

CHAPTER 6: THE MODEL IN PRACTICE AND THEORY

Evidence gathered for this evaluation of the Wagga Wagga model of "effective cautioning using family conferences" is instructive in several areas. It offers specific and general insights in politics, sociology and psychology. Furthermore, statistical evidence from Wagga provides an objective measure of several positive outcomes delivered by the model.

To begin with, the development and implementation of the model offers an important *political* case study. It is a study in the politics of policing and, more generally, a study of the clash between two political world views. In that clash, the view that society can be largely self-guiding appears to have prevailed against the frequently unquestioned alternative view that society should be guided by a professional elite. Thus, at the level of local politics, the view that society can be largely self-guiding informed the design of the model of effective cautioning using family conferences. And at the levels of state and national politics, growing acceptance of the Wagga model of juvenile justice necessarily acknowledges an alternative to the view that society should be guided by a professional elite. Thus, the key political question to which this report offers one tentative answer is not what structures in justice best enable public officials to make decisions on behalf of others. Rather, the key political question is what structures best enable the members of local communities to make just decisions on their own behalf.

The second area in which evidence gathered for the evaluation offers specific and general insights is in the area of *sociology*. Evidence gathered from conferences themselves reveals a great deal about interaction in groups, and about the power of social networks. It appears to be a measure of the intrinsic integrity of the conference process that it regularly delivers outcomes satisfactory to all conference participants. This apparent integrity of the process itself would seem to derive both from the nature of the interaction between conference participants and from the ability of the conference process to mobilise and even rebuild social capital. Thus, the key sociological question is what processes best foster the sort of interaction that mobilises and builds social capital.

Third, interviews with conference participants some months after their conference reveal much about their perceptions of the process and its aftermath. The reported perceptions of victims, offenders, their supporters, and police suggest that the conference process and the subsequent honouring of conference agreements do not fit the paradigm of retributive justice. The responses of participants suggest that conferences and conference agreements exemplify an alternative paradigm of restorative justice - or, better still, "transformative justice". The latter phrase is preferable, since it emphasises not *restoration* of the status quo ante, but *transformation* of individuals and social networks. This transformation occurs as a result of people's involvement in a conference and fulfilment of a subsequent conference agreement. (A fuller discussion of these terms and their relative value is provided below.) The key *psychological* question raised and tentatively answered by the report is thus what model of habits, motivation and rationalisation best explains this individual and collective transformation.

Fourth, statistical data from the Wagga Wagga pilot program of family conferencing strongly support claims that the model is able to achieve its several stated goals. Preliminary studies had already suggested (1) that the overwhelming majority of participants were satisfied with the conference process and its aftermath. Police statistics had likewise suggested (2) that there were very high rates of voluntary compliance with conference agreements. Lubica Forsythe's detailed data analysis has now provided evidence suggesting (3) that rates of reoffending are reduced significantly by the conference and its aftermath. The rate of reapprehension for that cohort of offenders whose cases were dealt with by conference rather than court was approximately half that of a group of offenders whose comparable cases had gone to court. (See Tables 23-25; Figures 8 & 9) Once the constructive suggestions of participants have been incorporated into an improved model, it is highly likely that this rate of reapprehension can be further reduced. Evaluation of the conferencing program in Canberra will provide a more rigorous and accurate measure of the ability of conferencing to deliver lower rates of reoffending.

For the time being, we have a great deal of evidence that the Wagga model produces both better subjective and better objective outcomes. The model produces better *subjective* outcomes insofar as people feel better about the central process than they do about the alternatives. Participants generally seem to feel that they have achieved *procedural, material* and *psychological* justice because they have been allowed to argue their case, to be party to a fair agreement for material restitution, and to express their feelings openly.¹

The model produces better *objective* outcomes in the form of reduced rates of reoffending and higher rates of material reparation. And there seems to be yet another positive outcome delivered by the model, an outcome that involves both subjective and objective improvements. The model appears to improve police practices on the streets. Police and young people who were interviewed as part of the program evaluation suggested that relationships between the two groups had improved in recent times. Both groups suggested that this improvement in their relations on the streets correlated with the involvement of both parties in conferences. The data on first offences, presented in the previous chapter (Tables 8 and 9), would seem consistent with such claims. Good order offences as a proportion of first offences declined from over 12% of the total before the implementation of the conferencing program to under 6% during the two years after the program began. It is not clear whether this statistic reflects more tolerance on the part of police, more civil behaviour on the part of some young people, or a combination of both of those factors. Whatever the explanation, the figures lend support to suggestions by police and young people that the offence of "contempt of cop" became less significant as the new model of effective cautioning using family conferences was introduced. Again, the program evaluation in Canberra may provide a more precise measure of this phenomenon.

In sum, the evidence collected during this program evaluation suggests that the Wagga model provides a better deal for victims, for offenders, for their supporters, and for

¹ This argument is presented in more detail in a paper on conferencing in schools. See M. Hyndman, D. Moore & M. Thorsborne, "Family and Community Conferencing in Schools" in R. Homel (ed), *Problem Solving for Crime Prevention*, Brisbane: Griffith University, 1995

police. The evidence also contributes to a greater understanding of the family conferencing process, a greater understanding of this particular model, in which police convene conferences in order to deal with the majority of juvenile justice cases, and a greater understanding of the political environment of policing.

This final chapter will now consider these three areas in reverse order. It will consider, first, the broader politics of policing and juvenile justice. It will then consider this particular model of juvenile justice. Finally, it will consider in some detail the family conferencing process around which the model is based.

The *politics* of program implementation and the mechanics of the *model* have already been described in some detail in the first chapter of this report. Further discussion here will be brief. Anyway, the most far-reaching implications of the evaluation derive from studying neither the politics of implementation nor the mechanics of the model. The most far-reaching implications derive, rather, from detailed studies of the conference *process* itself. As more evidence about the process has emerged, so the initial theoretical account of the process has been elaborated. Ongoing discussions about the conferencing process among a small group of colleagues - in Australasia and elsewhere - have led to the development of a grounded psychosocial theory which has built on Braithwaite's theory of reintegrative shaming. Some of those who have followed the development of the Wagga model from the outset have now come to see family or community conferencing as one version of a generic *transformative justice process*.

A clearer understanding of the nature of this generic process should enable further improvement of the one particular version with which this report has been concerned. A clearer understanding of the process should, in turn, enable further improvement of the model of "effective cautioning using family conferencing". Finally, understanding the process and improving the model might lead to the identification of other arenas where transformative justice processes are preferable to the retributive alternatives. Accordingly, the bulk of this chapter will be devoted to an analysis of the conferencing process itself, and to a summary of the psychosocial theory that best accounts for the power of the process. Nevertheless, the political and procedural framework within which the process has operated in this program must first be well understood.

Politics and Policing

An account of the politics of implementing and evaluating the model of effective cautioning has been supplied in the first chapter of this report. More detailed accounts are available elsewhere.² Beyond the details, the essential pattern is this: Two rival interpretations of "community policing" clashed in Wagga Wagga during the implementation of the model of effective cautioning. One of these interpretations sees "community policing" largely as a tool of management, a rhetorical means of diffusing conflicting demands from within and without the Police Service. The other interpretation takes seriously the language of decentralisation, consultation, and

² D.B. Moore & T.A. O'Connell, "Family Conferencing in Wagga Wagga: A Communitarian Model of Justice" in C. Alder & J. Wundersitz (eds), *Family Conferencing and Juvenile Justice: The Way Forward or Misplaced Optimism?* Canberra: AIC, 1994; D. B Moore & J.M. McDonald, "Juvenile Justice and Community Cohesion: A Local Initiative and its Wider Ramifications" in K. Hazlehurst (ed), *Justice and Reform Vol. 2* Aldershot: Avebury, 1995

democratic participation.³ This latter view of community policing has been consistently espoused by the local Community Consultative Committee, the Police and Citizens Youth Club, and the Beat Police. The Wagga Wagga Patrol Commander displayed considerable courage in supporting these groups.

