

# POLICE AUTHORITY, RESPECT AND SHAMING\*

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## INTRODUCTION

This paper explores structures of police authority which seek legitimacy through consensus and respect within the ideology of community policing. Respect may be presented as one of the principal, voluntary bonding relationships within any community, and is proposed as a key to analysing the prevention and control potential of policing strategies.

Shaming comes into the picture as an indicator of the impact of police authority within different community/cultural settings. While reintegration makes sense in terms of community symbolism, the significance of policing as part of the reintegrative process depends on its status and interaction with community interests.

In communitarian crime control agendas the police should be effective shaming agents. However if this only occurs in some socio-cultural settings and not others, does the problem lie with the structures of police authority or the wider relevance of reintegrative shaming for the specific community situations in question? In a very tentative attempt to address these questions the paper looks back to the consequences of shaming for police in differing climates of respect. Respect is identified as one pivotal component of community policing, where the control dimension relies on shaming for reintegration through police intervention.

This does not purport to be a developed critique of reintegrative shaming as a policing strategy. Rather certain reservations about the reality of community policing within particular relationships and interactions emerge in the context of specific cultural and community perceptions of police authority.

## POLICE AUTHORITY

Informed analysis of policing in Europe, the USA, and Australia is infected with a language of crisis.<sup>1</sup> The crisis is portrayed as one of authority, and its perception:

Respect for the authority of the police is the expression of police legitimacy, and where respect is denied then the implication is that coercion is the basis of police actions. Obviously this threatens the overall legitimacy of hegemonic police ... However, in the

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1 Eg, Hall, S, Critcher, C, Jefferson, T, Clarke, J and Roberts, B, *Policing the Crisis: Mugging, the State, and Law and Order* (1978); Freckelton, I and Selby, H, "Police Accountability", in Findlay, M and Hogg, R (eds) *Understanding Crime and Criminal Justice* (1988); Bayley, D, *Forces of Order: Policing Modern Japan* (1991).

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contemporary era of increasing state interventionism the potential exists for bringing police increasingly into the enforcement role against powerful and articulate institutions and individuals with attendant problems of order and legitimacy.<sup>2</sup>

It is observed of Japan, by contrast, that: "Japanese police operations are not conducted in an atmosphere of crisis and declining public confidence ... Surveys show that the public believes that the police performance is very good. Their respect for the police is high".<sup>3</sup>

This apparent hegemony in policing, at least from the perspective of community approval and acceptance, impacts on police authority. Unlike the "crisis talk" in western policing circles, where even the most general symbiosis of the community and the police rarely migrates from ideology to practice, Japanese society and culture fosters police authority in a manner which is worthy of careful analysis.

Weber<sup>4</sup> coins the phrase "imperative co-ordination" when referring to the probability that specific commands from a given source would be obeyed by given groups of persons. The socio-cultural determinants of such co-ordination, and the imperatives on which such obedience rests will provide keys to the form and understanding of police authority. Acceptance of such authority and obedience to it can range from habituation to a rational calculation of advantage. Whatever the imperative arising out of any particular socio-cultural moment, the legitimacy of police authority is essential for the consequences of respect and obedience.

Advancing further with Weber's interpretation of authority, legitimacy depends on traditional, charismatic, and rational/legal explanations. If police authority is to receive broad acceptance and support, the community in which it exists must substantially justify policing on each of these levels.

It is not sufficient to focus on different reactions to police authority in particular cultural settings if one is to appreciate the creation and maintenance of that authority. To say for example that the American offender shows anger, and the Japanese, shame<sup>5</sup> only presents a partial insight into the influence of authority. This discloses nothing of the way in which police authority is perceived by those who exercise it, nor does it reflect on the role-definition of police in terms of their authority.

Police authority is as much a product of specific policing history as it is a determinant of police function. For example, it was essential to the ideological underpinning of the Peel police in Britain that the authority conveyed to the new London police appeared to be consensually based. This uniformed and unarmed police service was meant to develop the respect of the community over which they kept watch. Such respect would then in turn make it possible for the police to perform their allotted functions. However, with policing in Britain remaining class based, and the Peel police failing to create a sufficient policing hegemony, the maintenance of respect fast developed into the primary function for the new London police.<sup>6</sup> The connection between the structure of police authority and the

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2 O'Malley, P, *Law, Capitalism and Democracy* (1983) at 68.

