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William M. Plews-Ogan  
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**Embedding Justice**  
Shaming Rituals in Reintegrative Justice Systems: Spain, California, and New  
South Wales

A thesis submitted in partial fulfillment of the requirement for the degree of Bachelors of  
Arts in Sociology from the College of William and Mary

By  
William Plews-Ogan

Accepted for: \_\_\_\_\_

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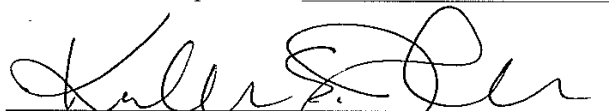
April 2015  
Williamsburg, VA

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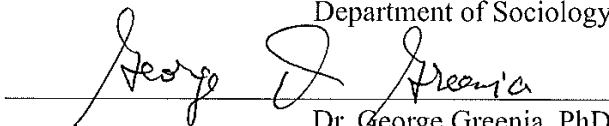
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## INTRODUCTION

The age-old axiom that “justice is blind” is rooted in petrified ideas that punishment is manufactured and transacted without the heavy hand of humanity. But in fact criminal justice is not indifferent; it is not politically sterile; it does not exist in a cultural vacuum; it is not mechanical. Criminal justice is dynamic and culturally embedded, involving well-practiced rituals that promote the interests of the community. What makes every culture’s system of justice different is also what unites them: a structured, rehearsed series of rituals that reflects the culture in which they are embedded. How might reintegrative sentencing and shaming rituals endow the practice of justice with specific, applied cultural beliefs and values? How might these rituals strive to repair the harm done by a crime and reintegrate the offender as a valuable community member? What kind of cultural structures shape these processes?

My research explores court-based and other creative alternative justice processes that activate culturally specific rituals seeking to prevent future crime and reintegrate the offender into the community. This study is the product of an evolving ethnographic research design that began on the Camino de Santiago in northern Spain in 2012 and expanded to therapeutic justice programs amidst varying political-cultural contexts in California and New South Wales, Australia. My comparative analysis expands upon theory on rituals of reintegrative shaming in restorative justice settings and introduces the concept of “Embedding Justice.” Embedding Justice is the symbolic activation of cultural beliefs and values through justice rituals undergone at the community level. I illustrate the ritual mechanisms shared across these three sites in Embedding Justice shaming rituals and consider their implications for the study of reintegrative justice.

## CHAPTER 1: TERMINOLOGY AND OUTLINE

### *Defining “Embedding Justice”*

My research questions developed as I collected and analyzed interview data with officials at each justice site and saw central themes emerge in the data. I began to notice a common practice of “shaming” the offender at all three sites, and further recognized that these practices could be examined as rituals. Informed by the relevant literature in the field of reintegrative shaming, restorative and rehabilitative justice, and justice rituals, I identify in this paper three critical ritual mechanisms that are dominant in my data:

- (1) Symbolic ritual actors as representatives of community and culture;
- (2) Self-expression of offenders as a ritual shaming process; and
- (3) Physical and dialogical structures that enable ritual shaming.

As the literature indicates, successful shaming mechanisms must also reintegrate the offender into the community. Thus each ritual shaming mechanism involves processes that help the offender recognize their value to the community and actualize that value in the community.

My data also led me to an a concept I refer to as Embedding Justice.<sup>1</sup> My definition of Embedding Justice is the symbolic activation of cultural beliefs and values through justice rituals undergone at the community level. My research examines the community as a stakeholder in

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<sup>1</sup> Paul Gready, a Senior Lecturer at the University of London in Human Rights, defined the term “Embedded Justice” in the context of micro-level justice events that connected local populations with broader movements of transitional political justice in conflict nations such as Rwanda and Sierra Leone in a 2005 study (see Gready 2005 in References). I did not study his work prior to writing this thesis, and my definition pertains to ritual processes of justice, rather than concerning justice’s relationship with political transitions and national traumas. The term I use —“embedding justice” refers specifically to ritual *processes*, rather than a rigid category of justice approach.

justice transactions and a site for shaming rituals both within and outside of court settings. My data, then, includes perspectives on Indigenous and Western justice traditions across three countries and cultural contexts. My sociological perspective reflects a focus on cultural construction and meaning of ritual. My data address the practice—or the “doing”—of justice as both a sentence and a process at once (Gardner 1976). Embedding Justice occurs where *sentences* and *processes* convene during rituals undergone at the community level: the community is a stakeholder, and individual ritual actors perform on behalf of the community to exert forces of social control. These ritual agents “do” reintegrative justice<sup>2</sup> by activating distinct cultural understandings about acceptable and unacceptable behavior (Gardner 1976).