The two competing interpretations of "community policing" can be understood as examples of two competing world views. The former interpretation of community policing assumes the model of a scientifically-guided society. That model leaves the detection and solution of social problems to experts (who often draw direct analogies between the rigour of their social science and that of the natural sciences). The latter interpretation of community policing assumes, in contrast, the model of a self-guiding society. That model has only a limited faith in the political pronouncements of experts. It has a greater faith in the ability of people to contribute to political debate and to make mutual adjustments on the basis of popular participation.

The model of a scientifically-guided society tends to favour centralist control. The model of a self-guiding society seeks to devolve power to the lowest possible levels, according to the principle of subsidiarity. Political scientist Charles Lindblom has suggested the following reasons for the divide between these two philosophies:

There exists in the literature of social science no justification of centrality over mutual adjustment, the favoritism shown to it more habitual than reasoned. Rational decision making, as both many lay people and professionals see it, is simply what a rational mind does with a problem, and a centralist has a rational mind. That a centralist's mind alone achieves rationality denied to interacting people they simply assume. Their mistake derives in part from their view of problem solving as wholly cognitive, not also social; thus they habitually speak of the "decision maker" rather than of interacting participants. They remain blind to the fact that centralists do not necessarily think their way through to a solution but instead impose one by exercise of authority.⁴

Perhaps the most interesting aspect of the politics of implementing the Wagga model of effective cautioning concerns the relationship between these two philosophies of centralism and mutual adjustment. Once a basic preference had been shown for mutual adjustment over the imposition of central authority, that philosophy of mutual adjustment seems to have informed the subsequent development of all procedures within the model. Thus, the review committee that exercises collective discretion to refer a case to court or conference operates according to the philosophy of mutual

³ As a general rule, and for understandable reasons, the first view tends to prevail among commissioned officers, the second among the more committed, less cynical constables and sergeants. A study of the views of senior commissioned officers concerning community policing is available in D.B. Moore, "Views at the Top - Downunder: Senior Australian Police on Australian Policing" in *Policing and Society*, 4, 1994. A study of rank-and-file views is available in D.B. Moore "Police Responses to Community Policing" in S. McKillop and J. Vernon (eds), *The Police and the Community*, Canberra: AIC, 1991. Similar findings of a cultural clash between rank-and-file and commissioned officers are presented in a more recent report that reached conclusions opposite to those anticipated and desired by the senior officers who commissioned the report. See ***

⁴ Charles Lindblom, *Inquiry and Change: The Troubled Attempt to Understand and Shape Society*, New Haven: Yale University Press, 1990. pp. 247-248

adjustment where previously there had been an individual, unilateral decision to send a case to court or to a traditional caution.

Similarly, the attendance of investigating officers at conferences is optional, and this arrangement was designed to give individual officers an opportunity to decide for themselves the merits of the process. Rather than being told that they had to support the process, they could trade "war stories" about it with their colleagues if they chose to do so. Both initiatives - the review committee and the attendance of investigating officers at conferences - appear to have fostered a culture of talking and critical thinking. Officers have thereby been encouraged to reconsider - individually and collectively - the fundamental aims of their profession. And most importantly, of course, the conference process itself involves a shift away from the philosophy of imposed central authority and a shift towards the philosophy of mutual adjustment.

A model that employs conferencing in this way ultimately requires a redefinition of two key political terms. The politics of implementing the Wagga model has involved redefining the terms "community" and "policing". The term "community" is no longer defined *centrally* as the community of voters or the community of viewers and listeners. These definitions, understandably, are favoured by politicians and media. The Wagga model, in contrast, gives "community" a *local* definition. The "community" that attends a conference is the community of people affected by a given incident. And that community is constituted, in turn, by several smaller communities: the "communities of care" surrounding victim(s) and offender(s). In other words, the community spoken of in politics and infotainment consists of innumerable smaller communities. The Wagga model deals with some of these smaller communities - as the need arises.

The term "policing" has also been redefined. The Wagga model enables police to deal with the majority of juvenile justice cases at the front end of the justice system, and to do so using the resources of a local community rather than the resources of the state. And the guiding philosophies of the conference that harnesses these resources include reparation and harm minimisation. The model thus defines the primary role of policing as "peace keeping" rather than "law enforcement". Yet again, mutual adjustment prevails over the imposition of central authority.

The Wagga Model

A key feature of the *politics* of implementation of the Wagga model, then, has been a preference for mutual adjustment over the imposition of central authority. A key design feature of the *model* itself is that police are responsible for carriage of the model's key procedures. Some of the arguments for this arrangement have already been rehearsed in the first and fourth chapters. They include minimisation of bureaucratic complexity, which, in turn, both (1) minimises the *delay* between apprehension and official response, and (2) minimises total systemic financial *costs*.

Other arguments for the role of police in the Wagga model include (3) the increased willingness of parties - particularly victims - to attend conferences if police are in attendance, and the transformative effect of the model and process not only on participants but also on (4) police and (5) policing. As was suggested in the fourth chapter, this transformative effect appears to be experienced at four points in the

model. It is experienced by police (a) who attend review committee meetings, (b) who attend a conference as an investigating officer, (c) who arrange and convene conferences, and (d) who are involved in any follow-up after conferences.

A further advantage of the role of police in this model of juvenile justice arises from (6) the fact that policing is not inextricably linked to the paradigms of legal formalism or welfarism. Legal formalism, as the guiding philosophy of attorney generals' departments, and welfarism, as the guiding philosophy of community service departments, are the two principal philosophies informing practices in contemporary juvenile justice systems. Children's courts and related diversionary programs generally offer some mix of these two philosophies, adjusting the ratio of legal formalism to welfarism over time in response to fluctuations in the social and political mood. In contrast, the conferencing process is guided by a quite different philosophical mix of *reparation, harm minimisation, education and transformation*. This philosophical mix is less likely to succumb either to a legal formalist philosophy or a welfarist philosophy so long as the model and its central process are coordinated by an agency that is guided (exclusively) *neither* by legal formalism *nor* by welfarism. Policing, with its three-fold historical mandate of law enforcement, peacekeeping, and miscellaneous/emergency service, is guided by a mix of philosophies. Its mandate to keep the peace and provide miscellaneous/emergency services is quite consistent with the goals of reparation, harm minimisation, education and transformation.

Despite the weight of such arguments, however, there has been considerable opposition to the Wagga model. That opposition has frequently been backed by arguments that are less than clear. Opposition has apparently wavered between, on the one hand, criticism of the model and process, and, on the other hand, support for the process, but criticism of the model because of the role of police in it.

Perhaps not surprisingly, the most vociferous criticism has come from departments guided by legal formalist or welfarist philosophies, or from academics similarly committed to those philosophies and related practices. Where their criticism has focused on police involvement, critics have claimed that only certain individuals or agencies are capable of convening conferences. Police, they say, are not up to the task. Consistently, such critics have then proceeded to outline the skills needed by mediators.