3 Bayley, above n1 at 4.

4 Weber, M, *The Theory of Social and Economic Organisation* (1947).

5 Bayley, above n1 at 141.

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function of policing rested on a social dichotomy between the ideology of consensus policing, and the reality of community dissonance.

### **SOCIAL SETTING AND THE STRUCTURE OF POLICE AUTHORITY**

As part of our ongoing analysis of alternative policing strategies we have selected the following as useful structural indicators of policing styles:<sup>7</sup>

- Participation
- Voluntarism
- Professionalism
- Organisation\Bureaucratisation
- Client focus
- Visibility
- Jurisdiction
- Force

Against any or all of these structural features particular policing strategies may be analysed within culturally specific contexts<sup>8</sup>. One is then presented with the opportunity of exploring power relations on which police authority is constructed. All too often policing is discussed in terms of the ideological and functional imperatives which are said to produce certain styles of policing. Such simple causal impressions may ignore the reality of police authority as it is constrained daily within its operational community. The control forces at work on policing practice are indicated by adaptations of policing structures, or gaps across advertised ideology and the actual relationships between the police and the public.

Respect is essential to the crime control potential of shaming as a policing strategy. If respect is viewed as both a part and a consequence of a power relationship, existing as a unique social bond within particular communities, then it might be assumed to have some impact on a significant social construct such as police authority. As with relationships of respect, police authority is culturally specific. The nature and manifestation of police authority within a community setting will depend on the structure of policing and its fit within power relations which are the community. Shaming as control is used to influence community power relations. Police authority, from which shaming might emanate, is both integral to the structures of policing, and essentially influenced by them.

### **RESPECT IN CULTURE**

David Bayley in his book *Forces of Order: Policing Modern Japan*<sup>9</sup> entitles his opening chapter "Heaven for a Cop". This is a foreigner's view of the tranquillity of Japanese

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6 See Brogden, M, Jefferson, T and Walklate, S, *Introducing Policework* (1988) at 62-63).

7 Findlay, M and Zvekic, U, *Alternative Policing Styles: Cross-Cultural Perspectives* (1992).

8 Ibid, ch3.

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policing. Whether such interpretations accord with the reality of police practice in Japan is open to debate. But the impression remains, constructed as it is on the image of Japan as a relatively crime free society.

And from a police point of view, why heaven? What becomes clear from Bayley's assessment of the nature of Japanese policing is the predominance of respect. Respect is the aspiration for most police, both organisationally and on individual terms. It appears to be painlessly obtained within a variety of police situations in Japan:

- officer to officer
- junior officer to senior officer
- officer to organisation
- public to police

Why this is so, and why an observer with experience of another police milieu should find this so remarkable, might only be understood within a wider examination of the link between respect and culture.

A major preoccupation for policing in the west is the maintenance of respect. Particularly for those systems of policing which rely on discretion, respect is vital to the determination of how such discretion may be exercised.<sup>10</sup> Factors which influence the "respect generating" potential of discretionary decision-making in policing are similar to those which designate the distance of the police from the public and vice versa.

The position of any police officer/organisation on the community integration/isolation continuum will effect both the way in which police discretion is exercised and appreciated. Discretion can be evidence of a police force responsive to community needs, or one which is arbitrary in the exercise of power. What designates the interpretation of discretion is the proximity of the decision-making process to community interests and moral dimensions. If police discretion becomes consistently perceived by the public as unworthy of respect rather than as ensuring it, then as the need for discretion is magnified through the consequent isolation of policing, the legitimacy of police authority for the exercise of discretion will be undermined.

Policing is a process of contest. Often a significant and constant contest is over respect for their authority. Manifestations of disrespect for the police are not limited to situations of public disorder.<sup>11</sup> On a more subtle plain there are perceived degrees of challenge when suggestions are made that the police should share their authority, or become more accountable for its exercise.<sup>12</sup>

It is the image of police authority under challenge which sets police outside the community, and is designed to do so with at least certain sections of the community which do not possess an investment in police respect or public morality. On the other hand if

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9 Above n1.

10 See Travis, G, "Police Discretion in Law Enforcement" in Findlay, M et al (eds) *Issues in Criminal Justice Administration* (1983); Bayley, above n1.

