

Feminism, justice and ethics: reflections on Braithwaite's commitments

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1. Introduction

I shall never forget the day. It was more than 25 years ago, in January 1993, when I was working at the University of Michigan in Ann Arbor. I received an express mail package from Australia, and it was from John. He had sent me a paper to read and comment upon.

I read the paper that evening and was captivated by its many new ideas. John wrote about a process called 'community conferencing' in a place called Wagga Wagga in New South Wales. He described a case of a male youth sexually assaulting a girl in the swimming pool, but it was not the case that captured my attention. Rather, it was the way that John wrote about male domination, violence against women, and the ways that an informal justice process could bring forward feminist voices for social change.¹ John presented the paper to the Australian Institute of Criminology's (AIC) Second Conference on Violence (15-18 June 1993) in Canberra, and it was published a year later (Braithwaite & Daly, 1994). The experience marked the start of my journey to Australia to research restorative justice.

I have a folder of correspondence with John during the time we were developing the piece. With John's permission, my essay draws from it and recent email exchanges. It also draws from material in *The Canberra Times* about the AIC conference, which began with a controversial bang. The opening speech by Governor-General Bill Hayden² attracted significant critique from some feminist quarters. A story in *The Canberra Times* gave it front-page headlines the next morning: 'Hayden defends men, challenges media over "misrepresentation"' (Campbell and Frith, 16 June 1993: 1). Hayden was critical of a major Melbourne newspaper, *The Age*, for using headlines such as 'The war against women', and for characterising reports to Victorian police of family violence as being 'at epidemic levels and rising'. He said 'most men are not waging a war against women' and 'most men are not violent' (Hayden, 16 June 1993: 11). During and after the conference, *The Canberra Times*

¹ Throughout this paper, by informal justice process, I mean one that is not a formal (or conventional) criminal justice process, even if it may be situated within formal criminal justice, as this Wagga Wagga conference process was.

² The Australian Governor-General is the British monarch's representative in Australia and Australia's constitutional head of state, who carries out three types of duties: 'constitutional and statutory, formal ceremonial, and non-ceremonial social' (Parliamentary Library, 1996). Bill Hayden's opening address to the 1993 conference was a non-ceremonial social duty.

published numerous stories and some editorials about what was said and debated. The paper paints a vivid picture of the gender politics of the time, when ‘women’s groups and the media [were] talking up the problem of violence against women’ (Editorial, 17 June 1993: 10).

Scheduled to speak on the same day as Hayden, John anticipated that he would need to duck for cover when presenting a paper on the potential of community conferences when responding to violence against women.

My essay sketches how the paper evolved and John’s determination to ensure its feminist contribution was strong. It also reveals an ethical side of John’s work that I admire and try to emulate. I believe that John was unusual in reaching out to feminist scholars, reading our work, and seeing its value at a time when few male colleagues did. In 1994, he had hoped that community conferences could be used in adult family and domestic violence cases, but some years later he realised that it would have been premature due to the under-development of appropriate protocols (Braithwaite & Strang, 2002: 1-2).

2. Contexts of feminist advocacy and debate

The 1980s were a heady time for consolidating and expanding feminist thought,³ along with nascent ‘new justice’ ideas that had emerged from 1960s and 1970s social movements (Daly and Immarigeon, 1998). However, feminists in differing spheres of academia, practice and daily life recognised a problem: the strength and vitality of feminist grassroots activism for change during the 1960s and 70s was being undermined and distorted by neoconservative policies of the 1980s. As Linda MacLeod (1985: 368) argued, this encouraged an overly simple response, ‘the criminalisation of wife battering’. MacLeod presented her analysis to the AIC’s 1985 National Conference on Domestic Violence and raised concerns with the growing emphasis on utilising criminal law and police responses to domestic violence *alone*. She characterised these as ‘powerful symbols of chivalry’, which ‘focus on rescuing the victim ... by current-day knights in police-officers’ clothing ... but do little or nothing to prevent her subsequent victimisation or to address the roots of her oppression’ (MacLeod, 1985: 374). Her concerns reflected considerable debate during the 1980s and early 1990s over the desirability of mandatory or pro-arrest policies for domestic violence.