This assumption that mediation and conferencing are synonymous is false. It arises from a failure to distinguish between (1) an alternative mechanism for dispute resolution in *civil law* from (2) an alternative means of responding to an act of *criminal* victimisation. When advanced by attorney generals' departments, in particular, such arguments are disturbing. Policy analysts in a central legal agency really should be capable of distinguishing between civil and criminal law.⁵

The confusion of the critics might perhaps be excused on the grounds that the conference process is convened at the juncture of civil and criminal law. The criminal

⁵ For a generally perceptive criticism of "victim-offender mediation" programs that have failed to distinguish between criminal and civil law, see Brett Mason, "Reparation and Mediation Programmes: The Perspective of the Victim of Crime", *Criminal Law Journal* 16, 1992 402-414

law is invoked as a prelude to convening a conference. But an agreement reached in the conference would have standing only in civil law were a participant to claim legal remedy for a failure to honour the agreement. Perhaps most confusing of all - certainly for legal formalists - is the observation that conference participants do not seem primarily concerned about breaches of *legal rules* - civil or criminal. Rather, participants seem concerned about breaches of *community standards*. The concerns of participants are, first and foremost, moral and ethical, rather than legal. To understand this distinction more clearly, one must analyse the conference process.

Dynamics of the Process

To reiterate: The *politics* of implementing the Wagga model have involved taking seriously the rhetoric of community policing. The terms "community" and "policing" have thus been subject to redefinition. "Community" has been redefined as the group of people immediately affected by an incident. "Policing" has been redefined primarily as peacekeeping. In both instances, the philosophy of mutual adjustment in politics has prevailed over the centralist philosophy that society should be guided or directed by a professional elite.

Yes, police play a key role in the *model*, but their role does not undermine this philosophy of mutual adjustment. As members of the weekly review committee, police collectively exercise their discretion to decide that a group of people directly affected by an incident might be brought together. Once that decision has been taken, members of the group affected by the incident are offered participation in a conference. The opportunity to repair the damage caused by the incident, and to minimise further harm, is given to conference participants. Details of conference agreements are left to them, and the obligation to honour the conference agreement they made likewise rests with them.

Now to the *process*: The conference itself appears to be one example of a generic process of transformative justice. Thus, the conference is informed by key principles of the more familiar paradigm of "restorative justice", but extends those principles. It seeks restoration and transformation, rather than retribution.

Canadian academic and social activist Ruth Morris has recently delineated these three approaches with impressively clear definitions. She begins with *retributive justice*, which sees crime as a *violation of the state*. Retributive justice sees problems as beginning with the *crime*. And the goal of retributive processes is some combination of punishment, deterrence, protection, and rehabilitation.

In recent years, a second paradigm has begun to influence debates and practices in criminal justice. Perhaps its most eloquent advocates have been members of the North American Mennonite and Quaker communities.⁶ The *restorative justice* paradigm they have promoted sees crime as a *violation of people and relationships*, rather than a violation of the state. Like retributive justice, restorative justice sees problems as

⁶ See especially Howard Zehr, *Changing Lenses: A New Focus for Criminal Justice*, London: Metanoia, 1990

beginning with the crime, but the goal of restorative processes is to restore "wholeness to the victim and responsibility to the offender".⁷

Morris and her colleagues do not disagree with this paradigm of restorative justice, but they would like to see it extended. The resultant third paradigm has more significant implications for the criminal justice system than does the paradigm of restorative justice. Morris calls this third paradigm "transformative justice". It sees crime as a violation of people and relationships *which offers an opportunity for transformative healing for all*. It sees problems beginning with the *causes of crime*. And transformative justice processes treat crime as *an opportunity to find healing for both victim and offender*.⁸

The Wagga model of effective cautioning using family conferencing clearly fits this third paradigm, the paradigm of transformative justice. The Wagga model offers an opportunity for healing to all affected by a criminal incident. A conference deals with the incident itself, but in providing a constructive response, conference participants may also begin to address some of the causes of crime. In this model, then, crimes are treated, where possible, as opportunities for problem solving. They are treated as opportunities for individual and collective transformation. Conference transcripts and interviews with participants - reproduced in the second, third, and fourth chapters of this report - provide a weight of empirical evidence that participants understand conferences in these terms, and that a transformation does indeed occur during and after conferences.

Now those who have followed the debate about family conferencing in Australia since early 1992 will be aware that much of the theoretical work around the model and process has not, until recently, employed this paradigm of transformative justice. The starting point for theoretical work has been an apparently slightly different paradigm. Conferencing has been described as one example of a generic "ceremony of reintegrative shaming".⁹ But there is no theoretical conflict here. Reintegrative shaming achieves the social reintegration of victim(s) and offender(s) through a sequence of remorse, expiation and forgiveness. The immediate goal of conferences and conference agreements is *restoration* - material and psychological. For this reason, conferences have been understood as examples of restorative justice - and indeed they are.¹⁰ They repair the damage - as far as is possible - and they minimise further harm arising from the offending incident. But beyond restoration, a conference and its aftermath appear to have a broader *transformative* effect. Our current understanding, then, is that *ceremonies of reintegrative shaming constitute a subset of the larger category of transformative justice processes*. The family conference is thus understood as a ceremony of reintegrative shaming *and* as the central process in a working model of transformative justice.

⁷ Ruth Morris, "A Practical Path to Transformative Justice", unpublished paper, Toronto, December 1992, p.3. For a clear discussion of the link between philosophy and practice in New Zealand, see F. McIlrea, "Restorative Justice. The New Zealand Youth Court: A Model for Development in Other Courts?", *Public Sector*, 17 (3) 1994, pp. 15-17

⁸ *ibid.*

⁹ John Braithwaite and Stephen Mugford, "Conditions of Successful Reintegration Ceremonies: Dealing with Young Offenders", *British Journal of Criminology*, 32 (2) 1994, esp p. 143

¹⁰ See McIlrea *op cit.*

Understanding more about the nature of the conference process has required a dialogue between the theory of reintegrative shaming, other social theory, and qualitative data. From the first meeting held in Wagga in 1991 to consider the introduction of the conferencing process, a working hypothesis has been that such data as was collected in any evaluation of the process and model would prove consistent with the theory of reintegrative shaming. Both the qualitative and quantitative empirical evidence from the Wagga model do indeed seem consistent with the theory of reintegrative shaming.

A more rigorous evaluation of the fit between theory and practice began in the Australian Capital Territory in 1994 and this "phase three" trial should provide detailed results. As suggested in the introduction, the evaluation from Wagga can be compared to the second phase of a medical trial. Thus, following the (phase one) test for "toxicity" in New Zealand, the key aim of the (phase two) Wagga evaluation has been to ensure that the model and process work as well as possible, prior to a full-scale (phase three) randomised trial in Canberra.

An improved and smoothly functioning model alone would be a significant outcome from the Wagga evaluation. But this evaluation has also led to some fascinating theoretical advances. In particular, the evaluation has involved international collaboration to strengthen the physiological and psychological aspects of the theory of reintegrative shaming. The resultant "biosocial" theory offers a persuasive explanation for the efficacy of the process and model. This theory goes a long way towards explaining why the Wagga model has been able to deliver a better outcome for victims, offenders, their supporters, and police. Accordingly, the rest of this chapter will outline the (sociological) theory of reintegrative shaming and psychological counterparts known as affect theory and script theory. The theoretical result is a "social psychology of transformative justice", which is well illustrated by the excerpts from conferences and interviews held in Wagga Wagga.