11 See Cunneen, C et al, *The Dynamics of Collective Conflict* (1989).

12 Freckleton and Selby, above n1.

state institutions such as the police are traditionally imbued with public morality, a morality which itself is unequivocal, then social divisions where they exist will not undermine respect for discretionary authority.

## SHAMING

It is said<sup>13</sup> that criminal justice in Japan is based not on notions of deterrence, or even retribution, but the desire for what Braithwaite refers to as “reintegrative shaming”.<sup>14</sup> Shame can result in a variety of consequences depending on the form it takes, the social context of its administration, and the status and disposition of parties to its transaction. Shaming, Braithwaite suggests, will reintegrate rather than stigmatise if it maintains “bonds of respect or love, that sharply terminates disapproval with forgiveness, instead of amplifying deviance by progressively casting the deviant out”.<sup>15</sup> To achieve this, the shaming agent must possess the respect or love of the shamed, or at least command the respect of important social referents in the situation wherein the shaming takes place.

One of the problems associated with the acceptance of reintegrative shaming as a potent mechanism for social control is the assumptions of a supportive social setting: “The theory of reintegrative shaming assumes that there is a core of consensus in modern Western societies that compliance with the criminal law is an important social goal”.<sup>16</sup>

Shaming itself may be one of the factors which help create such consensus. However, community attitudes to the agents of shaming and the characteristic stance of the offender in the face of authority will also require some unanimity if shaming is to take effect.

The power of shaming for social control relies on an image of man with a mutable character. Shaming for reintegration needs to exist within a framework of criminal justice released from obsessions with individualised guilt, directed more towards contrition and repentance rather than punishment.

Shaming is needed when both individual and community consciences fail. Punishment may in turn be required when shaming is of no effect. However in shaming exists some aspect of punishment, and punishment may, as Durkheim argued,<sup>17</sup> have some conscience constructing effect on the community.

For shaming to take hold as a significant control perspective within the formal institutions of criminal justice, those institutions need to subscribe to strategies which seek to regulate through reason rather than emphasise punitive sanctioning for its own sake. Whether such state-centred institutions can break with the dispossessing political ideology of their sponsor, to adopt a control process in which the state may become a minor player, is itself problematic. This might only be achieved where the state retains the ultimate enforcement potential.<sup>18</sup>

13 Bayley, above n1 at 180.

14 Braithwaite, J, *Crime, Shame and Reintegration* (1989).

15 Id at 12.

16 At 38.

17 Durkheim, E, *The Rules of Sociological Method* (1966).

18 See Braithwaite, J, “The Political Agenda of Republican Criminology”, paper presented to the British

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## SHAMING AND COMMUNITY SYMBOLISM

Japan's crime control achievements may of course be purchased at a cost. The interdependency, the shaming, the communitarian mobilisation to resocialize wrongdoers, are ingredients of a culture in which duties to the community more often than in the west, overwhelm the rights of the individual.<sup>19</sup>

Despite these reservations, Braithwaite identifies communitarianism as an essential social condition for reintegrative shaming. Interestingly, modern policing ideology also emphasises the importance of community symbolism for the legitimation of police authority.

The traditional formulation of the relationship between policing and community symbolism is reactionary and historically idealist. It is based on past notions of the original community and the origins of policing, which should be distinguished from Braithwaite's "communitarian-ism"<sup>20</sup>. Through claiming an inherent connection with the ideal community the police can seek some form of representative, democratic and consensual legitimacy. They can mask the diversity of their function behind the image of the homogeneous community. The concept of homogeneity serves to either marginalise or deny the diversity of interests and responsibilities at the heart of modern policing. The form that this quest for community takes:

in crime control ideology is to look back to a real or imagined past community as providing the ideal and desirable form of social control. This impulse is reactionary and conservative, not in the literal political sense, but in always locating the desired state of affairs in a past which has now (usually just now) been eclipsed by something undesirable.<sup>21</sup>

For community symbolism to also satisfy crime control aspirations depends on specific situations of cultural homogeneity. As Grabosky<sup>22</sup> argues, there is a case for positioning cultural homogeneity as a precondition for effective social control. A consequence of this proposition might be that effective crime control mechanisms must minimise or marginalise social diversity. Braithwaite seems strongly against such a position, arguing that diversity is essential to enabling diversity.