3. Braithwaite’s developing feminist consciousness

³ This a brief gloss of shifts and debates in feminist advocacy over three decades, which took varied forms and in somewhat different temporal contexts in countries like Australia.

The earliest letter in my Braithwaite file is dated 23 July 1989. In it, John said he read two recently published papers of mine on feminism, criminology and justice, and had passed them along to a PhD student and an Australian feminist scholar. Responding to my paper on feminist conceptions of justice and a critical analysis of the ‘different voice’ construct (Daly, 1989), he said:

Through methodologies which draw out voices suppressed by traditional, hard-nosed, statistical, formally legal and patriarchal methods, we can find the seeds of hope which can be fertilised in the struggle for a ‘kindler gentler’ (!) criminal justice system. This, for me, is the most fervent hope for the line of work you are pursuing.

Two observations can be made. First, John wanted to foreground the views of society’s marginal and subordinated members, a longstanding concern. Second, he used the term ‘patriarchal’. In the same year (1989), he discussed how a ‘patriarchal culture’ affected sex/gender differences in offending in *Crime, Shame and Reintegration* (Braithwaite, 1989: 92-94) although he did not consider its impact on victimisation. Two years later, Braithwaite (1991) analysed conditions and relations that were ‘structurally humiliating’, including ‘patriarchy’, which he defined as ‘a condition where women enjoy limited dominion, where men do not respect the dominion of women [and] where women are humiliated by men’ (p. 50).

In a March 1991 email, he said he was ‘remorseful’ for not having read work by Betsy Stanko, a well-known feminist criminology scholar, on violence against women (he recalls that I pointed this out to him in 1990). When he searched for her books, not one was in Canberra’s libraries. He planned to rectify the problem in upcoming travel to universities in Liverpool and Oslo, where he expected to find the books in their libraries. ‘So I will then have a chance to improve my gendered self’, he said.

An early paper cited feminist theory. ‘Women as victims of crime’ (Braithwaite & Biles, 1980) analysed findings from the first Australian national victims survey. In the introduction, the authors said they would ‘not attempt to demonstrate their unsophisticated grasp of feminist theory [by integrating] the findings [with] a coherent theoretical framework’ (p. 330); but at the end, the analysis of a greater female fear of victimisation displayed uncommon feminist insight. Like 1970s victimisation surveys in other countries, the Australian data showed a disjuncture between the likelihood of female victimisation (generally lower compared to males, except for rape) and the fear of being a victim of crime

while walking in one's neighbourhood at night (higher for women). This heightened female fear (based on a fear of rape) 'hems [women] into a protected day-to-day existence ... and is a concrete manifestation of the ideological importance in a sexist culture of keeping women dependent on men for protection' (Braithwaite & Biles, 1980: 338).

In a recent email (24 May 2019), I asked John when he began reading and reflecting on feminist work. He said, 'I had been thinking about it for a long time', having read *The Female Eunuch* (Greer, 1970) 'when it first came out', along with 'quite a bit of other feminist writing' by 'the big figures of second wave feminism at that time'. He had given undergraduate lectures on the topic at Griffith University and the University of Queensland in the mid-1970s, and he had frequent conversations with feminist colleagues at the AIC and in Australia.

4. Developing our paper

During 1992 we began to discuss a paper on violence against women and community conferences (also termed by John reintegration ceremonies, but not yet restorative justice). This was prompted, in part, by a plenary panel paper I had given at the Law & Society Conference (June 1992) on the United States Senate's confirmation hearings of Clarence Thomas as Supreme Court Judge and Anita Hill's allegations that Thomas had sexually harassed her (Daly, 1992). At the time, I had only Norwegian feminist abolitionists' ideas to work with. In a 22 July 1992 letter responding to my plenary argument, John said he felt 'a lot of sympathy for the way the Scandinavian abolitionists think about these things, though my theoretical position is to be a minimalist on criminal justice intervention rather than an abolitionist'. However, he thought 'the criminal label is a good thing' although most criminal acts could be 'better labelled in other ways'.