The social psychology of transformative justice (1): criminology¹¹

The theory of reintegrative shaming is presented most clearly in *Crime, Shame, and Reintegration*, published in 1989. In that book, John Braithwaite turns the traditional concerns of criminology upside down by asking why most people obey the law most of the time.¹²

The "classical school" of criminology had sought to answer a very different question. They asked why some people break the law some of the time, and offered the general answer that criminal offenders made a "rational hedonic calculation". Criminals weighed the advantages and disadvantages of committing an offence, and if the advantages of offending - such as pleasure or wealth - outweighed the disadvantages -

¹¹ Parts of this section were previously presented in a paper presented to the second annual Silvan S. Tomkins Colloquium, "The Experience and Expression of Anger", Philadelphia, October 1994. The paper is: D.B. Moore, "Public Anger and Personal Justice: From Retribution to Restoration and Beyond".

¹² On the question of compliance with the law, see also Tom Tyler, *Why People Obey The Law*, New Haven: Yale University Press, 1990.

such as pain or loss of liberty, then the decision was taken to offend. Thus, according to this school of thought, the solution to the problem of crime was for the state to devise tougher sanctions. If the pain or loss of liberty were sufficiently great, these disadvantages would outweigh the advantages of ill-gotten pleasure and wealth. A sufficient quantity of institutionalised anger would instil a fear that outweighed the seductions of crime.¹³

Positivist critics of the classical school also asked why some people break the law, but they arrived at different answers to those reached by the classical criminologists. One group of critics suggested that some people were born into criminality, predestined by their genetic inheritance. Later variations on this determinist theme were based on psychology or sociology. Criminality was largely a product of psychological profile or social and economic circumstances. All of these theories suggested that the ultimate cause of criminal behaviour was beyond the control of the individual. The policy implication was that punishment might not be an appropriate response.

Modern criminal justice practices have been influenced by all of these theories. They all contain an element of truth. They also contain serious flaws. Recent attempts to deal with some of the more obvious flaws have prompted a reversal of the basic question about law-breaking and predatory behaviour. The focus has more recently been on understanding compliance rather than transgression. It is considered that a better understanding of why most people abide by the law most of the time may lead to better ways of responding to those people who do break the law, who do victimise and violate the rights of others - at least some of the time. A better understanding is required of why most people have some empathy for others and why they respect the rights of their fellow citizens. Braithwaite's contribution to this understanding has been significant.

Crime, Shame, and Reintegration suggests that most people obey the law not primarily because they fear formal penalties but for reasons of greater personal significance. First, they obey the law because their conscience does not allow them to do otherwise. Breaking a just law would violate their idea of themselves as positive moral agents. Second, most people obey the law because they fear disgrace in the eyes of the people who matter to them.

A recent study from New Zealand provides strong empirical support for this theory. Julie Leibrich offers a sophisticated analysis of the reasons why a group of her compatriots had "gone straight", breaking a pattern of offending. Her analysis clearly shows that the combined effect of shame and pride is far more significant as a motivator than is the fear of punishment.¹⁴

¹³ Any summary of this nature will contain oversimplifications. For some sophisticated recent essays on the history of classical criminology, see Piers Beirne, *Inventing Criminology: Essays on the Rise of Homo Criminalis*, Albany: SUNY Press, 1993. For examples of how the principles of deterrence and discouragement can guide well-designed modern crime prevention projects, see the series *Crime Prevention Studies*, Monsey, NY: Willow Tree Press, the first volume of which was edited by Ron Clarke in 1993.

¹⁴ See Julie Leibrich, *Straight to the Point: Angles on Giving Up Crime*, Dunedin: University of Otago Press, 1993, especially the table on page 52. Insofar as such factors are quantifiable, reports from participants in Leibrich's survey suggest that the combined effect of shame, pride, a feeling of

To be more precise, two distinct experiences of shame can be identified as behavioural motivators or inhibitors that encourage compliance with social norms. (1) When shame is evoked by public exposure of inappropriate behaviour, a person experiences "disgrace shame". (2) Conversely, when a person is deterred from completing an action by an intimation of the *potential disgrace* that the action might evoke, then shame has encouraged *discretion*. Conscience has served as a constraint. "Discretion shame" is thus a significant agent of individual conscience.¹⁵

In both cases, shame plays an important role as a regulator of social life. But the two experiences of shame differ in their intensity. The public experience of disgrace shame is clearly intense and unpleasant, the feeling of discretion shame far less so. The former is overwhelmingly affective, the latter seems largely cognitive. Discretion shame is a private means of intuiting what behaviours are publicly appropriate, and it is an internal reminder of one's bonds with others. When a person has an active conscience and is regularly reminded of their bonds with relatives, friends and colleagues, they should generally be able to avoid the more painful disgrace shame that is evoked by inappropriate behaviour. Experiences of discretion shame will help to avoid disgrace.

Taking account of such arguments about the social significance of shame, the theory of reintegrative shaming identifies several reasons for the failings of modern criminal justice systems. Modern criminal justice systems lack a means by which to foster consciences. They lack a means by which to strengthen an offender's ability to feel discretion shame. They lack a means by which to strengthen bonds between offenders and their supporters. Indeed, modern criminal justice systems seek to do exactly the opposite. They offer "ceremonies of degradation" that stigmatise offenders, setting them apart from the community.¹⁶ Offenders may be set apart symbolically, through public denunciation. They may be set apart literally, in detention centres and prisons.

An offender who represents an immediate physical threat to other citizens should indeed be set apart from the general community in order to ensure the safety of others. But how can this physical removal be justified in other cases? If Braithwaite's explanation of offending is correct, then the policy of severing an offender's links with the community is quite illogical. Social links need to be strengthened rather than severed. New links need to be nurtured. The crucial point here concerns the response that follows the public experience of shame.

Braithwaite argues that officialdom has generally sought to evoke shame as a prelude to stigmatisation. But this sequence is not inevitable. Stigmatisation need not necessarily follow shame. In the presence of people with emotional ties to either perpetrator or victim - in the context of supportive "communities of care" - a person who is shamed may be reintegrated rather than stigmatised. A person may be brought back into the fold, rather than cast from it. Braithwaite suggests that the process of

interpersonal responsibility and a reassessment of values was four times as significant as the fear of increased penalties in the decision to "go straight".

¹⁵ This distinction is generally attributed to Carl Schneider. See his *Shame, Exposure, and Privacy*, Boston: Beacon, 1977.

¹⁶ The standard reference here is Harold Garfinkel's "Conditions of Successful Degradation Ceremonies", *American Journal of Sociology*, 61, 1956.

strengthening rather than severing a person's links with their community can be initiated by a "ceremony of reintegration".

Of course, some of the most basic examples of reintegrative shaming can be found in the daily routines of parenting. Here a contrast may be drawn between the means by which effective parents manage behaviour, and the means by which public agencies attempt to ensure compliance. Good parenting seeks a balance between an ethic of care and an ethic of justice.¹⁷ Rules are clearly defined and are enforced, but love, tolerance, and an awareness of needs temper the strict enforcement of these rules. To take a simple example: An older child hits her younger brother. She is reprimanded, she remonstrates, then bursts into tears. She may be temporarily sent from the room, but is later hugged. Here, in its simplest form, is a sequence of crime, shame, and reintegration. The response is simple, humane, educational - and effective.

