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Shame in regulatory settings

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1. Introduction

How do people feel when they have broken the law? Does it make a difference whether their behaviour was also against their own values? And how does this feeling affect their response to regulatory action? As a consequence of questions like these, the moral emotions and their implications for regulatory systems have received increased attention within disciplines such as criminology, sociology and psychology. One reason for the revival of interest in shame, in particular, is John Braithwaite's (1989; Ahmed et al. 2001) theory of reintegrative shaming. While the theory has its roots in sociological and criminological theory, it suggests that an important psychological effect of social disapproval is the emotion of shame, and that the emotional responses to disapproval are critical to explaining the effect that regulatory action has on subsequent compliance. In response to growing recognition that moral emotions are important, two sets of questions have been explored. The first is whether social disapproval, or 'shaming', should be used in regulatory contexts and, if so, how? Restorative justice is one domain that draws on the concept of reintegrative shaming, but it is also a domain in which concerns about the dangers of shaming have been raised. The second set of questions concerns the nature of shame itself. Is the emotion a response to the fear of rejection, is it a response to a perception of being a failure or is it a consequence of violating one's values? What does the emotion tell us about the moral engagement of individuals with regulatory practices?

2. Shaming in regulatory contexts

A focal point for the revival of interest in shame was publication of John Braithwaite's (1989) book *Crime, Shame and Reintegration*. In this book, he argues that the criminal justice system has underestimated the significance of social disapproval in preventing offending. To understand crime rates, we need to look beyond official mechanisms, such as penalties that are imposed by criminal justice systems, to the degree to which societies express disapproval of crimes. The concept that is central to Braithwaite's analysis is shaming, which he defines as:

all societal processes of expressing social disapproval which have the intention or effect of invoking remorse in the person being shamed and/or condemnation by others who become aware of the shaming. (Braithwaite 1989: 100)

An important characteristic of this definition is that it does not limit itself to demeaning or humiliating forms of disapproval but seeks to encompass the full spectrum of ways in which disapproval might be expressed.

The fundamental distinction the theory makes is between stigmatisation and reintegration. Stigmatisation occurs when disapproval is directed at the person as well as at the offensive behaviour, when the person is not treated with respect, when there is no ceremony to decertify the individual's deviant status and when deviance is allowed to become a master status trait (Makkai and Braithwaite 1994). As with labelling theories, stigmatisation of offenders is expected to lead to greater reoffending. Being charged with a crime, found guilty in a court and then sanctioned imposes a deviant identity on an individual because it ceremonially changes the position of the person within society and has important social implications, such as reduced employment opportunities. This critique of criminal justice asserts that, once imposed, a deviant identity becomes a self-fulfilling prophecy: marginalisation reduces the individual's access to legitimate opportunities while increasing perceptions of injustice and the attractiveness of supportive subcultures.

Reintegrative shaming theory diverges from the labelling tradition by rejecting the idea that stigmatisation is an inevitable product of social disapproval. Reintegration can occur, instead of stigmatisation, when shaming is respectful, distinguishes between the person and their actions, concludes with forgiveness or decertification of deviance and does not

allow the person to take on a negative master status trait. One context in which this often occurs is in family life and the disciplining of children, where research shows that authoritative approaches are more effective than either permissiveness or authoritarianism.

While an important element of reintegrative shaming theory concerns the failure of stigmatisation, the distinctive contribution the theory makes is to explain why it is that reintegrative shaming works to reduce offending. Here the theory places greatest emphasis on the role shaming plays in the development or engagement of conscience. As Braithwaite (1989: 9) puts it, reintegrative shaming, is:

conceived as a tool to allure and inveigle the citizen to attend to the moral claims of the criminal law, to coax and caress compliance, to reason and remonstrate with him over the harmfulness of his conduct.

Shaming is important because of its educative value in developing or reinforcing beliefs about what is wrong. Shaming can have a deterrent effect, as an informal sanction that threatens the loss of respect by valued others. This is, however, secondary in reintegrative shaming theory to its moralising qualities. Shaming that is reintegrative is seen as having distinct advantages over shaming that is stigmatising because it allows concerns about behaviour to be communicated effectively to offenders. Affirmation and inclusion of the individual allow for moralising and denunciation of the act to occur in a way that invites the offender to acknowledge guilt and express remorse, knowing that he or she will not be outcast and that forgiveness, or decertification of their deviant status, will occur. Stigmatisation focuses attention on the individual's status rather than the harm he or she has caused and is more likely to damage the offender's bonds with law-abiding others.