When we met at the ASC conference in New Orleans in November 1992, he said he was working on a draft paper on male violence against women and community conferences. It was that paper I received in January 1993. John sent it under pressured circumstances because he had promised it for Tim Newburn and Betsy Stanko's edited collection on masculinities and crime. In his letter he said:

If you want to engage with it and become a co-author, I would welcome that.

Unfortunately, this would have to be done quickly. The due date for the paper is this month!

He was concerned that the paper may be too long, but said

I am inclined to dig my heels in and refuse to cut it. It is an important paper to me and I don't want it to be compromised by editorial demands.

He acknowledged that 'my thinking in this area might be quite uncongenial to you', but whatever the outcome,

I would appreciate *the decision* urgently. If you cannot engage with it over the next couple of months, I'd want to get moving with an alternative quality assurance process, i.e. feedback from respected feminist colleagues (John's emphasis).

I replied on 17 January 1993, first with several criticisms, saying

My major contribution, were I to be involved in this paper, would be to make the arguments more clear and readable and defensible ... The paper may require a strong re-organisation ... 'the pyramid' just pops in ... and you've offered several other major lists of ideas. A second contribution would be to say more about the failures of the conference idea. This must be discussed more, especially if you want anyone to take the ideas seriously. Finally, there are areas where the characterisation of feminism and related [topics] would need to be changed, both for accuracy and diplomacy.

Then, I pointed out what I liked:

The paper really shines when you show how the criminal process amplifies stigma and rage, and how the legal process increases violence. The paper is also good for giving examples of how the conference works: what kinds of interactions occur and what innovations are possible. Finally, your argument about the relationship of formalism to informalism is nicely done and gets beyond the impasse. Generally, the paper is a good think piece and will help people to think differently about the goals of responding to harms.

At the same time, I was not comfortable with framing the argument within republican criminology (Braithwaite & Pettit, 1990) and preferred to see that pared back. I was also

concerned with the ‘communitarian direction of the argument’ and believed there needed to be ‘an acknowledgment of its downsides and problems’, having in mind feminist critiques of mediation and the oppressive role ‘the community’ could have on women. I raised other questions, which subsequently featured in feminist critiques of conferences. Among them were these. ‘The role of conference advocates: are these workers all women? Or what role do men play in assisting victimized females?’ Was there ‘an analysis of how gender structures the conference proceeding ... e.g., [are] men doing more talking and making decisions or in other ways silencing women?’ Although I did not ‘want to remove the complexly woven nature of the argument’, I suggested that it ‘could be presented in a way that moves us along in a brisk walk rather than a stroll’ (email 17 January 1993).

Soon after, John sent me a copy of a letter to Betsy Stanko (30 January 1993), which began with ‘Oh Betsy, how bad I have been. I have not finished the paper promised for your book with Tim Newburn ...’ He went on to say that

I have spoken and emailed endlessly with Kathy Daly about its many flaws. She likes telling me my flaws. Remember when she told me that one of my flaws was that I had not read your three books.

He said that I had agreed to co-author, but because he knew the deadline had passed, he wanted to give the editors the option of saying ‘no thanks’. A key concern for him was the publisher’s restrictions on word length. He said to Betsy that ‘the paper is really important to me in the deepest intellectual-personal and political sense. That is why I want to do it right, however much space that takes’. In a subsequent email to me in early February, he reinforced this point after he learned from the editors that the maximum length was 6,000 words. He said:

We want [the paper] to be interesting AND NOT HAVE MAJOR GAPS IN THE ARGUMENT. My concern with this paper is that we get it right, whatever is the optimum length for getting it right. I will refuse to compromise just to keep [the publisher] happy (John’s emphasis).