Developmental and educational psychology provide terminology with which to identify the general principles behind this specific example. These general principles may thus be applied in other areas. In the terminology of developmental psychology, the parental response described here is neither authoritarian nor permissive. It is *authoritative*. Educational psychologists, unlike most contributors to debates in criminal justice, have long recognised this third approach to social regulation and the enforcement of rules. The differences between the three approaches are as follows:

(1) The principle governing the *authoritarian* approach is that, in order to send a clear message about the unacceptability of an act, one must punish the perpetrator. This approach is exemplified in criminal justice by the just deserts model.

(2) The principle governing the *permissive* approach is that, because one does not wish to harm the perpetrator, one must justify, excuse, condone or ignore an unacceptable act. This approach is exemplified in criminal justice by the welfarist model, and by most "diversionary" schemes.

(3) The principle governing the *authoritative* approach is that a clear message must be sent about the unacceptability of an act, but support must be offered to the perpetrator (and the victim). An authoritative process strikes a balance between an ethic of justice and an ethic of care.

Here, then, is the reason why there are so few authoritative processes in any official systems of social regulation: An ethic of care can only be offered by people with ongoing emotional attachments to the perpetrator. State officials do not generally have such attachments to the subjects of their attentions. In state-centred justice systems, either the perpetrator is punished in order to send a message about the unacceptability of the act, or the moral unacceptability of the act is overlooked. Authoritarian and permissive responses make no clear distinction between act and perpetrator. Generally lacking meaningful ongoing relationships with the subjects of their attentions, public officials are rarely in a position to offer an authoritative response.

¹⁷ For a clear summary of this debate between proponents of an ethic of justice and proponents of an ethic of care, see Joan Tronto, *Moral Boundaries: A Political Argument for an Ethic of Care*, New York: Routledge, 1993.

Now there is a highly significant parallel between these three regulatory approaches and the three psychological circumstances under which an individual might offend, might fail to heed the moral imperatives underlying both social rules and the criminal law.¹⁸ The first set of circumstances is when a person fully understands the moral requirements of a situation and yet, despite this, acts immorally, acts illegally. The second set of circumstances is when a person is morally deficient - by birth or by socialisation. Inheritance, psychology, or society have conspired to make such people incapable of distinguishing right from wrong. They may be physically constrained, but cannot be blamed. Classical and neo-classical criminology have been concerned with the first group. An *authoritarian* response seems most appropriate to the actions of the wilfully illegal and *immoral*. Most critics of classical criminology have been concerned with the second group. A *permissive* response seems most appropriate to the *amoral*.

But there is a third set of circumstances under which an individual may fail to heed moral imperatives. Indeed, this is the most common set of circumstances under which laws are broken. These are circumstances in which a person misconstrues a situation. They are unaware of the full consequences of their actions. They are unaware of the number of people harmed by their actions, and unaware of the extent of that harm. They do not feel that their behaviour is immoral, though they may well understand that their behaviour is technically illegal. Unlike the person who fully understands the situation but breaks a just law anyway, the person who misconstrues a situation is not immoral. Nor is the person who misconstrues a situation amoral, in the manner of the person who is constitutionally incapable of distinguishing right from wrong.

The person who misconstrues a situation has failed to heed moral imperatives but such a person may be neither *immoral* nor *amoral*. Rather, such a person may be considered *potentially moral*. This is true of the majority of young offenders. It is also true of many older offenders who first entered the system as juveniles. Squaring off against a system which seeks to victimise them, however, they will have learned to focus on themselves, rather than on the consequences of their behaviour for others. They will have lost the ability to feel the full consequences of their actions, to empathise with those they have affected. And yet, under circumstances that force them to understand those consequences, they will display a moral response. They will empathise; they will feel remorse; they will offer to make reparation.

Unfortunately, modern criminal justice systems have found it difficult to arrange for circumstances in which people can fully understand the consequences of their actions and make some active contribution to repairing the harm. An authoritative process, which would condemn the act but provide support for the perpetrator, would be most appropriate response for that vast majority who are potentially moral. The modern state, however, having been unable to offer authoritative processes, has generally been limited to a repertoire of authoritarian or permissive processes. Its only alternative to a ceremony of degradation has been the absence of any ceremony. So most offenders are treated as if they are either immoral or amoral, when in fact they are neither. (If they

¹⁸ Robert Richards, *Darwin and the Emergence of Evolutionary Theories of Mind and Behaviour*, Chicago: Chicago University Press, 1987 pp. 625-6

stay in the system long enough, of course, many tend to behave as if they are indeed immoral or amoral.)

This tendency to see people who are dealt with by the criminal justice system as either immoral or amoral is exacerbated by the general tone of public debate about criminal justice. Such debate frequently focuses on the severity of sentences dealt out to offenders. From all that is known about the factors which discourage offending, however, the degree of certainty of detection is more significant than the speed with which a matter is to be dealt, and both of these factors are more significant than the likely weight of the sentence.¹⁹

Part of the reason for this hierarchy of significance is that *sentencing* is further removed in time than is *detection* or *processing*. But the system is unable to guarantee detection of the crime, nor can it ensure speed of processing if the crime is detected. *In the absence of certainty and celerity, debates focus on severity*. Further public anger is evoked. The assumption that offenders are either immoral or amoral goes unquestioned.

In sum, modern criminal justice systems have assumed that offenders are immoral or amoral, and have responded with authoritarian or permissive processes. And yet the bulk of offenders are potentially moral. They and everyone else affected by their actions would be better served by an *authoritative* process.

Modern criminal justice systems have used anger and fear as motivators, and have evoked shame as a prelude to stigmatisation. But love and pride are more powerful long-term motivators than are anger and fear. And shame can be followed by reintegration of both perpetrators and victims, rather than by stigmatisation. The significance of the family conference in these terms is that it is a ceremony of reintegration which treats perpetrators as *potentially moral*, and responds to an incident in an *authoritative* way.

Because the authoritative principles underlying the conference design seek to balance an ethic of justice with an ethic of care, emotion is seen here as being at least as important as cognition - perhaps more so. To argue along these lines, however, is not to subscribe to some simplistic dichotomy between the rational and the "irrational". Modern psychology is increasingly recognising "the strategic role of the emotions", the subtle inter-relationships between emotion and cognition.²⁰ Rational thought, discussion, and action are seen to operate within boundaries or parameters set by the emotions. Thus, feelings of fear, shame or disgust constrain certain behaviours - even certain thoughts. Conversely, feelings of anger, interest, or enjoyment promote other behaviours, other thoughts. One of the larger tasks of this evaluation has been to draw on psychological theory in order to build a model that accounts more fully for the role of emotions in conferences.

¹⁹ The most sophisticated longitudinal studies of effects of arrest show no support whatsoever for the claim that tougher sentences lower recidivism rates. See Patricia Brennan & Sarnoff Mednick, "Learning Theory Approach to the Deterrence of Criminal Recidivism", *Journal of Abnormal Psychology*, 103 (3) 1994.

