs such as marijuana and cocaine in recent years (Bachman et al. 1988; 1990a). This research shows that during the years when the social disapproval and perceived health risk of marijuana and cocaine use were declining, usage increased; during the years when social disapproval and perceived risk increased, usage decreased for both drugs (Bachman et al. 1990a: 176). The change strategist would not become pessimistic because the changes are small; her project only makes sense with a reform timetable measured in decades rather than years.⁸ But this may be of limited interest to statist criminology, which is loath to fund projects grounded in historical vision. Parliamentary terms and periods of incumbency at the head of government research units do not readily accommodate historical farsightedness.

Confronting the Paralysis of Pessimism

A further basis for pessimism about the capacity of social movements to reduce crime arises from devotion to what Hindess (1982) calls a "capacity-outcome" approach to understanding struggles. According to such an understanding, it is naive to believe that disorganized social movements can secure any more than symbolic victories against powerful organized interests. The capacity-outcome approach assumes that in order to determine the likely outcome of a struggle all one need do is identify what resources or capacities are available to the contending parties; the outcome can then be read off in *a priori* fashion. Hence, if the alcohol industry is a powerful and affluent industry with many political friends and the temperance movement is an economically disorganized collection of women, you can read off the outcome—the alcohol industry will win. Yet the mechanics of history are not so simple. The environmental and consumer move-

ments perhaps do lose more battles than they win, but often enough they win against industries with superior resources. Hopkins and McGregor's (1991) analysis of the Australian movement against domestic violence addresses the structure-agency issue, the extent to which the agency of social movements can prevail against structures of domination:

An American study found that the existence of local feminist groups was a more important predictor of community programmes for battered women throughout the USA than per capita income, political liberalism or the existence of state domestic violence legislation (see Tierney 1982: 211). The movement against domestic violence does seem to be a case of, in this instance, women making their own history. (Hopkins and McGregor 1991: 138)

It seems that social movements can make progress in moral crusades that appeal to the sense of justice of people. Progressive change is possible by asking citizens to challenge a hegemony that unjustly acquiesces in a certain type of crime's being less serious because it is perpetrated by men in a position of some national or familial power. The appeal of such crusades can be broad because what is demanded is really so little and so consistent with the rhetoric of Western justice systems. It is a demand simply that we should not afford criminals an advantage in our perceptions of the evil of their deeds simply because they are powerful. It is a plea for the uncontroversial notion of treating equal crimes with equal seriousness. This is certainly part of what makes progress against the odds more possible for social movements when they demand that the criminal law be taken seriously.

Progress may be easier here than in so many of the other domains where social movements struggle. The truly difficult part of the republican criminologist's political agenda is to find or build social movements to mobilize against the excesses of the criminal justice system. Just as the symbolic power of the criminal law makes mobilization against criminal justice neglect comparatively easy, this symbolic power makes mobilization against criminal justice excess difficult.

One of the more sophisticated versions of the capacity-outcome approach to struggles is Edelman's (1964) account that diffuse, disorganized publics win symbolic victories, while organized interests receive tangible rewards. So, for example, the social movement against white-collar crime gets the symbolic victory of enacting new laws to regulate business, but the powerful players of the industry win the tangible victory of ensuring that the new laws are enforced only against marginal operators whom the powerful corporations are quite pleased to have harassed (Carson 1975; Hopkins and Parnell 1984; O'Malley 1980). Although this model has ex-

planatory power in some criminal justice domains, it would be more of a concern to the republican if her job were primarily to secure tougher state enforcement. But in fact, when confronted with a domain where the criminal law is not being taken seriously enough, the republican is more concerned with symbolic victories than with tangible changes to state policies. The republican analysis is that crime rates are more responsive to patterns of community disapproval of crime than to state enforcement patterns. So it is the symbolic victory for the hearts and minds of citizens that is more important than securing tangible changes to state criminal justice practices. This is not to say that republicans are unconcerned about reforming criminal justice practices (the nature of such concerns is developed at length in Braithwaite and Pettit 1990), it is just to say that the republican pursues the objective of reducing crime with more of an eye to community organization than to criminal enforcement.