5. Ethics: the problem of B-ness

In a 28 February email, John asked if I would be able to commit to revising the paper before the AIC Conference in Canberra in June 1993. I said I could, and this set in motion a flurry of emails during May when I was revising the paper and then in June, after John received my revision. I will not parse the many exchanges we had about what had to be expanded, reduced and finessed. But I would like to briefly share two emails, dated 1 June 1993, after John had received my revision:

You have done a wonderful, wonderful job on the paper ... I do think your contribution is so substantial that we are now on equal partner footing. In these circumstances, I have a strong preference against alphabetical order and in favour of coin tossing. This preference follows from the fact that most of my co-authors happen to be women who are more junior than me and who have post-B names. I feel uncomfortable exploiting my B-ness across so many co-authorships.

Later that day, he sent a second email that said:

I definitely have it in the equal partnership range ... It is not a clear case to me of one author making a substantially greater contribution than the other. ... I think people will read it as a blend of feminist theory which they would expect to have been contributed by you and republican theory which they would have expected to be contributed by me, converging on common conclusions. Given that the critical audience ... is feminist criminologists, ... the paper will have a better chance of being influential if you end up first. Anyway you decide whether you are willing to yield to my strong preference to toss the coin.

I decided not to go with the coin toss and instead to be second author because John had written a substantially developed first draft and I was not sufficiently familiar with republican criminology. However, this exchange has stayed with me, along with other advice John has given me on ethical practices in academia. Senior scholars must pay close attention to the ethics of author ordering and of what their actual contribution to a publication is, particularly with more junior colleagues and students.

6. The 1993 conference

The opening address by the Governor-General was followed by several papers, including ours, one by Jocelynn Scutt and commentary by Sandra Egger.⁴ In an email a few days before the conference (10 June), John relayed that a colleague ‘predicted [I would be torn] limb from limb for taking a “decriminalising” line’. This did not occur, although criticism did emerge during question time. In a 19 June 1993 email, John described what happened in his session this way:

The paper went really well. I had slides and mostly read because I was nervous. [There was] only time for two questions, which were both constructive, both from women, one Aboriginal. Big round of applause (about 200 there). That’s the good news. But then after Jocelynn Scutt’s paper, she got a question about what she thought of our paper. She said ... stuff about women being silenced if they did not get their day in court. I was then ... asked by one questioner if I would really support conferences for rapists. [There were further exchanges, but] it was in no way nasty.

Then, he said that

Jocelynn got a big round of applause when she said ‘just at the moment in history when we are beginning to hold rapists accountable in courts and when women are coming forward, we have these voices saying “no, do it in private”’. That’s how it ended.

In the 19 June email, John described Sandra Egger as ‘very supportive of our paper in her job as commentator. ... Sandra is a feminist and shocked some [people] with her attack on totalising versions of feminism. She, I understand, has copped a lot of flack’. He wrote to Egger on 21 June, saying ‘I thought your comments at the violence conference last week were courageous ... I know it all comes with more of a cost for you than for me.’ His insight on the differential sex/gender ‘costs’ of making unpopular arguments displayed an unusual solidarity for the time. He continued,

⁴ At the time, Scutt was a lawyer, working in Owen Dixon Chambers in Melbourne, and Egger was senior lecturer at the University of New South Wales Law School (she passed away in 2013).

The enthusiastic response Jocelyne got from the audience for saying that now was not the right time to mediate crimes against women in private ... was enough to sow some seeds of doubt among critical listeners.

During the conference, a two-page Statement of Concern (1993) was issued, which was addressed to the AIC as the conference organisers. It was signed by Karen Struthers and Ron Frey⁵ and was intended to encourage others to sign, with the aim of presenting it publicly on the last day of the conference. The Statement emphasised gender inequality as a core factor in violence against women and children, and it challenged several points the Governor-General made in his opening address, but without naming him. The Statement concluded that

A number of prominent speakers at the conference have failed to understand the fundamental realities of violence ... Examples of these include: the anti-feminist comments made by a number of speakers; [and] the lack of gender analysis in a number of the key presentations (Statement of Concern, 1993: 2).

In preparing this paper, I contacted Struthers and Frey to determine who else, besides the Governor-General, was among the ‘prominent speakers’ they had in mind. Both said it was too long ago for them to recall. However, John’s memory is that he and the Governor-General were in their sights. In recalling the Governor-General’s opening address, John relayed in a recent email (19 May 2019) that there had been a cartoon about ‘multiple big feminists’ chasing a ‘timid, terrified little fellow in glasses’. My research assistant, Victoria Meyer, tracked down the cartoon by artist Geoff Pryor, which was published in *The Canberra Times* on Sunday, 20 June, two days after the conference ended.

