

REDUCING THE CRIME PROBLEM: A NOT SO DISMAL CRIMINOLOGY*

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A normative criminology is possible which offers guidance on the types of crimes we should struggle to reduce and how. An explanatory criminology is possible that suggests which practical strategies may work in reducing these types of crimes. These possibilities have eluded us, however, because of the excessive emphasis on state policies within prevailing theoretical traditions. A theoretical revolution in criminology is needed to cause us to look in the right places for practical struggles that might bear fruit. Republican criminology is advanced as one theoretical alternative. Republicanism causes us to see that those crime problems which are our most serious are actually problems on which we may be making some progress. A theoretical reorientation might help us grasp the sources of our contemporary successes in crime control so that we might apply ourselves to reinforcing them.

Criminologists are pessimists and cynics. There seem good reasons for this. Our science has largely failed to deliver criminal justice policies that will prevent crime. The grand 19th century utilitarian doctrines — deterrence, incapacitation, rehabilitation — are manifest failures. The return to classicism in criminology — the just deserts movement — has been worse than a failure. It has been a disastrous step backwards.

My own view is that we need a theoretical revolution in criminology to extricate us from our contemporary nihilism. In this lecture, I will argue for a theoretical revolution that causes us to look at the crime problem in a decisively changed way. It replaces pessimism that nothing works in reducing crime with an optimistic vision. The theory enables us to see that: (1) the most serious crime problems in contemporary societies are precisely the crime problems we are in the best position to reduce; and (2) the changes needed to effect these reductions have gathered significant momentum in Australia since the mid-1970s.

To find the foundations for the theory that will ultimately lead us to this conclusion, we need to go back beyond the failed 19th century theories of liberalism, Marxism and utilitarianism to the political theory which was dominant for several centuries up to the 18th century. That political theory is republicanism. This does not mean that I advocate creating Montesquieu's or Machiavelli's or Jefferson's republic in 21st century Melbourne. The intellectual challenge before us is to construct models of contemporary urban republics, practical strategies for injecting republican elements into liberal urban life. So what are the lights on the republican hill that we might reformulate in a contemporarily relevant way?

Cass Sunstein (1988) advances four commitments as basic to republicanism: (1) deliberation in governance which shapes as well as balances interests (as opposed to simply doing deals between pre-political interests); (2) political equality; (3) universality, or debate to reconcile competing views, as a regulative ideal; and (4) citizenship, community participation in public life. It will perhaps already be obvious to you how these republican values underwrite the importance of community policing as a practical strategy.

I will be as brief as I can on the philosophy of republicanism as a foundation for criminal justice policy. These foundations are discussed at length in my book with

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Philip Pettit, *Not Just Deserts: A Republican Theory of Criminal Justice* (Braithwaite and Pettit, 1990). This is a consequentialist theory that posits the maximisation of dominion as the yardstick against which to measure the adequacy of policy. What is this dominion that we wish to maximise?

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. Freedom for the liberal means the objective fact of individuals being left alone by others. For the republican, however, freedom is defined socially and relationally. You only enjoy republican freedom – dominion – when you live in a social world that provides you with an intersubjective set of assurances of liberty. You must subjectively believe that you enjoy these assurances and so must others believe. Being a social, relational conception of liberty, by definition it also has a comparative dimension. To fully enjoy liberty, you must have equality of liberty prospects with other persons. If this is difficult to grasp, think of dominion as a conception of freedom that, by definition, incorporates the notions of that old republican slogan *Liberté, Egalité 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.

Secondly, 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, redistributive tax and economic policies are commended by the theory. So we have a theory that can require minimalism in criminal justice policy alongside interventionism in economic policy.

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

The point of all this is to show that theories are valuable when they help us to see a problem differently and to see changed and effective ways of responding to it. I will now go on to argue that republican criminology does replace a pessimism that nothing works in reducing crime with the optimistic interpretation outlined at the beginning of the lecture. To remind you, republican theory enables us to see first, that the most serious crime problems in contemporary societies are precisely the crime problems we are in the best position to reduce. Secondly, the changes needed to effect these reductions have gathered momentum since the mid-1970s.

These changes are not so much in criminal justice policies, but growth in the support for and effectiveness of social movements with criminal justice agendas. Republican criminological praxis involves active support for social movements such as the women's movement, the environmental movement, the consumer movement and the social movement against drink driving. It also involves support for community policing, genuine community policing, for the kind of communitarian reform direction being taken with the so-called family group conferences for young offenders in New Zealand and Wagga Wagga, for the kind of non-criminal justice

interventions to give educational and employment hope to young offenders that have long been advocated by the likes of Ken Polk of this University.

To get to these conclusions, we need to step back for the moment from the normative theory in the book with Philip Pettit to the explanatory theory in my other recent book, *Crime, Shame and Reintegration* (Braithwaite, 1989). The two books are intended to be complementary — the one a normative theory, the other an explanatory theory.