In this regard community consensus as to the "rights and wrongs" of crime and criminals, rather than the homogeneity of the community in other ways, is an essential variable within shaming relationships. "The fact that the confessional has some power amongst Catholics as a reintegrative ritual does not require that the Catholics of the world are a homogeneous group. It requires consensus on a few things within a world of dissensus on most things."<sup>23</sup>

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Society of Criminology, York, 27 July 1991.

19 Above n14 at 65.

20 Ibid, ch6.

21 Cohen, S, *Visions of Social Control* (1985) at 188.

22 Grabosky, P, "The Visibility of Punishment", in Black, D (ed) *Toward a General Theory of Social Control* (vol 1, 1984).

23 Braithwaite, J, "Diversion, Reintegrative Shaming and Republican Criminology", paper given at an International Symposium entitled *Diversion and Social Control: Impacts on Justice, Delinquents, Victims and the Public*, Bielfeld, Germany, 27-29 May 1991.

Hogg and Findlay suggest<sup>24</sup> that policing is highly differentiated. Its organisational and legal structures orient the institution to some groups and contexts and not others. The effects of this on power relations and the universalising of respect within the community are obvious. Cunneen points to the paradox for homogeneity and community policing ideology, arising from such differentiation:

Under the rubric of the community, contradictory social relations such as those of class, race and gender disappear. Relations between groups of people which may involve the exercise of power and exploitation are deemed nonexistent if the definition imposed posits a single community. Thus the application of the term community may have a powerful political effect of deeming conflict between groups as in some way extraordinary and therefore illegitimate.<sup>25</sup>

If the police are nominated, for the sake of crime control, to enforce any myth of cultural homogeneity and protect community symbolism, then shaming could become part of this facade.

### RESPECT, SHAMING, AND POLICE CONTROL IN A COMMUNITY SETTING

While shaming relies on influencing frameworks of approval, the shaming agency relies on approval to empower their shaming function. The reason why shaming may be more influentially directed against different offence types, or originating from different shaming agents, depends on collective dispositions to respect and morality.

Braithwaite postulates that by partitioning shaming mechanisms into reintegrative and stigmatising types, and predicting their opposite influences on crime control he has advanced a missing link in criminological theory which enables the integration of previously irreconcilable theoretical perspectives.<sup>26</sup> This representation of the crime/shame equation requires a variety of structural preconditions which first must be understood if one is to estimate the crime control potential of particular shaming mechanisms operating within particular sociocultural settings. These structural preconditions may exist both as institutions of control, and structural relationships between control mechanisms and the objects of their endeavour. The analysis of these structural preconditions requires the investigation of nominated mechanisms and the culturally specific context of the crime occasion against which they are directed, in order to predict the crime control potential of consequential relationships.

When looking at the significance of formalisation for crime control potential we previously identified three structural features of control mechanisms around which an analysis might be constructed: sources of authority, regulatory frameworks, and decision-making processes.<sup>27</sup> So as to advance our appreciation of the potential for reintegrative shaming through policing agents, the following observations are relevant:

24 Hogg, R and Findlay, M, "Police and the Community: Some Issues Raised by Recent Overseas Research", in Freckelton, I and Selby, H (eds), *Police in Our Society* (1988).

25 Cunneen, C, "Problems in the Implementation of Community Policing Strategies", paper presented to Australian Institute of Criminology conference on Community Policing, Brisbane, 1991.

26 Above n18 at 4.

27 Findlay, M and Zvekic, U, *Informal Mechanisms of Crime Control* (1988).

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- (a) The more reliant police authority is on community endorsement for its legitimacy, the greater is its potential as a shaming agent,
  - (b) the more consensual policing practice and its regulation through the framework of a community conscience is, the greater is its potential to reintegrate, and
  - (c) the more individualised and discretionary the sanction functions of policing are, the greater their crime control potential.

These somewhat universalised predictors are vitally reliant on the existence of particular culturally specific relationships for shaming to act towards crime control. For these relationships to eventuate, certain social preconditions must be present. As suggested earlier in this paper, for reintegrative shaming to control crime through the agency of policing, respect must pre-exist shaming, and respect must be the relationship which links police, offender, and the community to which his return is designated.