²⁰ See, for instance, Robert Frank, *Passions within Reason: The Strategic Role of the Emotions*, New York: W.W. Norton, 1988

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Several factors prompted the search for a theoretical model of emotions and social interaction that is consistent with the theory of reintegrative shaming:

- Matching observations from New Zealand and Wagga Wagga seemed to suggest that most conferences proceed through a standard emotional sequence, regardless of the nature of the offence or the background of participants.
- One group of critics of the model and process claimed that the experience of shame may be intrinsically harmful.
- Another group of critics claimed that shame is a "cultural construct", varying so significantly from one ethnic group to another that a process of reintegrative shaming would not be "culturally appropriate" for certain ethnic groups.

Detailed observations of conference dynamics in New Zealand were made by Judge Michael Brown, one of the key proponents of the 1989 juvenile justice reforms in that country. The summary of Judge Brown's experience was that, despite differences in the size of conferences, and despite differences in the nature and "seriousness" of offences, he has consistently observed an emotional sequence he describes with terminology that has a sacred rather than secular flavour. A change of heart occurs, he says, as the offender is given the opportunity to express remorse, as arrangements are made for expiation, and as the often long process of forgiveness is initiated by the victim. At the beginning of conferences, participants generally feel anger, fear, and distress. They also experience shame, followed by surprise when the point of view of other participants is revealed. But this negative emotional sequence is followed by more positive emotions as the conference moves towards some form of resolution.²¹ These observations of conference dynamics in New Zealand matched observations made by several observers of the Wagga program.

However, critics of the Wagga program had suggested - both privately and publicly - that the dynamics and outcomes of conferences could not take this constructive form. Conferences, they said, would harm offenders, or would have no effect on some. One line of criticism suggested that offenders would be harmed because shame is intrinsically harmful. The other major line of criticism suggested that the experience of shame varies so greatly from one culture to another that the theory of reintegrative shaming could not apply to members of some cultures.

The superficial differences in these two lines of criticism should not obscure their fundamental similarity. Both lines of criticism assume passive subjects. Those who advocate *minimal* intervention do so on the grounds that any experience to shame will lower a person's self-esteem. According to this model, which has been strangely influential in educational psychology, people are subject to experiences that raise or lower their self-esteem. Negative experiences lower self-esteem. Positive experiences

²¹ Judge Brown's views are available in various publications, but this summary of his views is recalled from conversations held through 1993 and 1994.

raise self-esteem. Accordingly, say the advocates of minimal intervention, people should be exposed to positive experiences and shielded from negative experiences. If confrontation with the full consequences of one's actions is likely to be a negative experience, then that experience - according to of this line of argument - should be avoided.

Those who advocate *therapeutic* intervention start from different premises. Some of the advocates of therapeutic intervention argue that culturally sensitive experts are required to deal with clients from different cultures. Specially tailored responses are required, they say, rather than some generic process. Their specific criticism of conferencing has been that shame is experienced differently by members of certain ethnic or cultural groups. The "cultural construction" of shame differs from one group to another, and the evocation of shame may thus not be appropriate for some groups.²²

The policy of minimal intervention and the policy of therapeutic intervention are, in sum, both premised on a psychological model of the passive subject. *Minimal* intervention is advocated by those who see a person's level of self-esteem as a ratio of the positive and negative experiences to which they have been subjected. *Therapeutic* intervention is frequently advocated by those who see individuals as blank slates on which the emotional rules of their culture have been written. In the tiresome and wrongly-framed "nature-versus-nature" debate, advocates of both minimal intervention and therapeutic intervention have come down firmly on the side of nurture. They are in the mainstream behaviourist tradition.

The myriad logical or empirical deficiencies of behaviourist psychology notwithstanding, behaviourism's model of the malleable and programmable subject has appealed to not a few political theorists and practitioners. But this is not the place to summarise the deficiencies of the behaviourist model of psychology. For the narrower purposes of this report, the chief failing of the behaviourist model is its inability to account for the psychosocial phenomena observed during and after conferences in Australia and New Zealand. On the one hand, if the more simplistic theories of self-esteem were correct, then the experience of shame in conferences would damage self-esteem. But the opposite appears true. On the other hand, if the theory that emotional reactions are "culturally constructed" were correct, then conferences with participants from different cultural backgrounds could not be run successfully and conferences would have little impact on people from certain cultures. Again, there is no evidence to support such claims, and plenty of evidence to the contrary. Observations from New Zealand and Wagga Wagga - and additional evidence from other jurisdictions where conferencing is being trialed - all suggest that participants experience the same basic emotional sequence. Participants appear to experience this sequence regardless of the nature of the offence, and regardless of their cultural background(s).

The behaviourist model is thus inadequate to the task of explaining these (and many other) phenomena. But some other mainstream psychological theories are scarcely more helpful. The most influential rivals to the behaviourist model of human blank

²² It may or may not be significant that the only people we have heard make this claim have been public officials of European extraction, and the people about whom they have made it have been indigenous Australians or people from cultures other than Western Europe.

slates have been Freudian theory and various cognitive psychological models. Again, despite superficial differences, these theories share a basic flaw. They all emphasise one aspect of human psychology at the expense of others. Where behaviourism has been overwhelmingly concerned with acquired habits, psychoanalytic theories have offered nineteenth century metaphorical accounts of motivation. Cognitive psychological models, in contrast, have underemphasised the role of both acquired habits and motivation. They have overemphasised the role of cognition.²³ So the dominant psychological models have focussed excessively either on habits, or on motivation, or on rational calculation. Criminal justice practitioners who retain their commitment to the classical criminological model, with its rational calculating offenders, make the same mistake. Theorists who argue for temperamental, psychological or social determinism do so too. All ignore the relationship between habits, motivation, and rational thought.

Psychological models offering plausible accounts of the relationship between habits, emotions and rational thought are nevertheless available. There are models that accord with the evidence across a range of disciplines. And the model that best fits the evidence from conferencing programs in New Zealand and Australia also offers a clear rebuttal of behaviourist arguments that shame is either intrinsically harmful, or that shame differs so greatly from one culture to another that the theory of reintegrative shaming cannot have general application. The psychological model that best supports the evidence from both New Zealand and Australia is called "affect theory". (Affect theory gave rise to, but is not quite synonymous with, "differential emotions theory".²⁴) It is supplemented by a related model known as "script theory".

Detailed summaries of affect theory are available elsewhere.²⁵ The essential points are these: Affect theory holds that there is a small number of basic emotions or affects shared by all people. These physiological reactions, which register on the face and at other sites around the body, are innate sub-cortical programs triggered by neural stimulation, and differentiated by the intensity and pattern of that neural stimulation. The affects are innate rather than learned. The system they constitute is a sort of template through which people experience the world from birth. Thus, the infant does not need to learn how to cry in distress or in fear, nor how to startle, nor how to squeal with joy. It is born with these capacities, which motivate it, and which tell it what is important in life.

²³ The discipline of Artificial Intelligence has been partly responsible for this continuing overemphasis, in some theoretical models, on detached logical calculation as the machine analogy for human psychology. See David Gelernter, *The Muse in the Machine: Computers and Creative Thought*, London: Fourth Estate, 1994.

²⁴ The phrase "Differential Emotions Theory" (DET) is most commonly associated with the work of Paul Ekman and Carroll Izard on facial expression.