 Geoff Pryor cartoon about here

⁵ At the time, Struthers was Director of the Domestic Violence Resource Centre, and Frey was a Lecturer at the Queensland University of Technology.

The cartoon shows two sets of large black boots with pom poms, walking toward a small male figure in the distance, with papers spilling about him, who wonders if he has ‘said something incorrect’. Indeed, the male figure in the distance could have been John, but artist Geoff Pryor relayed to me in a recent phone call (30 May 2019) that it was a ‘generic male’, not John or any other specific male. The women in boots were his caricature of a ‘feminist enforcement team’. He drew the cartoon on Friday afternoon, after reading stories that week in *The Canberra Times*.⁶ He could not recall which story he read or whether it was a theme that emerged from several stories on the National Conference on Violence.

 Pryor cartoon about here

I suspect that Pryor’s inspiration was a story on Friday by Rod Campbell (18 June 1993), which summarised critical points made in the Statement of Concern and made also by Jocelyne Scutt, who ‘emphasised that “there is a war against women”’, refuting what the Governor-General said in his opening address. The story went on to say that

Dr Scutt said that the women’s movement was not convinced that mediation, conciliation and counselling were appropriate ‘punishments’ for rapists and wife bashers, or anyone who engaged in criminal acts of violence. Men who committed acts of violence against women and children required a clear message that their acts were wrong and criminal (Campbell, 18 June 1993: 4).

It is not certain in Campbell’s story if Scutt was referring to ideas in the paper that John presented or was making a more general point.

7. Unresolved questions for justice

Debates at the 1993 conference echoed sentiments at the 1985 AIC conference. How much reliance can or should feminist advocacy place on criminal law, policing and crisis

⁶ His Friday afternoon schedule was to create two or three cartoons, which would be published in the Saturday, Sunday and Monday papers.

intervention in responding to domestic violence? What types of reforms to criminal law, or supplemental processes in criminal courts, could advance fundamental, feminist-inspired change in responding to rape and sexual assault?

Questions about the appropriateness of restorative justice (or other types of innovative justice practices) for partner, sexual and family violence have featured since the mid-1990s, when John and I first proposed the idea. Over time, the contributions to edited collections by Strang & Braithwaite (2002); Ptacek (2005, 2010); Cook, Daly & Stubbs (2006) and most recently, Zinstagg & Keenen (2017) reveal a maturing of ideas, with attention to multiple inequalities (sex/gender, racial-ethnic, class, sexualities). Earlier debates were framed in dichotomous terms (e.g., ‘criminalisation’ and ‘de-criminalisation’) that did not reflect the subtleties and uncertainties of the positions being advanced, and there was scarce empirical evidence to support anyone’s claims. Today, there is a greater degree of openness to seeing the value of innovative justice practices that run alongside of or are intertwined with conventional criminal justice or occur outside criminal justice.

Still, with some exceptions, governments are reticent to support conferences for adult cases of violence (all types of violence), and domestic and sexual violence are especially hot political potatoes. There also remains a degree of scepticism by feminist scholars and advocates about the utility and desirability of conferences. In my view such reticence and scepticism are mistaken: when conferences are used in admitted adult cases, they can be part of a criminal justice response, not a complete diversion from it, an argument developed early by Hudson (2002).

But there is a deeper, more fundamental problem, one that Hudson (1998) and Hampton (1998) raised many years ago (Daly, 2002: 62). It comprises two linked questions. How do we treat wrongs with the seriousness they deserve without relying on harsh, exclusionary types of punishment? How do we ‘do justice’ in an unequal society? The paper that John and I wrote on conferences and violence against women attempted to address the first question with the enforcement pyramid and escalating responses, when required. However, we only partly addressed the second question, with reference sex/gender inequalities and male domination. The two questions for justice will likely remain unresolved for many years to come.

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