### **SOCIOCULTURAL LIMITATIONS ON THE CONTROL POTENTIAL OF SHAMING**

The stance of the offender in the face of police authority complements and is complemented by the role definition of the police. Essential to this definitional process, whether emanating from out of the community or the police, is respect for police authority. If such respect is not shared, or is challenged by any party to the definition process, then the police role and its originating authority will be in contest, and will require legitimation beyond consensus.

The impact a police officer's admonition may be directly proportional to the weight accorded it by the community as a form of censure. In this regard police should be perceived as more than just agents of the law. This is particularly so when the law itself is treated as circumspect either through practices of selective enforcement or passive resistance. When police act as a potent agency for shaming, they possess a degree of moral authority which goes beyond a simple affiliation with government.

Braithwaite suggests such a moral authority as vesting through a "family model" of the criminal justice process. Cultural commitments to shaming will be reintegrative when exercised through community-centred frameworks of disapproval designed to generate reacceptance to a universal and possible social entity. In certain cultural situations the family is assumed to act as such an entity. But again for the family to form the framework and goal for reintegration it cannot be structurally problematic, nor can it be exclusive.

Traditional western notions of criminal sanction rely on individual identification not so much for the purpose of reintegration, but for deterrence and retribution through stigmatisation. In this regard:

...the nub of deterrence is not the severity of the sanction but its social embeddedness; shame is more deterring when administered by persons who continue to be of importance to us; when we become outcasts we can reject our rejectors and the shame no longer matters to us.<sup>28</sup>



The family image is developed through a discussion of the bonds of respect. It is this characteristic which is said to make the family so effective in most cultures as an agent of social control.

Despite the family model, Braithwaite concedes that modalities of shaming are culturally specific. He may have advanced this further by suggesting the institutional dimensions of criminal justice and punishment which characterise different societies are structural determinants of the place and potential of shaming as a control process.

In his discussion of reintegrative shaming in Japan, Braithwaite emphasises the family model as cornerstone of Japanese cultural organisation. By so doing he dwells on collectivised responsibility: "When an individual is shamed in Japan, the shame is often born by the collectivity to which the individual belongs as well — the family, the company, the school — particularly by the titular head of the collectivity".<sup>29</sup>

This observation is not novel,<sup>30</sup> nor does it simply relate to the process of eschewing crime. The collectivisation of shame within a family structure can equally well apply to the perpetuation of a criminal morality. So too the family organisation is conceived as criminogenic.<sup>31</sup> And as the criminal potential of the family is bound up with the mythology of the family, so too is its crime control potential.

This discussion of the family both as a focus of shaming and a framework for reintegration highlights a fundamental problem with Braithwaite's analysis. The relevance of shaming for crime control is only in part circumscribed by output issues. Constructing a causal analysis of any crime control strategy without first specifically examining the structures of authority from which it emanates has the danger of seeing the significant variables as existing at the other end of the relationship. The essential elements of police authority within a community context will not only determine the direction of the shaming cause and effect, but also may limit its ultimate success.

An example of a structural component of policing which vitally influences the progress of shaming is discretion. All decision-making within the criminal justice process to some extent involves discretion. From a community perspective, no matter how great is the encroachment of the law there must remain a residuum of justice which is not according to law, some activities in respect of which the administration of justice cannot be defined or regarded as simply the enforcement of the law. The structure of the discretionary process may to varying degrees be predetermined by rules, but the relationship between rules and decisions may not always be a parallel one. When looking for example at police discretion the concepts of rules and regulatory frameworks should be considered rather to appreciate the distance which such discretion stands away from them.

As Davis has observed:<sup>32</sup> "Discretion is a tool indispensable for the individualisation of justice ... Discretion is our principal source of creativeness in government and in law".

28 Above n14 at 54.

29 Id at 63.

30 See Moriyama, T, "Do We Need Further Community Policing in Japan?" (unpublished, 1992).

31 See Findlay, M, "Crime and the Extended Family" (unpublished, 1992).

32 Davis, K C, *Police Discretion* (1975) at 25.

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Through discretion both the more and less formal agencies and aspirations of criminal justice find some common ground. Yet along with this, discretion presents an ambiguity for crime control strategies. How is it that justice is to be represented as individualised and arbitrary on the one hand, and is simultaneously seen as advancing the rule of law? This has particular bearing on control strategies which rely both on a subjectivity of application as well as some predictability of consequence.