“Reintegrative shaming” is a common theoretical concept forwarded by Braithwaite (1989) and other scholars, and Restorative Justice applies to a specific model used in California, but not explicitly at my Australia or California sites. “Community Justice”—specifically parole and reintegration services like halfway houses—has been studied by scholars like David Karp and Todd Clear (2002) and Rudolph Moos (1974). Research on justice and reintegration rituals by scholars like Shadd Maruna (2001) forwards a nuanced explanation of the precise ritual phenomena that occur when offenders return to their communities. Research on cultural beliefs and values of justice in many societies has also been done. But my analysis is unique in (1) comparing these three culturally distinct sites, (2) applying an ethnographic sociological

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<sup>2</sup> I use “reintegrative justice” to refer collectively to all three justice models, because they all seek to reintegrate offenders into the community and oppose “retributive” justice models such as court-to-incarceration systems. In fact, this opposition arises directly from interviewees in my data. The term “reintegrative justice” is not prolifically used in literature to refer to any particular model of justice, but it best represents the commonality in the objectives of my three sites: to shame but then to reintegrate the offender into the community. Several other justice models are tangential with my topic area, but are not inclusive of all three of my sites’ models.



approach that can answer how theoretical processes of justice ritual are undertaken by real ritual actors in real communities, and finally (3) in examining the importance of cultural context in criminal justice rituals.

Before examining each site, I offer an overview of the existing models of justice whose theory loosely correlates to each of my reintegrative justice sites.

## CHAPTER II: LITERATURE REVIEW

### *Models of Reintegrative Justice*

#### *Therapeutic Jurisprudence and Restorative Justice*

Elements of Therapeutic Jurisprudence (TJ) philosophy—a school of criminal justice theory addressing the essential therapeutic purpose of laws and adjudication—can be seen in the offender rehabilitation programs in California, the penal pilgrimage program in Spain, and the circle courts in Australia (Wexler 1993: 280). David Wexler (1993) describes TJ as “the study of the role of law as a therapeutic agent” (280). He goes on to explain that TJ “suggests that the law itself can function as a therapist; ... legal rules, legal procedures, and the roles of legal actors, principally lawyers and judges, may be viewed as social forces that can produce therapeutic or anti-therapeutic consequences” (280). This concept is more concerned with questions of legality and legal construction than with the practice of criminal sentencing. Still, it offers a meaningful framework with which to “ask...how the law can use behavioral science information to improve therapeutic functioning without impinging upon concerns about justice” (Wexler 1993: 280). A general therapeutic culture forms a critical foundation for the structures and tools used in justice rituals at all three of my sites.

Restorative justice (RJ)—another theoretical approach with practical applications throughout the world—has been shaped by prolific recent contributions of criminologist John Braithwaite of Australia National University and Howard Zehr of Eastern Mennonite University in Virginia, USA. Braithwaite’s (2004) definition is as follows: Restorative justice is “...a process where all stakeholders affected by an injustice have an opportunity to discuss how they have been affected by the injustice and to decide what should be done to repair the

harm” (28-31). He goes on to explain that the offender, the community, and the victim are primary stakeholders, and should participate actively in the process of justice. Braithwaite offers a laundry list of potentialities for restorative justice practice, including the restoration of property loss, human dignity, physical health, self-determination, and “sense of duty as a citizen” (Braithwaite [www.restorativejustice.org](http://www.restorativejustice.org)).

Restorative justice is a highly specific procedural model, but its versatility across cultures—especially those in my cases—makes it a critical model for this study. The vagueness and the ideological conflicts inherent to restorative justice follow from cultural appropriations. Braithwaite explains, “We can craft open-textured restorative justice standards that allow a lot of space for cultural difference and innovation while giving us a language for denouncing uncontroversially bad practice” (Braithwaite [www.restorativejustice.org](http://www.restorativejustice.org)).

In defining what restorative justice *is* at its core, Zehr and Gohar (2002: 23) explain what restorative justice *is not*, which situates restorative justice in a space of resistance against dominant Western retributive justice frameworks. Zehr explains that there are three central pillars to restorative justice:

- 1) Harms and related needs (of victims, first of all, but also of communities and offenders)
- 2) Obligations that have resulted from (and given rise to) offenders' but also communities' harm
- 3) Engagement of those who have a legitimate interest or stake in the offense and its resolution (victims, offenders, community members)

Elements of Restorative Justice and Therapeutic Jurisprudence can be identified at my sites to varying extents, but other models of justice are also visible in the three reintegrative justice cases I studied.

*Community Justice: The Community and The Family as Stakeholders*

Community Justice is primarily concerned with the process and outcomes of criminal sentences involving the community, such as probation, parole, halfway houses, or substance abuse support systems. Again, the cases I studied cannot be unified under the Community Justice model. Yet examining community justice models is important for answering the critical question: what is the community's role in justice processes? Further, what is the family's role in justice processes? Indeed, the family and the community are the two institutions most critical to reintegrative shaming and Embedding Justice rituals at my sites.