Reintegrative shaming theory places considerable store in the ability of moral persuasion to reform individual offenders. However, this faith in moral persuasion at the individual level stems from a broader social premise, one derived from control theory, that the reason individuals do not commit crime is because they have commitments to shared moral norms and social institutions. It is argued that punishment is irrelevant to most people because committing serious crime is unthinkable to them. Socialisation of children in families and schools about moral norms leads to a broad consensus about what acts should be crimes. While subcultures that support alternative cultural values exist,

support for the criminal law is much greater. Indeed, Braithwaite states that reintegrative shaming theory is only valid to the degree that there is a consensus that certain actions should be prohibited.

The application of shaming theory to restorative justice

The significance of shaming to regulatory intervention has been explored in a variety of domains, including school bullying (Ahmed and Braithwaite 2006; Morrison 2006), workplace bullying (Ahmed and Braithwaite 2011; Braithwaite et al. 2008; Shin 2005), sexual offenders (McAlinden 2005), tax evasion (Braithwaite 2009; Murphy and Harris 2007), nursing home regulation (Braithwaite et al. 2007) and business regulation (Braithwaite and Drahos 2002). However, the most extensive application has been in the development of restorative justice programs, which expanded rapidly in the 1990s and are now found in criminal justice, child protection, schools and prison systems in many parts of the world. Restorative justice is an alternative to the criminal justice system that redefines the goals of justice as well as the way in which it is carried out. A defining principle of restorative justice is that an offence creates an obligation for offenders to repair the harm that has been caused (Zehr 1990). Unlike the principles of traditional justice that emphasise the importance of consistent and proportional punishment, the aims of restoration are the empowerment of participants as well as reparation and reconciliation. These broad goals include reintegration of offenders because the focus is on repairing harm that has been caused to the offender and their social networks as well as any victims.

The dynamics of restorative justice interventions—such as family group conferences, victim–offender mediation or healing circles—are also rich contexts for the reintegrative kinds of shaming that are advocated (Harris et al. 2004). Family group conferences, for example, involve semiformal meetings between the offender(s), people who are close to them, the victim(s) and their supporters. The focus of a conference is on finding out what happened and how the incident has affected all of the parties, as well as coming to an agreement about what needs to be done to repair the harms that are identified. As a consequence, they involve communities in the kinds of conversations about the negative consequences of crime that Braithwaite argues are critical to developing individual conscience and commitment to the law. Empirical observations suggest that family group conferences are perceived as significantly more

reintegrative than court cases (Harris 2006) and that well-run programs have the potential to assist in resolving shame-related emotions that occur during them (Retzinger and Scheff 1996).

Concerns about shaming

While awareness of shaming has increased, so, too, have concerns about the explicit use of shaming to control or respond to crime. The explicit use of shaming by courts has also seen the rise of 'shaming' practices that are completely contrary to the restorative approaches discussed above. Recent examples have occurred, particularly in American criminal justice, where shaming has been used in the court system as a deterrent or punishment for convicted offenders. Offenders have been ordered to complete 'shame sentences' relevant to the crime they commit instead of spending time in jail. Shoplifters have been ordered to stand out the front of shops holding signs declaring that they stole, drink-drivers are ordered to attach 'DUI' (driving under the influence) stickers to their cars, while those convicted of soliciting sex are ordered to sweep the streets.

Massaro (1997) argues that this 'modern' kind of shaming outcasts certain segments of society in a way that does not protect the individual and undermines the dignity of the whole community (see also Condry 2007). In addition to arguing against the decency of this approach, she argues that the complexity of the emotion of shame is such that courts are ill equipped to employ shaming and that the effect on offenders would be difficult to predict. Martha Nussbaum (2004) identifies five arguments in the literature against the use of shaming punishments: that they are an offence against human dignity, that they are a form of mob justice, that they are unreliable, that they do not hold the deterrent potential that they are supposed to and that they are potentially net-widening.

While it is not surprising that concerns are raised about overt forms of humiliation, the appropriateness of shaming within more reintegrative forums such as restorative justice has also been questioned. Maxwell and Morris (2002) and others have argued overt disapproval should not be an aim of restorative practices, suggesting instead that they are oriented towards exploring the consequences that an offence has on its victims, with the aim of provoking empathy. They argue that 'shaming' is a dangerous proposition in restorative justice because even with the

best of intentions offenders might interpret shaming as stigmatising. Shaming young offenders may exacerbate problems rather than prevent reoffending, particularly if offences have been committed as a consequence of low self-esteem, which has occurred as a consequence of an absence of emotional support or a difficult past.