The generally heavy reliance on discretion to give effect to shaming may lead to what Karl Klockars refers to “ass kicking policing”<sup>33</sup> unless we assume an inherent and uniform community morality ascribed to, and embodied in the police. With the present press towards professionalism from within many police cultures, standardisation rather than the independent exercise of discretion is preferred. If shaming is to fit the exigencies of each case, it may face the criticism of arbitrary application which will not sit comfortably with professional aspirations.

Having said this, the search for reintegration cannot proceed down a universal path. Each case for shaming seems to require an individualised approach, while the image against which the shame is cast must remain constant. Thus in the control strategy itself lies a further contradiction.

## SHAMING AND COMMUNITY POLICING

The recent propaganda which supports community policing initiatives in the West would have it that the police and the community are one. If that is so, and the community is imbued with a universal public morality and a commitment to reintegration, then shaming is an obvious control strategy in which the police can share.

But the police and the community are not one. Even in cultures where respect for the police is common, the structure of police authority sets policing beyond the common and more negotiated power relationships which bind the community together. In itself this separation may enhance the position of the police as a shaming agent, provided in the long term that respect for state institutions is not influenced in inverse proportion to their distance from less formal community controls.

Particularly for policing, the consequences of respect and its withholding are two sided. As emphasised earlier, the nature of police authority and the real impact of selected policing strategies depends on the respect in which they are held by the public. Of equal importance is the respect accorded the public by the police, and the genuineness with which they approach non-sanction directed control strategies.

Shaming as a tactic of policing necessitates that the police embrace a conception of their authority which essentially relies on the support of the wider community. Traditionally police in Western jurisdictions have preferred an authority image which itself ensures obedience, and is ultimately guaranteed through the threat of force.

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33 Klockars, K, “Order Maintenance and the Quality of Urban Life and Police: a Different Line of Argument”, in Geller, W, *Police Leadership in America* (1986).

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There are dangers in relying on police to do shaming. In particular, the absence in relationships between the police and the community, of features essential for the success of shaming may, if recognised and exposed, fundamentally undermine police authority. Police might more safely adopt the role as a catalyst for community organisation so that dialogue can occur within a relevant community about a particular crime and its offender.

If police authority initially vests in anything not compatible with those social relationships which generate community respect, then policing will not achieve crime control through the practice of reintegrative shaming. In such a scenario police officers will see shaming as little more than an ideological construct which fails to support their perception of police authority. The community in turn which may accord legitimacy to police authority for reasons outside respect, will interpret police attempts at shaming as stigmatising rather than reintegrative. To test this assertion it might be useful to briefly examine the following shaming strategies available to police within different cultural settings.

### **1 SHAMING THROUGH CONFESSION**

In Japan it would appear that confession is integral to the shaming process. A confession is sought from an accused not so much as a key to apportioning guilt and prosecuting for a sanction as is common in Western traditions. In a Japanese policing context the confession is the first stage of contrition and may even indicate that formal sanctions are not called for. Further, the confession will form an essential part of shaming, allowing for reintegration to commence from an accepted ground that reintegration is required.

In western policing operations the process of obtaining confessions has recently come to be suspected as a principal factor in the loss of respect for police investigation functions.<sup>34</sup>

### **2 SHAMING THROUGH ADMONITION**

In Australian policing jurisdictions the police admonition remains respected in rural settings. In country communities, particularly those not fractured by racial tension, the local police sergeant may retain the respect of families through the informal administration of admonitions to delinquent juveniles. Such admonitions rely on the understanding that they will be accepted, and complemented by strong family intervention. The authority of the police officer to adopt this strategy comes neither from the law nor from central policing bureaucracies. It is the natural result of tradition, charisma, and local community rules. It is confirmed through immediate respect generating power relations within the rural community.

### **3 SHAMING THROUGH APOLOGY**

Both the significance and consequences of formal apologies to and through the police in Japan only make sense against the unique cultural background of that nation. Perhaps this truly can only be understood by the actual participants.

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34 See Stevenson, N, "Criminal Cases in the New South Wales District Court", in Basten, J et al (eds), *Criminal Justice Systems, Vol 1* (1982).

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There is no real equivalent in Western policing. While the apology is a social lubricant used in everyday community intercourse, its sincerity is ridiculed or depreciated in formalised criminal justice.