Although all of these social movements seem to have succeeded in turning community attitudes against the conduct of concern to them, the crime control dividends may have been less than expected because a significant proportion of the campaigning has been stigmatic. These social movements have failed to grasp the crucial difference between reintegrative shaming and stigmatization. Hence, stigmatic features of the social movement against alcohol have motivated a culturally specific form of resistance within Australian male mateship culture—the denunciation of antialcohol activists as “wowsers” (Dunstan 1974). Recent community disapproval of illicit drug use has been stigmatic in a way that has enabled drug subcultures to assure drug users that their rejectors are worthy of rejection. In contrast, the Australian antitobacco movement has been at pains not to stigmatize users while disapproving of their practices. Even here, though, a stigmatizing fringe to the movement has fueled subcultures of resistance in the form of smokers' rights movements, which are supported by the tobacco industry.

Similarly, while the social movement against white-collar crime in the United States has dramatically changed community attitudes to disapproval, many white-collar criminals have acquired an immunity to this disapproval. They also reject their rejectors. An important study by Benson (1990) found that convicted white-collar criminals were more likely to feel mad than bad about their offending. The reason, I have argued, is that the stigmatic features of the social movement against white-collar crime in the United States have fueled business subcultures of resistance to regulatory laws (Braithwaite 1989b). Consequently, the social movement regularly fails to bring offenders to a position of shame about their crime.

Instead, offenders feel angry about being unfairly picked on by antibusiness prosecutors.

Similarly, many violent men in Australia reject their rejectors as man-haters. One reason they may be able to do this is that there is a fringe of the Australian women's movement who are in fact man-haters. While the Australian women's movement in general eschews the stigmatization of men, managing to communicate disapproval within a continuum of respect for men, occasional stigmatic excess has provided symbolic ammunition for chauvinist cultures of resistance that sustain the moral ambiguity of domestic violence.

The Egalitarian Thrust of Republican Support for Social Movements

In this section I briefly sketch five additional reasons why republican political theory counsels the consideration of support for the social movements I have mentioned. These are (1) the republican commitment to economic and political equality; (2) the commitment to active participation of citizens in community life; (3) the effect of inequality on crime, not only through the historical muting of disapproval toward crimes of the powerful but also, for example, through the effect of patriarchy on the structuring of humiliation; (4) the way social movements can inculcate pride in being law-abiding and rights-respecting as well as shame at violating these norms; and (5) the way social movements can encourage the evolution of cooperation in regulatory regimes while preventing the evolution of capture and corruption.

The republican supports social movements that represent the egalitarian aspirations of less powerful groups because a concern with political and economic equality is basic to republicanism (Pettit 1989; Sunstein 1988). For Philip Pettit and me, this concern defines republicanism—the republican wants to maximize the dominion of citizens, defined in a social or relational way as equality-of-liberty prospects (Braithwaite and Pettit 1990: 64–65). Women living under the thumb of a patriarch or men living in abject poverty cannot enjoy equality-of-liberty prospects with the wealthy. Because republicans also support the active participation of citizens in community life, they have two reasons for supporting the women's or consumer movements besides their concern about crime prevention—an equality-based reason and a participation-based reason.

A third consideration is the belief that inequality is a direct cause of crime. Inequality of power has allowed our most serious crime prob-

lems to fester because the powerful have been able to sustain immunity from community disapproval. Elsewhere I have argued that for more direct theoretical reasons, economic inequality, inequality in political power (slavery, totalitarianism), racism, ageism, and patriarchy are causes of crime (Braithwaite 1991b). There is both a noninstrumental and an instrumental side to this argument. First, much crime, particularly violent crime, is motivated by the humiliation of the offender and the offender's perceived right to humiliate the victim. Inegalitarian societies, it is argued, are structurally more humiliating than egalitarian societies. For example, it is structurally more humiliating to be a black in South Africa than in Tanzania. The more instrumental analysis of the motivation of crime also rejects Sutherland's (1983) interpretation that poverty cannot be a cause of crime because it is the rich and not the poor that commit greater numbers of more serious crimes. According to my more instrumental analysis, inequality worsens crimes of *poverty* motivated by *need* for goods for *use* and crimes of *wealth* motivated by *greed* enabled by goods for *exchange* (Braithwaite 1979, 1991b). Inequality worsens both crimes of the exploited and crimes of exploitation.