The crucial explanatory idea in *Crime, Shame and Reintegration* is that reintegrative shaming is the key to crime control. This is not just about shaming as a specific deterrent. It is not just about shaming that causes an internalisation of the wrongfulness of crime, so that we are punished by our own pangs of conscience. Most of us did not commit a murder last week, not because of any rational calculation of the costs and benefits of solving our problems by bumping off the person causing them. Rather, we refrained from murder because murder was right off our deliberative agenda. Cultural processes of shaming murderers to which we were exposed in earlier periods of our lives had rendered murder unthinkable as a means of solving our problems. The key to understanding crime control is in coming to grips with how this unthinkable is constituted.

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

Reintegrative shaming is disapproval extended while a relationship of respect is sustained with the offender. Stigmatisation 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.

Emphasising reintegrative shaming as a strategy of crime control is not as oppressive as emphasising stigmatisation, and certainly not as oppressive as imprisonment or other forms of punishment. But it can be oppressive. Here is where one must have a moral theory, a normative theory, to guide the application of the explanatory theory. In a more detailed paper (Braithwaite, in press), I argue the republican position that shaming should only be used when its use is likely to increase dominion. The test is whether a particular form of shaming will make our society more or less free. Indeed, I argue that, conceived in a republican way, shaming not only can avoid being an unconscionable threat to freedom. I argue that the capacity to shame is essential to constituting freedom.

Consider rights which, according to our book, republicans are required to take seriously as constraints on the pursuit of good consequences. Rights only have meaning as claims that rich individuals and corporations can occasionally assert in courts of law *unless* community disapproval can be mobilised against those who trample on the rights of others. Liberals and republicans can agree that gay men and lesbians have a right to be different outside the constraints of the criminal law. Yet

because liberals are squeamish about mobilising 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 police to court when they harass them. While the republican supports this, it must be viewed as a rather empty gesture. For the republican, rights to diversity only acquire genuine power when socialising institutions and community campaigns against disrespect of rights result in citizens internalising 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.

But how do social movements mobilise shame to bring crime under control? The first point to reiterate is that it 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 unthinkability 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. I do not think I would have much difficulty persuading this audience that for most of the different ways that scholars might define harm to persons, three types of crime are responsible for the greatest harm to persons in our society. These are domestic violence (Scutt, 1983; Hopkins and McGregor, 1991), occupational health and safety and other corporate crimes of violence such as those in the pharmaceutical industry (Braithwaite and Grabosky, 1985: 1-41) and drink driving (Homel, 1988). 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 (Grabosky and Sutton, 1989; Wilson and Braithwaite, 1978; Braithwaite, 1979).

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 the 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 (Scutt, 1983: Ch 9; Hatty and Sutton, 1986; Wearing, 1990). 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 (Sergeant, 1973). 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' (quoted in Pontell and Calavita, 1991).

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 such as Tomasic and Pentony working on insider trading 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 (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 Wallace, 1988). 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 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 or overwhelming — patriarchy is not about to breathe its last gasp, the environment continues to collapse and drink driving remains one of our 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 stigmatisation compared with the positive effects of reintegrative shaming of offenders. I refer to feminists who stigmatise men, to white-collar crime scholars who stigmatise pharmaceutical executives as structurally and irretrievably evil drug pushers.

But 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 which 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 prior to the social movement against domestic violence that regained momentum in the mid-1970s. Similarly, government victim surveys provide a doubtful baseline because interviews have been conducted in the very households which are the sites of domestic violence, presumably in many cases within sight or sound of the very persons who have committed the violent acts. Victim surveys come up with many misleading findings, among them the strongly replicated finding in the US that women assault men in the home as much as men assault women (Tyree and Malone, 1991). In fact, statist methodologies show that the problem is getting worse because an accomplishment of the social movement against domestic violence has been to provide support to women who wish to lodge complaints against violent men (Hopkins and McGregor, 1991).

One objection to dealing with crime by directing shame against specific forms of crime is that this is a utopian enterprise, since shaming is not an effective mechanism of social control in modern, urbanised, 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, 1992). Like Elias (1978, 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 focus 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 compared with the past. What we can say with some confidence, however, is that domestic violence has become more shameful compared with say Trevelyan's (1985: 196) description of the shamelessness of male violence in 15th century England:

Wife-beating was a recognised right of man, and was practised 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.

This fact is not only recorded in the history books, but in the courts as well, where, within limits, domestic violence by the head of the household continued to be matter of right rather than shame until late in the 19th century.

Similarly, I view the evidence as very strong that in recent history there has been a rise in the shamefulness of environmental crimes (McAllister, 1991) and certain other types of corporate crime (Grabosky et al, 1987).

In this lecture I have overplayed the contrast between preventing crime by state enforcement and preventing crime through mobilising social movements. This contrast has been set up in an attempt to highlight the limitations of statist criminology. But in fact my view is that both state and social movement crime control efforts are maximally effective when there is a strategic synergy between the two.