²⁵ D.B. Moore "Evaluating Family Group Conferences: Some Early Findings from Wagga Wagga" in Biles, D. & McKillop, S. (eds) *Criminal Justice Planning and Coordination* Canberra: AIC, 1994, and "Pride, Shame and Empathy in Peer Relations" in K. Oxenberry, K. Rigby & P. Slee (eds), *Children's Peer Relations: Cooperation and Conflict*, Adelaide: University of South Australia, 1994. More generally, see D.L. Nathanson, *Shame and Pride: Affect, Sex, and the Birth of the Self*, New York: W.W. Norton, 1992; J.A. Singer & P. Salovey, *The Remembered Self: Emotion and Memory in Personality*, New York: Basic, 1993. The original formulation of affect theory is to be found in the four volume work by Silvan Tomkins, *Affect/ Imagery/ Consciousness*, New York: Springer, 1962/63/91/92. Script theory is given elaborate treatment in the third volume.

According to Silvan Tomkins, the founder of modern affect theory, there are nine affects. Six of these he called primary affects, two he called drive auxiliaries, and one he called an affect auxiliary. The six primary affects are fear, anger, distress, surprise, interest and enjoyment.²⁶ The ability to experience and express these primary affects has a basic survival value. Affects provide an immediate and powerful message about what is important in life.

In addition to the six primary affects, the theory holds that three additional affects have evolved - making a total of nine. Tomkins called the additional affects disgust, dissmell, and shame. Building on earlier speculation by Darwin, Tomkins argued that these additional affects evolved as auxiliaries to existing physiological systems. Thus, the affects of disgust and dissmell evolved as auxiliaries to the basic drive to eat. As negative responses to taste and smell, disgust and dissmell evolved as means of protection against that which is biologically poisonous. But these brakes on the drive to eat have also come to be used symbolically. Expressions of disgust and dissmell in humans do not always indicate an unpleasant taste or smell. Such expressions are also used to convey negative feelings towards unpleasant experiences or people. Thus, because of their value in symbolic communication among intelligent social animals, the drive auxiliaries of disgust and dissmell have become harnessed to the affect system. The most powerful symbolic use of disgust and dissmell is in contempt, which mixes these affects with anger in order to convey individuation and hate.

The final affect identified by Tomkins is shame. Its evolution is explained by analogy with disgust and dissmell. Just as disgust and dissmell evolved as brakes on the *drive* system, so shame evolved as a brake on the *affect* system. Thus, in much the same way that disgust and dissmell originally evolved as a protection against the *biologically* poisonous, so shame evolved as a protection against the *socially* poisonous. Strictly speaking, then, while disgust and dissmell were originally *drive auxiliaries* that subsequently developed into affects, shame evolved as an affect *auxiliary*. Shame acts as a brake on the positive affects of interest and enjoyment. And this reasoning is at the heart of Tomkins' startlingly novel definition of shame as a sudden impediment to interest and enjoyment.²⁷ Shame will thus occur "whenever desire outruns fulfilment", whenever one's physical or social limits are exceeded.²⁸

The physiological basis of shame is apparently the sudden release of powerful vasodilators in the limbic system, producing that unmistakable response: The neck muscles lose tone, the face is lowered and sometimes covered with the hands. The gaze is averted and the skin reddens. Interest and excitement are interrupted, as are attention and cognition. Tomkins' interpretation extends Darwin's hypothesis that this shame response is the most recently evolved of the innate affective responses, and that shame is experienced only by higher mammals, perhaps only by the higher primates.

²⁶ In purely abstract terms, the responses they most commonly prompt are, respectively, to withdraw from that which is perceived as negative, approach that which is perceived as negative, recognise sameness, recognise sudden change, approach that which is perceived as positive, and withdraw from that which is perceived as positive.

²⁷ Tomkins 1963 *op. cit* p. 123

²⁸ Nathanson 1992 *op cit* p. 138

Donald Nathanson, who has produced the clearest comprehensive summary of affect theory to date, describes the social significance of the shame response in the following terms: "Since it is the mutualisation of interest-excitement and enjoyment-joy that powers sociality, shame is [...] an innate modulator of affective communication".²⁹ Shame is the brake on interest and excitement. It provides a dramatic reminder of individual and social limits.

The positive emotion of pride, in contrast, is developed through repeated sequences of the interest and enjoyment that accompany achievement. And there is a dialectical relationship between shame and pride. This relationship is one of the most powerful sources of motivation. It is an essential aspect of developmental psychology. Thus, unless something interferes with the process,

pride is attached to the acquisition of each moiety of normal growth and development and shame is attached to any failures along the way. As each way station on the road to maturity is reached, it soon loses its power to trigger pride; while at all stages in development reminders of one's previous (and therefore more primitive) status remain capable of activating shame.³⁰

Shame thus influences behaviour from infancy. But it is also the dominant affect powering more complex emotions such as embarrassment, guilt and awe. Embarrassment, according to this model, can be understood as shame evoked in the event of a breach of largely aesthetic social norms. The feeling of guilt can be understood as shame evoked for the transgression of moral and legal norms, together with fear of reprisal. Awe can be understood as shame evoked by some phenomenon which makes the self, by comparison, seem diminished.

To clarify such definitions, a distinction needs to be made between affects, feelings, emotions and moods.³¹ Nathanson defines *feeling* as the conscious awareness of an affect. He defines *emotion* as the result of an association between a present feeling and related past feelings. And he defines *mood* as a persistent emotion or set of emotions. Moods are the result of a sort of feedback loop by which the same affects are repeatedly evoked over an extended period. So affects can be "contagious", generating more of the same within an individual. And this phenomenon also occurs *between* individuals. Affects thus play a vital role in human intersubjectivity. They play an essential role from the moment when an infant first mimics its mother's smile or causes distress in its parents with its own distress. Facial expressions and bodily posture broadcast affect from one individual to another.

The associated theory of scripts builds on affect theory, providing an account of the differences in affective association at an individual, sub-cultural and cultural level.³² Script theory is

²⁹ *ibid* p. 134

³⁰ *ibid* p. 16

³¹ *ibid, passim.*

³² See Singer & Salovey op. cit; also S.S. Tomkins, "Script Theory" in J. Aranoff, A.I Rabin, & R.A. Zucker (eds), *The Emergence of Personality*, New York: Springer, 1987

a grand attempt to integrate models of perception, cognition, memory, affect, action, and feedback theory. [...] The unit of this integration is the scene, which consists of at least one affect and at least one object of that affect.³³

The general significance of affect and script theory is considerable. They provide the basis for a balanced model of the relationship between habits, motivation and cognition. They provide new insights into interpersonal communication. But the specific significance of affect theory to this evaluation is that it provides a highly plausible explanation of the dynamics of conferences. It also provides a psychological counterpart to the sociological theory of reintegrative shaming. And here affect theory also provides a clear theoretical rebuttal to behaviourist claims that shame is intrinsically harmful, or that shame is a cultural construct.