This critique of shaming is based in part on doubt as to whether shame is a positive emotion for offenders to feel. A number of scholars have argued that the more important mechanism in restorative justice is the eliciting of remorse, which occurs as a consequence of the offender coming to understand the impact that their actions had on the victims. Shame, on the other hand, is said to be a dangerous emotion to invoke in offenders because it is a threat to their sense of self worth and is potentially destructive. These questions reflect a broader debate about the virtues of shame as an emotion, in which there is a clear division between those who are pessimistic about the role shame plays and those who are more optimistic.

3. What is the role of shame in regulatory contexts?

As just illustrated, various ideas about shaming—both positive and negative—are based on assumptions, often implicit, about the nature of the emotion that shaming invokes. This raises the question of what is shame, when does it occur and what are its characteristics? Answering these questions is critical to understanding the role that shame plays in regulatory settings and has been the focus of recent research, discussed below. Two broad conceptions have dominated thinking about shame.

Shame as a social threat

The first of these conceptions describes shame as a response to social threat, which is precipitated by the individual's perception that they have been rejected or disapproved of in some way. This conception of shame is apparent in early anthropological perspectives that describe shame cultures as those relying for social control on the sensitivity of individuals to negative perceptions of others, rather than through the development of conscience (Benedict 1946). This idea has been elaborated in contemporary research. While these approaches have varied in their explanations of why people are sensitive to social evaluation, they

all emphasise the need to be accepted by others—because the need to have strong personal ties is a basic human motive, because there is an evolutionary need to maintain status or because shame is related to the person's perception of his or her own self-worth (Gilbert 1997; Leary 2000; Scheff and Retzinger 1991). An important characteristic of this conception is that it describes shame as a response to social pressures that are exterior to individuals and constraining. The individual feels shame as a result of others' decision to reject. If others do not reject in the face of the same actions, no shame is felt.

Shame, or the fear of shame, is described as powerful motivation for the individual to continually monitor and work on personal relationships and to comply with social expectations at a broader level. Scholars have drawn on this understanding of shame to argue that informal social sanctions represent a significant deterrent (for example, Grasmick and Bursik 1990). A number of empirical studies, which place shame within a rational choice perspective, show that concern at feeling shame is associated with lower self-reported projections of offending and, in some cases, that the effect is comparable with, or greater than, official sanctions (Grasmick and Bursik 1990; Paternoster and Iovanni 1986; Svensson et al. 2013). While research suggests that expectation of feeling shame deters offending, it provides less support for conceptualising shame as a direct response to social threat. Studies suggest that shame can occur in the absence of external disapproval, that individual sensitivity to criticism is a moderating factor and that the individual's own moral judgement is important (Gausel et al. 2012; Liss et al. 2013; Smith et al. 2002).

Shame as personal failure

A second way in which shame is described in the literature is as a response to perceptions of personal failure. This is based on the proposition that shame occurs when an individual perceives that they have failed to live up to an ideal or standard that they uphold, and that the consequence of this is the perception that the 'whole' self is a failure (HB Lewis 1971; M Lewis 1992). This proposition has been explained using a number of theoretical frameworks, including psychoanalytic theory, attribution theory and affect theory. Shame is compared with guilt, which is described as a response to the perception that an act or more transient characteristic of the self was deficient, as opposed to the whole self.

Unlike the social threat conception described above, here, perceptions of failure are not necessarily prompted by disapproval, but can occur in isolation and in relation to personal ideals.

June Tangney and her colleagues, in particular, have argued that a disposition to feel shame is far less adaptive than a disposition to feel guilt, because shame involves an overwhelming negative evaluation of the self that prevents individuals from responding positively (see Tangney and Dearing 2002). An extensive program of research shows that individuals who are shame-prone are more likely to feel anger and hostility, are less likely to feel empathy for others and are more likely to suffer from psychopathology. The implication of this research is that regulatory systems would engender more adaptive responses in offenders if they provoked guilt rather than shame in offenders. However, recent research in offending populations did not show a direct relationship between shame-proneness and reoffending, although shame-proneness did predict externalisation of blame, which, in turn, predicted reoffending (Tangney et al. 2014).