The model I like to use to communicate the required synergy is of the enforcement pyramid. Figure 1 is an example of a business regulatory enforcement pyramid. The idea is that the capacity of the state to escalate up the enforcement pyramid to tougher and tougher sanctions motivates the firm to cooperate with dialogic regulation at the base of the pyramid. By dialogic regulation I mean decision-making where the firm sits down with an environmental regulatory agency and with greens to negotiate the solution to a pollution problem.

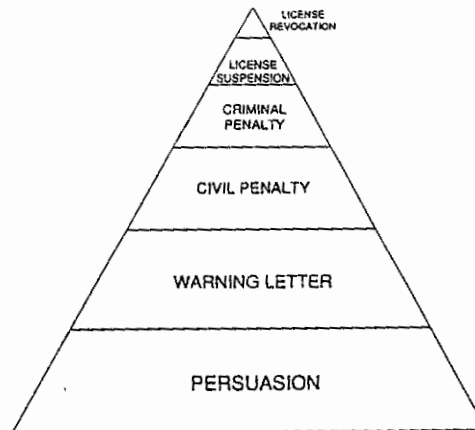


Figure 1: Example of an enforcement pyramid. The proportion of space at each layer represents the proportion of enforcement activity at that level.

In Figure 2 we 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 internalise an abhorrence of violence, to take pride in respecting the rights of women, pride in caring for others. But sometimes families will fail in accomplishing this. Then they must look for support outside. In the first instance, a battered women 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 criminal enforcement as by imprisoning the man. Just as with the business regulatory pyramid, the capacity of the victim of domestic violence to display the inevitability of escalation to more and more dire outside intervention can be empowering for the victim.

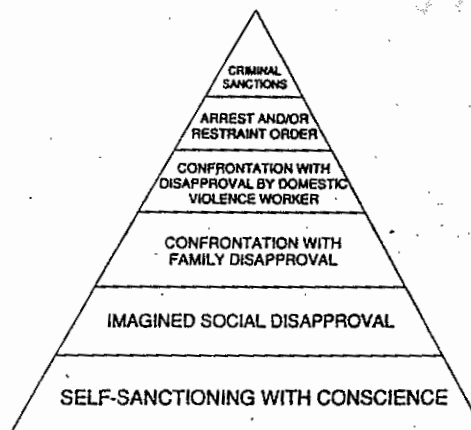


Figure 2: Example of a domestic violence enforcement pyramid.

The hope with these models is not that state enforcement will be so potent and so regularly used that it will deter rational offenders. The deterrence literature shows that to be an unrealistic hope. No, the hope is that we can enable state enforcement a level of credibility sufficient to empower informal processes of social control, to make dialogic regulation of our most serious crime problems something that powerful actors would be well advised to attend to.

The republican envisages that a long historical process of community and state involvement in shaming acts of domestic violence will result in most citizens internalising 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 perpetrator that following an act of violence others will disapprove of him. Note that no one has to directly confront the offender with shame at this level; an offender who understands the culture will know that those who find out about his violence will be gossiping disapprovingly. As I was at pains to argue in *Crime, Shame and Reintegration*, 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 his violence, then someone must confront him with that disapproval. If family members are too intimidated to do it, then a domestic violence worker must do it. If disapproval, dialogue and counselling 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 following a specific outburst (see Sherman and Berk, 1984; Hopkins and McGregor, 1991)) 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 drink driving in Australia — the formalism of random breath testing empowered the informalism of dialogic regulation within drinking groups.

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.

If criminology is to escape the nihilism that can turn it into an ever more dismal science, we do need to think more creatively about how to achieve synergy between state and communitarian social control in a democracy. To unleash and guide that problem-solving creativity, a radical rethinking of criminological theory might help.

Republicanism seems to me just one example of how to see a somewhat different light on a different hill. I do not know what Sir John Barry would have made of all of this, but it is a light I hope he might have thought worthy of consideration. Barry was certainly one who searched for the light on the hill; he was not a pessimist about the prospects for Australian criminology to inform crime prevention; he was a foundation activist in two of the new progressive social movements of his time — the Council for Civil Liberties and Amnesty. Perhaps the pessimistic late 20th century audience I confront might think about taking to heart these virtues of Sir John Barry?

NOTES

¹ For the philosophers who are shocked by such a casual definitional gestalt, here is a formal definition:

'A person enjoys full dominion, we say, if and only if:

- 1 She enjoys no less a prospect of liberty than is available to other citizens.
- 2 It is common knowledge among citizens that this condition obtains, so that she and nearly everyone else knows that she enjoys the prospect mentioned, she and nearly everyone else knows that the others generally know this too, and so on.
- 3 She enjoys no less a prospect of liberty than the best that is compatible with the same prospect for all citizens' (Braithwaite and Pettit, 1990: 64-5).

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