Wagatsuma and Rosett,<sup>35</sup> in their general examination of the apology within law, identify the sincerity of an apology as being connected with personal coherence and ambivalence on two distinct levels.

An apology suggests change in attitude when the apologiser expresses remorse for past hurt, and the commitment that future behaviour will not be hostile and will make up for the rupture in relationship created by the hurtful act. Apology thus is Janus-like with one face looking back remorsefully on the hurtful deed and the other looking forward hopefully to a better future.<sup>36</sup>

In the apology exists a potential to merge the differing aspirations for apportioning guilt and achieving reconciliation. The crime is recognised by the offender while simultaneously dissociating himself from it through reaffirming a belief in the appropriateness of the rule or authority offended against.

Why is the apology now alien to Western policing? From a police point of view it might be due to its devalued status, and the fact that concerns with guilt pre-dominate. For the offender it is because if any relationship is seen to be ruptured it is not considered to be with the police. With no image of a relationship with the police worth re-establishing, the offender will see no need to seek their forgiveness in order to reactivate such a relationship.

Shaming relies on an admission of an act and then its wrongfulness, as does an apology. Forgiveness and gratitude are part of the reintegrative consequences of both. Where the apologiser and the recipient exist in mutually supportive community relationships the apology necessarily has that significance. Such a relationship is central for community policing ideology. It is rarely recognised as existing between the police and the public in the West.

#### 4 SHAMING THROUGH CAUTION

The most common endeavour by police to resolve minor offences through some mechanism of shaming is the formal caution. Most states in Australia have legislation empowering their police to administer cautions to juveniles in a regulated fashion.<sup>37</sup> The impetus for this practice was not only to divert minor offenders from the institutional criminal justice process, but to provide some regulation over what had long been a feature of individual police discretion.

However, with the principal conditions on the use of this strategy being the capacity of the offender and the nature of the offence, its exercise would appear more to be concerned with clemency and deterrence than with reintegration. In fact the political justifications in

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35 Wagatsuma, H and Rosett, A, "The Implications of Apology: Law and Culture in Japan and the United States" (1986) 20/4 *L & Soc Rev* 461.

36 Id at 475.

37 See Seymour, J, *Dealing with Young Offenders* (1988), ch 6.

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Australia for the introduction of such legislation focussed on court delay and police efficiency as much as they did on the reform potential of the caution.

The police use cautions as a way of reducing their workload and avoiding public censure for less regulated discretionary interventions. The caution invokes the offender not to repeat their behaviour rather than using the instant offence to restore wider relationships within the community.

These few brief and selective examples of where policing and shaming meet, reveal more than just some reservations with a particular control strategy. They highlight the necessity for the existence of real, mutual and operational power relationships between the police and the public if community policing is to exist. A telling sign of its unreality is the breakdown or absence of respect between the two in any cultural setting.

Problems of respect, and hence for reintegrative shaming, and more broadly for policing are not only to be faced by the West. As Professor Moriyama predicts:

In the future when the kinship is weakened among the family, and among the relatives or the neighbours who used to deter crime and delinquency, we will surely face the same problems as in western societies, and the need for establishing an alternative policing process ... may arise.<sup>38</sup>

It would be wrong to imply that all nations are at different stages along a unidirectional slide away from the effectiveness of reintegrative shaming. In "Shame and Modernity", Braithwaite<sup>39</sup> sees reintegrative shaming as essentially dependent upon specific historical moments within the progress of "civilisation". Due to the complex interdependency of relationships on which modern society rests the sources of, and exposure to effective shaming cannot be viewed in unidimensional causal terms:

There is no inexorable historical march with modernisation towards a society where shaming works less well. As a society becomes more role differentiated, the potential for effective shaming increases in important ways, but so does the potential for stigmatisation which cuts off effective shaming.<sup>40</sup>

What the earlier examination of respect as an essential component within the reintegrative potential of policing reveals, social disapproval as a crime control strategy is only as strong as the conditions of communitarianism and the relationships of interdependency wherein it is practised. The reality of community policing in any cultural context may also be the reality of reintegrative shaming as policing.<sup>41</sup>

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38 Above n30.

39 Braithwaite, J, "Shame and Modernity" (1993) 33/1 *Brit J Crim* 1-18.

40 Above n18 at 24.

41 See Braithwaite, above n23.