A critique of both the social threat and the personal failure accounts of shame is that they fail to adequately explain the complex relationship between the individual and the social contexts in which shame occurs, either conceptualising shame as a response to values that are extrinsic to the person (social threat conception) or having little to say about the social context at all (personal failure conception). Neither of these conceptions adequately accounts for repeated observations that shame is both intimately tied to identity and sensitive to the disapproval of others. Understanding the effect of social context on what the individual feels and how they respond is critical for understanding the relevance of shame to regulatory contexts.

4. Shame as threat to ethical identity

To better explain the social context in which shame occurs, an ethical-identity conception of shame has been proposed (Harris 2001, 2011).¹ It is argued that shame occurs when people perceive that their behaviour was or is inconsistent with their ethical identity. In contrast with the social threat conception, here, it is argued that shame occurs in reference to the individual's own values. A central question for individuals is whether they have done the wrong thing or are in some way defective. For at least some shame experiences, this question is not easily resolved.

This does not mean that the experience of shame is immune from external disapproval. Social-psychology research shows that the influence of others is not necessarily due to fear of social disapproval. People are sensitive to the opinions of others—at least those whose views we respect—because they contribute to our interpretation of our behaviour. A long history of research in psychology demonstrates that the values, attitudes and beliefs held by individuals are influenced by others (Turner et al. 1987). We expect to agree with those people whom we see as similar to ourselves and as having the same social identity, and it is disconcerting when we do not. Social disapproval results in shame because it either validates the person's belief that a particular behaviour was shameful or it challenges an interpretation that it was not.

The central experience of shame is a threat to the person's identity. If we come to the realisation that we have violated values that we believe are important, this undermines our sense of who we are. Holding certain values is at the heart of personal or social identities because identities are defined in large part by one's beliefs and their related behaviour. For example, being nurturing and protective might be perceived as important characteristics of a mother or a father. It follows that when we become aware that we have acted contrary to our values, our identity is called into question. The painful feelings of self-awareness, anger at

1 This understanding of shame has a much longer history in moral philosophy. Bernard Williams (1993), in particular, argues that the precondition for feeling shame is the perception that a respected 'other', defined in ethical terms, would think badly of us. In this view, people are seen as neither morally autonomous nor responsive to the disapproval of anyone. Instead, Williams presents an argument for understanding shame as an emotion that is intimately connected with individuals' sense of their own ethical identity.

ourselves and confusion that are associated with shame occur because the contradiction between our values and our behaviour cannot be easily reconciled.

Along with threat to identity, shame motivates the individual to resolve the contradiction between their identity and their behaviour. We experience a sense of dissonance that is uncomfortable and that motivates us to make sense of what has occurred. An individuals, we can resolve the inconsistency in a variety of ways, depending on a range of factors including social context. This means that the experience of shame can be heterogeneous. For example, an individual might seek to diminish the significance of their behaviour by seeing it as an aberration, apologising and seeking to repair harm that was caused. A very different response would be to decide that there was a compelling excuse for their behaviour, which justified it. As will be discussed below, scholars from a number of theoretical perspectives have also observed that, in some cases, individuals struggle to resolve shame, often with negative consequences.

5. Shame management: The different forms of shame

Evidence that the experience of shame is heterogeneous and that it can have both positive and negative consequences has turned attention to understanding why shame is a constructive emotion in some situations but counterproductive in others. Why do we hope that some individuals feel shame for what they have done, but experience unease at the idea of imposing shame within criminal justice? A long tradition of research on shame emotions has explored variation in how individuals experience the emotion, and this, like more contemporary research on dispositions, has generated the notion of shame management (Ahmed et al. 2001). This theoretical perspective suggests that when confronted with feeling ashamed for their actions, individuals can manage or respond to the emotion in different ways. This has important implications for criminal justice institutions.

Evidence of differences in shame experiences was first captured in the seminal work of psychiatrist Helen Block Lewis (1971). In her research with patients, Lewis identified three different forms of shame. The first, 'acknowledged shame', involves the recognition that one feels shame and has awareness of associated feelings. 'Overt-unidentified shame'

describes the experience of feeling the negative emotion associated with shame but not recognising it as shame and thus mislabelling it. 'Bypassed shame' involves an awareness that an event may be shameful and doubt about how others see the self, but the emotion is bypassed, leaving the person with 'an insoluble, plaguing dilemma of guilty thoughts which will not' be solved (Lewis 1971: 134).