Social movements affect crime not only by mobilizing shame against criminal behavior, but also by mobilizing pride in prosocial patterns of behavior that provide alternatives to crime. For example, the state contributed to the campaign against drunk driving in Australia with television advertisements showing role models for responsible male drinking. One member of the drinking group would in a nonthreatening way "be a mate" by insisting that he drive home a drinking companion who had consumed too much. Tom Scheff has rightly criticized *Crime, Shame and Reintegration* for not giving enough importance to pride as a complement to shame (Scheff and Retzinger 1991: 175). It may be that pride in being law-abiding, caring, responsible, and rights-respecting has more marked effects than shame does on the thought of being criminal or trampling on the rights of others. I give more prominence to shaming in *Crime, Shame and Reintegration* only because the partitioning of shaming resolves the central theoretical contradictions of criminology. At the same time, pride does seem to be an even more important emotion for the women's movement to cultivate than shame—pride in being a woman, pride in resisting patriarchal domination, pride in persuading men to respect the rights of women, and pride among the men who are so persuaded.

Finally, Ian Ayres and I have argued that business regulation schemes can be more effective if they are transformed from bipartite games between the state and a regulated industry to tripartite games in which the third

player is a community group with an active interest in the particular regulatory domain (Ayres and Braithwaite 1992). Republican empowerment of community groups in regulatory deliberation can improve the cost effectiveness and decency of regulatory institutions. Tripartite regulation, it is argued, can secure the advantages of the evolution of cooperative regulation (Scholz 1984) while preventing the evolution of capture and corruption. This analysis is of more general criminal justice import than one might think. This is because the republican believes that many social problems that are currently dealt with by criminal law would be better dealt with by regulatory law (Braithwaite and Pettit 1990). Hence, for example, the republican is interested in abandoning bipartite state criminal control of prostitution in favor of multiparty dialogic regulation that gives both the women's movement and sex workers' unions seats at the negotiating table when regulatory arrangements are put in place (Ayres and Braithwaite 1992).

I have sketched only summary references to these other works that give further reasons why the political program of republican criminology is support for empowering social movements of the powerless. I do this only to give some sense of the theoretical interconnections within the wider corpus of my work and why they converge on the political program of support for the social movements I have discussed.⁹

Synergy Between State and Social Movement Activism

Thus far I have overplayed the juxtaposition between preventing crime through state enforcement and preventing crime by mobilizing social movements. I have done this to make as effective a break as possible with the entrenched *étatisme* of conventional criminological thinking. But in fact, my view is that social movements are more effective when they eschew both a total preoccupation with changing state policies and a total preoccupation with grass-roots consciousness raising (see also Grabosky 1990). Social movements are effective when their strategies recognize the synergy between these two thrusts.

The purpose of my book with Ian Ayres is to show how a creative synergy can be sustained between state regulation of business and public interest group activism. First, we argue for state empowerment and resourcing of weak and disorganized public interest groups so that they can become credible participants in tripartite regulation. From the public interest group point of view, they must lobby for their empowerment by the state. The synergy between feminists and the refuge movement in Aus-

License revocation

License suspension

Criminal penalty

Civil penalty

Warning letter

Persuasion

Fig. 12.1. Example of an enforcement pyramid. The proportion of space at each layer represents the proportion of enforcement activity at that level.

tralia is a strategic model of how this can be done (Hopkins and McGregor 1991; Yeatman 1990).

It is also important that progressive social movements lobby for credible state sanctioning capacities against crimes of the powerful. This is not because social movements should seek to achieve results by relying on the state to deter crime. Unfortunately, this is precisely the miscalculation social movements often make. A credible capacity for sanctioning the powerful is necessary for enabling dialogic regulation; regulation based on reasoning about what sort of conduct should cause us to be proud or ashamed.