Community justice models understand the community to be a cohesive, service-providing entity in which justice processes are embedded. The programs I studied all used services—such as employment assistance organizations or substance abuse programs—to rehabilitate the offender *in community*. Further, the common use of the circular structure for these programs corresponds with structures used at my sites. The Alcoholics Anonymous 12-step process, for instance, is a circle-based sharing operation defined by participant self-expression; they facilitate mutual exposure to shame and reintegration (or re-acceptance) within a small environment, which appears quite similar to circle processes at my sites in Australia and California. All of them use “micro-communities”—the 5-15 people participating in the circle—as a training

ground and microcosm for the communities that the offender will soon re-enter (Karp and Clear 2002: 13).

Rudolf Moos (1974), in his book *Assessing Correctional and Community Settings*, analyzes community-based justice programs such as halfway houses and juvenile transition institutions. Being “treated in community” is a concept that emerged out of my ethnographic data, mostly as an alternative to incarceration, but specifically in terms of “victim restitution,” suspended sentences, and other “community-based alternatives” (233).

According to Moos, the family of the offender is also a critical feature of reintegrative justice processes:

Family expectations of the delinquent are of prime importance, since such expectations may be self-fulfilling.... The greater pressures for success, for a return to normal living, and for the fulfillment of work and school functions are likely to be translated into better post-institutional performance. (269)

Moos offers an important index to measure the family’s impact on a member’s criminality: the Family Environment Scale (FES) is “12 dimensions we thought would differentiate among families. The dimensions were: Involvement-Cohesion, Support, Expressiveness, Conflict, Independence, Achievement Orientation, and Intellectual-Cultural Orientation” among others (269). These factors correspond substantially with codes that emerged from my data regarding features of successfully shaming and reintegrating family networks. Moos’s metrics of reintegrative community justice help elucidate what elements of a family

might most effectively reintegrate an offender—for instance, close cohesion and significant orientation to one’s culture. These understandings are critical to my analysis of family and kin networks especially.

Implicitly, Moos examines the intersection of justice (1) sentences and (2) processes *in community*—an intersection that I examine in my research. But all examples are post-adjudication, unlike some of my sites. In other words, his models of community justice do not involve the actual “doing” of justice so much as the carrying out of sentences, and he does not analyze the *culture* in which they are embedded.

Karp and Clear (2002) help to clarify the community’s role as a stakeholder in justice transactions in their book *What is Community Justice?* Much in the same way I structure my introduction to reintegrative justice *processes* and *sentences* in following sections, these authors outline the *process* and *outcomes* of restorative justice. Successful processes, they claim, must involve (1) “system accessibility,” (2) “community involvement,” (3) “reparative process,” and (4) “reintegrative processes” (8). Outcomes of these processes must include (1) “restoration” of the crime’s harm, (2) “community capacity,” (3) “integration” of the criminal back into the community, and (4) “community satisfaction” with the process (8-10).

Their work is important to framing the themes that arose in my data, including the “symbolic ritual actors” that I identified in my data who participate in reintegrative justice. Karp and Clear show how police officers, mental health workers, probation officers, youth role model “navigators,” and support persons are all involved in the restorative justice process, just as they are involved in my three sites (9). They also stress how the structures used in these processes (i.e. circle meetings) must be “flexible,” in close proximity to the offender and victim, and

“informal”—not rigid or adversarial, but emotionally supportive (11). Finally, their contributions help explain how the *ritual* structures I examine—the circle sessions and small walking communities on the Camino—serve as “micro communities” (13). These “micro communities” are perhaps scaled down replicas of the greater community, or rather a proxy community in which the offender can experience shaming in a small, controlled environment and then be reintegrated into a small, supportive community. This essentially functions as a practice run: the offender uses these ritual experiences as preparation tools for reintegrating himself or herself in the greater community to the effect of less crime.

Braithwaite (2000) explains that the “communitarianism of the conference does not assume a geographical community;” and indeed, the communities I studied have fairly undefined geographical boundaries (122). “Rather,” he writes, “[the idea of a conference’s ‘community’] is an individual-centered communitarianism that can work in a world of weak geographical communities.”(122). So each individual represents a community in whatever capacity is natural to their condition—a football team, a neighborhood, a cultural community, or even a greater family network (122). In my data analysis, I discuss the various networks and representatives from communities that make shaming rituals potent.