One of the important findings from this work for understanding the implications of shame is that unacknowledged forms of shame are associated with feelings of anger and hostility towards others. Scheff and Retzinger (1991) extended Lewis's analysis by arguing that shame is a signal that the bond between the individual and others is threatened. When an individual does not acknowledge feelings of hurt associated with rejection, as is the case in unacknowledged forms of shame (bypassed and overt-unidentified), this emotion becomes redirected as anger towards the self and others. According to Scheff and Retzinger (1991), this is the cause of humiliated fury and helps to explain not just individual anger but also the behaviour of groups who experience a sense of shared shame. The implication is that shame that is not acknowledged, or resolved, by the individual can manifest itself in an unhealthy reaction.

Eliza Ahmed and her colleagues (2001) have described the various manifestations of shame through the concept of shame management. This captures the notion that, when confronted with a shame-inducing situation, individuals can manage the negative feelings in a variety of ways, influenced by both individual characteristics and the social context. Acknowledged shame occurs when the individual accepts that they are responsible. When this occurs, the person is more likely to make amends, to feel less anger towards others and is more likely to discharge the negative feelings. In contrast, unacknowledged shame, which Ahmed describes as displaced shame, occurs when the person does not accept that they are responsible. Failure to resolve the emotion, because of the tension between the disapproval of others and this denial of responsibility, results in shame being displaced into anger towards others.

There is growing empirical evidence that shame management predicts both bullying and criminal behaviours. Ahmed's own research in Australia and Bangladesh shows that children who are bullies are more likely to displace shame compared with children who have not bullied, who are more likely to acknowledge shame feelings (Ahmed and Braithwaite 2006; Ahmed et al. 2001). These results have been supported and extended in a study by Ttofi and Farrington (2008), which showed

that stigmatisation predicted poorer shame management in children, characterised by shame displacement, and that this predicted a greater prevalence of bullying. Positive shame management, characterised by shame acknowledgement, predicted a lower prevalence of bullying. Murphy and Harris (2007) found a similar result in the context of white-collar crime. In this study, unacknowledged shame (or shame displacement) predicted recidivism, and the relationship between shame acknowledgement and recidivism was mediated through feelings of remorse.

Research on shame management has significant implications for reintegrative shaming theory and has prompted a revision of the theory (Ahmed et al. 2001). While the revision does not alter the theory's prediction that reintegrative shaming increases compliance (while stigmatic shaming increases offending), it does clarify why this is the case as well as the role that shame plays. The original formulation of the theory implies that the benefit of reintegrative shaming is that it leads to greater feelings of shame. However, the implication of shame management is that reintegrative shaming allows greater moral engagement with disapproval and the threat that it poses to ethical identity, because it provides individuals with greater opportunity to engage with others' interpretations of their behaviour and to respond positively. As a consequence, individuals are more likely to acknowledge and resolve feelings of shame. Stigmatisation, on the other hand, is more likely to result in offenders displacing shame and feeling anger towards others. Thus, it would seem, somewhat ironically, the benefit of reintegrative shaming is that it allows offenders to resolve and diminish any shame they feel.

6. Conclusion

Interest in the role of emotion has grown in a number of regulatory fields (Karstedt 2002). Shame is of particular significance because most regulatory interventions implicitly or explicitly communicate disapproval. In some cases, such as restorative justice with juveniles, great care is necessary to avoid this disapproval becoming stigmatising. In other cases, such as regulating powerful corporations, disapproval has to be expressed loudly if it is to be heard (Braithwaite and Drahos 2002). In all these cases, the expression of disapproval raises the possibility of invoking shame. While discussion of shaming punishments and

'naming and shaming' strategies has tended to focus on the social impact of these strategies, such as loss of face or humiliation, this chapter has highlighted research that indicates that shame has a much more complex role. Shame is invoked when individuals question whether they have violated their values and, when experienced, represents a threat to the person's sense of who they are. This suggests that shame is invoked when individuals are morally engaged. A question for those who seek to change or regulate behaviour is how to engage the individual in this kind of discussion. Restorative justice does so by exploring the consequences for victims with the offender and those who are important to them in a reintegrative process. Similar approaches have been proposed in the regulation of aged care (Braithwaite et al. 2007). The concept of shame management shows that the way in which individuals manage the experience of shame is just as important as whether or not they experience the emotion. Indeed, unresolved or unacknowledged shame can appear very much like an absence of shame, and there is evidence that this form of shame has the potential to be a destructive emotion that is associated with anger and defiance. On the other hand, shame that is acknowledged would appear to promote empathy, remorse and reparation. These dynamics have important implications for the efficacy of regulatory interventions that are only just beginning to be understood.

Further reading

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