In *Responsive Regulation*, Ayres and I make this point with the idea of the enforcement pyramid (Ayres and Braithwaite 1992; see also Braithwaite 1985). An example of a pyramid is given in Figure 12.1. In this model, the state signals that it has a range of sanctioning possibilities through which it can escalate if the firm does not cooperate with dialogic regulation. The agency has the capacity to escalate right up to corporate capital punishment (license revocation). The paradox of the model is that by carrying a big stick, the state is able to speak softly. More crucially for the present argument, by carrying a big stick, the state is also able to require the firm to hear the voices of its critics from public interest groups. Tripartite dia-

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logic regulation at the base of the enforcement pyramid is enabled by the capacity of the state to escalate in punitiveness. Paradoxically, if we lop the top off such an enforcement pyramid, the state may have less capacity to do this. By weakening the criminal enforcement capability of the state, we end up with a more litigious, less cooperative regulatory regime in which public interest movements can have effects only by going to court.

We can translate the same basic model to the arena of domestic violence. My theoretical position is that violence within families is least likely when those families themselves succeed in persuading their members to internalize an abhorrence of violence, to take pride in respecting the rights of women and caring for others. But sometimes families will fail in accomplishing this. Then they must be able to look for support outside. A battered woman might seek help from a refuge. With a refuge worker, she might then seek help from the civil law (an order restraining a man from entering his own house) and ultimately the criminal law (imprisonment of the man). Just as with the business regulation pyramid, the capacity of the victim of domestic violence to show the offender how continued violence will lead inevitably to more and more dire outside intervention is empowering for the victim. If the victim is afraid to signal this power that the state enables her to have, another member of the family may have the courage to do so. Family members or domestic violence workers are likely to get the attention of violent men only when they can signal to the offender with genuine credibility that he is on a slippery slope leading to more and more forceful state intervention until the violence stops. Equally important to mobilizing outside legal support is outside support that gives women and their children the economic power to leave a violent household and to credibly threaten to leave should future violence occur. Obviously, state policies are essential here, and the women's movement is the crucial political force for securing those state policies.

The hope is not that state enforcement will be so powerful and so regularly used that it will deter rational offenders. The hope is that state enforcement will be sufficiently credible to empower informal processes of social control, to enable dialogic regulation of violence. State criminal enforcement capabilities are a resource that women, children, and domestic violence workers can use to demand that violent offenders take seriously their disapproval of acts of violence. Of course, state criminal enforcement capability is also important for securing the incapacitation of some men who are beyond reform or civil restraint and for signifying the shamefulfulness of crime. Neither of these latter reasons for criminal enforcement

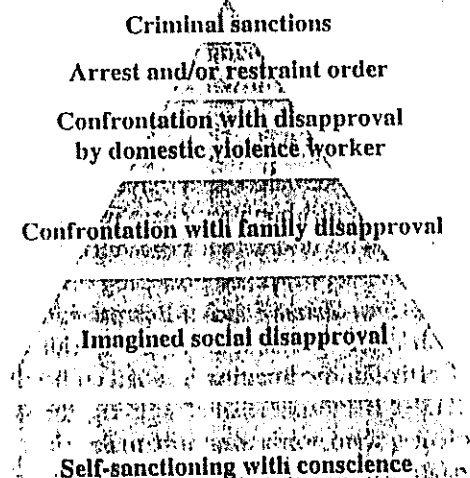


Fig. 12.2. Example of a domestic violence enforcement pyramid.

justifies, however, widespread or automatic resort to imprisonment. They justify only the capability for and the occasional use of imprisonment.