In response to the argument that shame is intrinsically harmful, affect theory suggests that shame is neither good nor bad. Rather, shame is simply part of human physiology and psychology. It is negative only insofar as people seek to avoid it. Shame is thus a guide to action and to restraint. More accurately, people seek to avoid shame because of shame's role as an auxiliary to the positive affects of interest and enjoyment. Shame is a brake on the untrammelled expression of the positive affects and marks their sudden and incomplete reduction.. To be without shame, however, would be to lack a basic means of environmental feedback. Shame is no more intrinsically harmful than is anger, fear, distress or disgust.³⁴

But some young people, it has been argued, show little remorse for their unacceptable actions; they do not appear ashamed. Appearances may be deceptive, however. As is indicated by several cases discussed in the third chapter of this report, the apparent absence of shame can usually be better understood as a more general emotional disengagement in response to earlier shameful, distressful or fearful episodes. And, as we have argued elsewhere, the *collective* experience of shame in conferences seems to teach a paradoxical lesson about shame. This lesson may "re-engage" the emotions. The lesson taught by the collective experience of shame is that one need not be ashamed of feeling shame.³⁵

In response to the argument that shame is socially constructed, affect theory distinguishes the basic physiology of the *affect* of shame from the more complex *emotion* of shame. The emotion of shame is, by definition, based on repeated experiences of the affect of shame and on associations of that affect with various experiences, various "scenes". Yes, within different cultures and sub-cultures, different responses to shame are encouraged. And yes, situations that evoke shame in some cultures may not be considered shameful in others. But the physiological experience of

³³ Singer & Salovey *op. cit.* p. 28

³⁴ Of course, it is possible for people to react to prolonged and persistent experiences of negative affect by "emotional disengagement". The blank look of the chronically shamed is one example of this phenomenon. Post Traumatic Stress Disorder appears to be another example of this psychological strategy. On PTSD, see especially Jonathan Shay, *Achilles in Vietnam: Combat Trauma and the Undoing of Character*, NY: Atheneum, 1994. Note that this theoretical model is *not* to be confused with claims of "repressed memory syndrome". See Frederick Crews, "The Revenge of the Repressed", *New York Review of Books*, Nov 17, 1994.

³⁵ Cases discussed by Kathy, Ted, Hilary and Paul in the third chapter illustrate positive changes, in the wake of conferences, for chronically shamed young people.

shame is a human universal, as is the dialectical relationship between shame and pride. Cultural differences in shame are thus matters of degree, not kind.

In sum, affect theory holds that shame is a human universal which plays an essential role in social regulation. The theory also provides a clear explanation for the observation that conferences move through a standard emotional sequence which apparently engages all participants. And finally, the theory suggests a profound psychosocial explanation for the apparent success of conferences. This explanation, which is fully consistent with the theory of reintegrative shaming, suggests that the success of conferences lies in their ability to realise fundamental motivational principles.

The fundamental motivational principles realised in conferences are outlined in the first volume of Tomkins's major treatise on the affect system. Here he suggested that the roles of positive affect as a "reward" and negative affect as a "punishment" make inevitable the development of four fundamental motivating principles. These principles are: (1) That positive affect should be maximised. (2) That negative affect should be minimised. (3) That affect inhibition should be minimised. (4) That power to maximise positive affect, to minimise negative affect, and to minimise affect inhibition should be maximised.³⁶

The conference process allows for the effective realisation of these principles in a controlled setting with specific goals. Thus, there is encouragement for affect inhibition to be minimised because participants are actually asked to express how they have felt about their involvement in the offending incident - whether as victim, offender, or supporter. Negative affects of anger, fear, distress, disgust, dissmell and shame are powerfully expressed, and are experienced by all participants. But once expressed, "broadcast" and shared, each negative affect is then gradually minimised. Conversely, the positive affects of interest and even enjoyment are evoked and gradually increased, as participants begin to move towards arrangements for reparation and restitution. The trigger for this shift from the negative to the positive is usually twofold. The trigger is usually the evocation of the "neutral" affect of surprise, followed by the coordinator's question about what the victim was expecting from the conference.

The transcripts reproduced in the third chapter of this report convey some feeling for the transition from negative to positive, even though the transcripts can only hint at the emotional tone of each stage of the conference. Surprise tends to be evoked at several points in a conference. It is evoked when new details of the offender's story emerge. It is evoked when family members and friends reveal how much they have been affected by the incident and its aftermath. And surprise is evoked particularly strongly when the effect of the incident on the victim(s) is described. This is the point at which the coordinator will ask what the victim expects.

There is more surprise here, of course, because victims seem consistently less concerned with retribution than the received wisdom would suggest. Victims, it seems, are concerned to have their procedural, psychological, and material needs met. And if these needs are met, then justice is perceived to have been done. Furthermore, simple

³⁶ Tomkins 1962 *op. cit.* p. 328

acts of expressing remorse, offering atonement, and expressing forgiveness can effect powerful changes. As one student of the phenomenon has put it, the remarkable and paradoxical quality of forgiveness is that it cannot undo what has been done, and yet, "in a mysterious way...this is precisely what it manages to do".³⁷

An hypothesis supported by this evaluation is that the power of an exchange of apology and forgiveness is related to the social context in which the exchange occurs and to the process that allows it to occur. The power of forgiveness is related to the complexity of the relationships involved and to the emotional nature of the broader process within which an apology is offered. These phenomena again require both a sociological and a psychological explanation.

An important part of the sociological explanation is provided by Tavuchis, whose sociology of apology, forgiveness and reconciliation identifies four modes of apology. Apologies, he says, may be offered from one to one, from one to many, from many to one, and from many to many.³⁸ The conference process provides for exchange in all four of these modes. Thus, not only does an offender apologise to a victim, but also to all present. The offender's supporters apologise to the victim or victims individually, but also apologise collectively to the victim's community of care.

It is important to note that apology and forgiveness can occur in all four modes because conference participants are acknowledging *shame* felt for a breach of moral norms. Shame is vicarious. Technical *guilt* for the breach of legal rules is not. Affect theory distinguishes here between the *affect* of shame, a *feeling* of guilt - a mix of shame brought about by one's actions and fear of reprisal - and an ostensibly *rational* judgement about legal culpability. While culpability is restricted to the offender, shame spreads across a social network. The affect of shame is experienced by all those who share some emotional connection with the offender.

Thus, where sociological theory identifies and counts the interpersonal bonds in this social network, psychological theory provides an account of the mechanism by which those interpersonal bonds are strengthened or weakened. The conference process is powerful, according to affect theory, not just because apology and forgiveness are exchanged from one to one, one to many, many to one, and many to many. The power of the process derives, more fundamentally, from its ability to minimise the inhibition of affect, and then to minimise negative affect while maximising positive affect. But note that the process does *not* (in the words of the Gipsy Rose Lee) accentuate the positive and *eliminate* the negative. Rather than being "eliminated" through being ignored or avoided, negative affect is reduced, fine-grained, brought under control. And what allows it to be brought under control is the format of the conference.

The conference focuses on the goal of repairing the damage and minimising further harm. The format of the conference encourages cooperation in devising the terms of an agreement to achieve that goal. Conference participants are similarly motivated to move beyond a situation that is evoking negative affect. Withdrawal of cooperation,

³⁷ Nicholas Tavuchis, *Mea Culpa: The Sociology of Apology and Forgiveness*, Stanford: Stanford University Press, 1991, p. 20

³⁸ *ibid.*

verbal attacks on the self, or verbal attacks on other participants only evoke more negative affect.³⁹ Once people have explained how the incident *affected* them, only constructive engagement and cooperation will work to minimise negative affects and maximise positive affects. Once people have got the shame, anger, disgust and fear "off their chests" - to use the telling metaphor, they can begin to cooperate. In the course of this cooperation, negative affects appear to be "transformed" into positive affects. Furthermore, in the more successful conferences, constructive engagement and cooperation appear to transform relationships between participants. Hence "transformative justice".

³⁹ These response are "poles" on Nathanson's "compass of shame" - which identifies four classes of response to shame. Thus, in response to shame, a person may withdraw, attack self, attack other, and avoid the affect through diversions. See Nathanson 1992 *op. cit.*