Philip Pettit and I have derived from the republican objective of maximizing dominion a presumption in favor of being parsimonious in the use of the criminal law (Braithwaite and Pettit 1990: 87). What the enforcement pyramid shows, however, is a paradox about the way the world works. The very capacity to escalate state intervention enables social control to work better at less coercive levels. While republicans should be faithful to the simple principle of parsimony by supporting reductions in the maximum prison sentence that can be imposed for assault, it would not serve the objective of parsimonious punishment to abolish imprisonment altogether as a sentence for assault. One reason for this is that a consequence of throwing away the big stick is that middle-sized sticks would be used more often. This at least follows if I am right that the tough sanctions at the peak of the enforcement pyramid channel social control down to the dialogic base of the pyramid.

For the republican, then, credible criminal enforcement capability strengthens the hand of communitarian crime control; it does not supplant it. We can conceptualize an enforcement pyramid for domestic violence as in Figure 12.2.¹⁰ The republican envisages that a long historical process of

community and state involvement in shaming acts of domestic violence will result in most citizens' internalizing the shamefulness of violence. Consequently, most social control will work at the base of the enforcement pyramid by self-sanctioning with pangs of conscience. If this fails, the history of community shaming of violence will persuade the perpetrators that others will disapprove of them after they have committed an act of violence. Note that no one has to confront the offender directly with shame at this level; an offender who understands the culture will know that those who find out about the violence will be gossiping disapprovingly. As I was at pains to argue in *Crime, Shame and Reintegration*, on most of the occasions when gossip hits its target, it will do so without being heard by the target; it will be effective in the imagination of a culturally knowledgeable subject. If the offender is incapable of imagining the disapproval others feel about the violence, then someone must make clear that disapproval. If family members are too intimidated to do it, then a domestic violence worker must do it. If disapproval, dialogue, and counseling do not work, then the formal law must be invoked: first a court order restraining the freedom of movement of the offender (perhaps associated with arrest after a specific outburst [see Hopkins and McGregor 1991; Sherman and Berk 1984]) and if that fails, criminal enforcement. The republican, therefore, does not call simply for informalism rather than formalism; she calls for a formalism that empowers informalism. The effect of successful implementation of an enforcement pyramid is, however, that most social control is communitarian control rather than state control and that most of the day-to-day successes are achieved by dialogic regulation, with state regulation stepping in to mop up the failures. This is also the story of Homel's (1988) work on the reduction of drunk driving in Australia—the formalism of random breath testing empowered the informalism of dialogic regulation within drinking groups or by bar attendants.

The real power of reintegrative shaming is at the level of prevention: conscience building. With the very worst cases of deep-seated violence, reintegrative shaming is quite likely to fail, but then so is everything else. When things come to this pass, we must do our best with clumsy protective measures for victims. But the heart of a political program that I suspect is shared by feminism and republicanism is to struggle for cultural and economic changes that prevent violence long before it becomes unpreventable.

Summary

1. The partitioning of shaming into reintegrative and stigmatizing modalities is the key theoretical move for criminology to take.

2. Social movements like the women's movement can affect the level of crime not only by shaming crimes of violence but also by inculcating pride in solving problems nonviolently, pride in caring for others and pride in respecting the rights of women.

3. Australia's most serious crime problems are domestic violence, white-collar crime, and drunk driving. These have been allowed to become our major crime problems because of historical failures of the community and the state to mobilize shame against these offenses. This historical failure is explained by the structural position of men and the structural position of those in command positions in the economy.

4. Since the mid-1970s, social movements have worked with the state and the mass media in a progressively more effective way to raise voices against the muted and ambiguous disapproval these offense types have attracted. Social movements such as the women's, environmental, and consumer movements can be more effective in campaigns to get the state and the community to take seriously the crimes of powerful people than in many of the other domains in which they struggle.

5. The republican way of thinking about crime therefore encourages the view that since the mid-1970s in Australia we may have been making slow but significant progress with the crime problem. This is not being achieved without setback and reversal. The excesses of financial deregulation caused a surge in certain types of corporate crime in the mid-1980s. The stigmatizing of men by some sections of the women's movement has fostered resistance and backlash to feminist thought in some quarters, most tragically among Aboriginal women (Ridgeway 1986). The stigmatization of business executives by some sections of the consumer and environmental movements has at times engendered business subcultures of resistance to regulatory law. But on balance, there has been progress.

6. There is no inexorable march with modernization and urbanization toward a society where reintegrative shaming cannot work. It is likely that in many Western countries, like Australia, domestic violence, drunk driving, environmental crime, corporate crimes of violence, and other types of white-collar crime have become more shameful in recent times.

7. This empirical view of historical shifts in patterns of community disapproval can be detached from republican normative commitments. My theory would be that illicit drug use can never be successfully controlled

by a state deterrence policy; it can be better controlled by a social movement against drug use, as long as that movement does not stigmatize drug users. The nineteenth- and early twentieth-century temperance movement is not in every way a model of the social movement I have in mind. However, it may be that its dialogism and its disapproval of drug abuse contributed to the dramatic decline in alcohol consumption that occurred during its heyday. The contemporary antismoking movement is another in which my analysis would place confidence as a strategy for change. Social movements do not have to be ideologically coherent, and they certainly do not have to accept republicanism, to be effective in changing patterns of disapproval for crime.

8. Progress with crime does not depend on cultural changes that are especially dramatic. It does not require our transformation into a society of busybodies, constantly prying into the affairs of other individuals. Such an individualistic vision would be politically impotent and an authoritarian threat to dominion. Progress requires us to support progressive social movements whose agendas include the disapproval of our most serious crimes. These social movements have effects at the microlevel. Consequently, shaming will work most of the time in the consciences and imaginations of potential wrongdoers who dislike the thought of people gossiping about them. We are not required to confront others daily with our disapproval (except our children, who are still learning how to imagine what others will disapprove of). This is not to deny that every now and then during a lifetime, most of us will encounter violent people who lack conscience, who fail to imagine the depth of disapproval others feel toward their violence. These people we certainly must confront. For most of us, this is not a month-to-month demand on our republican obligations. The month-to-month demand is to be active in one progressive social movement or another. Republicans do not have to be busybodies of daily private life so much as activists of public life, participants in a collective struggle for a republican culture.

9. Social movements can reduce crime not only by mobilizing disapproval of crime but also by attacking the structural roots of crime. Patriarchy is a structural cause of domestic violence, feminism a social movement that addresses this cause. Corruption in business-government relations is one reason why regulatory agencies cover up corporate crimes; consumerism (in the Nader public-citizen mold) is a social movement concerned with addressing this structural basis of crime.

10. Reintegrative shaming directed at the kinds of crime that republicans struggle to have recognized as crime is not repressive. Reintegrative

shaming is as necessary to increasing freedom as it is to reducing crime. Liberals are wrong to conclude that a high crime rate is a price we pay for freedom. A high crime rate is one of the consequences of the limited conception of freedom in liberalism.

11. Republicans believe in individuation, because dominion is something individuals enjoy as individuals. For republicans, both individual isolation and engulfment by the group are evils. Individuation in a social world is secured by a system of social assurances, including rights. Republican rights are best secured by reintegrative shaming of those who are not rights-respecting. Liberal rights, in contrast, are empty legal gestures of limited practical use to securing individuation in a social world infused with relations of power.

12. The republican is interested in exploring synergies between social movement action and state action that will increase dominion for citizens. In the domain of crime control, the task is not so much to get the state to do the job but for the state to empower citizens and movements of citizens who are ultimately our best hope for a reduction in crime.

28. See the discussion in Yeager (1991), especially at chap. 3 and pp. 225-26.
29. See generally the discussion in Yeager (1991), chaps. 6 and 8.
30. Section 309 [a] [3] of the 1972 amendments simply states that, upon a finding of any violation of the law or of a discharge permit, the EPA administrator "shall issue an order requiring such person to comply, . . . or he shall bring a civil action" (emphasis added). The legislative history of the act is also unusually clear that enforcement was to be mandatory. See Yeager (1991: 186-87).
31. *Sierra Club v. Train*, 557 F.2d 485, 489 (5th Cir. 1977).
32. EPA Headquarters Enforcement Memorandum, "Compliance Monitoring, Administrative Orders, and Court Actions Under Section 309 of the Federal Water Pollution Control Act Amendments of 1972," March 20, 1974 (emphasis in the original).
33. Statement of Richard E. Drooyan, chief assistant U.S. attorney, Los Angeles, in *Proceeding of Symposium 87: White Collar/Institutional Crime: Its Measurement and Analysis* (Sacramento: California Department of Justice, Bureau of Criminal Statistics and Special Services, 1988), p. 69.
34. EPA Headquarters Enforcement Memorandum, regarding correspondence between EPA and the Justice Department on problems in enforcement, December 3, 1976.
35. *Ibid.*
36. Conversation with author, EPA Headquarters, spring 1978.

Chapter 12

This chapter is in part stimulated by discussions of my earlier work with Ngaire Naffine, the late June Fielding, and Betsy Stanko. Unfortunately, I have taken only pathetically small steps down the three paths suggested by these scholars. My thanks to Ross Homel, Andrew Hopkins, Toni Makkai, David Nelkin, and Philip Pettit for extremely helpful comments on an earlier draft of this work.

1. For the philosophers who are shocked by such a casual definitional gestalt, here is a formal definition. A person enjoys full dominion, we say, if and only if:
 - a. She enjoys no less a prospect of liberty than is available to other citizens.
 - b. It is common knowledge among citizens that this condition obtains, so that she and nearly everyone else knows that she enjoys the prospect mentioned; she and nearly everyone else knows that the others generally know this too, and so on.
 - c. She enjoys no less a prospect of liberty than the best that is compatible with the same prospect for all citizens (Braithwaite and Pettit 1990, 64-65).
2. Needless to say, I am not impressed by the theoretical or empirical bite of Adler's (1975) arguments on the effect of the women's movement in causing the rise of a new female criminal (see Adler 1975; Box and Hale 1983; Scutt 1980; Smart 1979; Steffensmeier and Steffensmeier 1980).
3. It should also be noted that this social formation accounts for Australia's other major violence problem, beyond domestic violence. This is male-on-male violence,

macho responses to insult or humiliation, mostly by young working-class males, in the context of drinking at pubs, clubs, and other entertainment venues (Tomsen et al. 1991).

4. Purists who claim that statism does not exist in the English language can read it as a translation from the French (*étatisme*), a language more accommodating to republican writing.

5. According to republican criminology, among the many things that are critical to know, two of the distinctively republican things are: (1) Is it true that when we come to view a certain type of crime as shameful, we are less likely to engage in it? (2) Is it true that an effect of the campaigning of social movements has been to make some of the most serious types of crime more shameful?

6. The high point of this moral crusade was the extraordinary event of a National Tax Summit. Business, union, and community leaders were invited to the chamber of parliament to address the prime minister on what needed to be done to return to a fair tax system that citizens would respect.

7. As Gusfield says of the nineteenth-century heyday of the American temperance movement, "Sobriety was virtuous and in a community dominated by middle-class Protestants, necessary to social acceptance and to self-esteem." In contrast, by the mid-twentieth century or earlier, "Abstinence has lost much of its ability to confer prestige and esteem" (Gusfield 1963: 4).

8. A fully fleshed out theory of this sort would have to give an account of how entrepreneurs can create new waves of drug use until an effective community reaction takes hold—marijuana in the 1960s, heroin in the 1960s, cocaine in the 1980s, amphetamines and LSD in the 1960s with a resurgence in the 1990s. Does community reaction occur wave by wave, drug by drug? Is there a hopeful new ideological turn in community reaction today, where *all* drugs, tobacco and alcohol included, are being bundled together as harmful things to put into your body? Are parents today who fail to educate their children about the generic undesirability of drugs at risk of being cast as negligent parents? Are smoking parents now vulnerable to community expectations that they have an obligation to confess their own stupidity to their children?

9. The republican commitment also implies support for the crime victims' movement more generally (Braithwaite and Pettit 1990: 91-92). But this is a more difficult question I must leave for another paper.

10. I am grateful to the late June Fielding for suggesting in a seminar that the enforcement pyramid idea might be extended to the domain of crimes against women.