### *What does “Harm to the Community” Mean?*

When considering restorative and community justice programs, what does harm mean, exactly? Physical and psychological harm done to a single victim or group of victims can be proven in conventional court with conventional empirical methods such as physical evidence, witness testimony, video evidence, *et cetera*. But harm done to a collective community and

forms of harm that are difficult to quantify, such as emotional damage, is harder to define and harder to prove in conventional court. In Paddy Hillyard, et al.'s edited volume *Beyond Criminology: Taking Harm Seriously*, chapter contributor Joe Sim seeks to define harm to "the victimised state," as derived from theory on the "moral regulation" of the "State" as an agent (2004: 125). Sim cites Derek Sayer and Philip Corrigan (1985), who define "*moral regulation*" as "a project of normalising, rendering natural, taken for granted ... ontological and epistemological premises of a particular and historical form of social order" (Hillyard, et al. 2004: 125). Corrigan and Sayer are cultural historians from Britain, but their theory applies to how cultural divisions and the history behind them affect conceptions of "social order" and community moral standards. My interview data with representatives at these three sites allowed me to hear moral standards as articulated by cultural custodians.

If communities that possess these moral frameworks are agents of their own right, then they can be harmed directly by crime. Sometimes, a crime can cause harm to the existential *idea* of the community itself, not just an individual victim. Sim writes, "the murder of a state servant, particularly a police officer, represents a profound, symbolic moment in the culture and politics of a society triggering, as it does, an outpouring of popular sentiment and political rage" (Hillyard et al. 2004: 125). Harm to a community caused by the offense of one individual against another or a group of individuals seems, then, to be a symbolic violation of the "moral regulation" of that community. By association, the actual victim is also a symbolic victim that represents the community's standards. In my data, community representatives as ritual actors serve this symbolic purpose, and are used in the ritual of shaming the offender for the harm they caused the community.



*Defining “Culture”*

Before exploring court-specific rituals, it is important to establish an understanding of how to think about restorative justice or therapeutic jurisprudence as ritualized processes.

Stanford Sociologist Ann Swidler (1986) helps explain how cultural norms and values are activated in real behavior and interactions. She cites Talcott Parson’s (1951: 7) “voluntaristic theory of actions” about how “cultural traditions” provide individuals with “normative regulation of the means and ends of [their] action” (qtd. in Swidler 1986: 274). The creation and enforcement of laws is a clear way of putting these cultural traditions into action. And the interpretation and solidification of laws are especially visible in an adjudication setting with active dialogue. So courts with specific cultural affiliation such as the Indigenous Circle Sentencing courts I studied in Australia are particularly transparent venues for observing such “normative regulation” (1986: 274).

Parsons (1951: 7) further explains how “cultural traditions” provide “value orientations” around “elements of a shared symbolic system which serves as a criterion or standard for selection among the alternatives of orientation which are intrinsically open in a situation” (qtd. in Swidler 1986: 274). The “courses of action” Parsons describes here may be individuals’ decisions to use drugs and vandalize property or not to do so; or perhaps the decisions of how to sentence that offender appropriately. In “unsettled” times—those in which ideologies can establish “new strategies of action” and new ways of “organizing individual or collective action”—the ways in which “doctrine, symbol, and ritual” have a direct effect on action become apparent (Swidler 1986: 278; Parsons 1951). The recent legacy of land displacement,

colonialism, the “stolen generation”<sup>3</sup> and other cultural-political conflicts between White and Indigenous peoples in Australia has perhaps classified this era as an “unsettled” time in the context of my research. Specifically it factors into what some scholars have proposed is a gendered Aboriginal male violence subculture: men with uprooted cultural roles fall prey to alcoholism and lash out in violent ways (Bolger 1991: 44). Indeed, the explicit political motive of the circle courts is to redress cultural atrocities of previous generations and improve relationships between the justice system and Indigenous communities. There is official language in this case to support the assumption that the present time is one of unsettlement and social transition.

In these “unsettled” environments of social change, previous cultural ends are “jettisoned with apparent ease, and yet explicitly articulated cultural models, such as ideologies, play a powerful role in organizing social life” (Swidler 1986: 278). Swidler appropriates Parsons’ definitions of ideologies as “highly articulated, self-conscious belief and ritual systems, aspiring to offer a unified answer to problems of social actions” (279). Traditions, conversely, are taken for granted such that they seem to be “inevitable parts of life” rather than “self-conscious systems” (279). Swidler expands on Parsons’ explanations about how culture influences action within structures of authority, such as court systems:

Culture has independent causal influence in unsettled cultural periods because it makes possible new strategies of action—constructing entities that can act (selves, families,

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corporations), shaping the styles and skills with which that can act, and modeling forms of authority and cooperation. (1986: 280)

Clifford Geertz offers another explanation of culture: "...an historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic forms by means of which men communicate, perpetuate, and develop their knowledge about and attitudes toward life" (Geertz and Banton 1966: 3). Symbols, for Geertz, can be "any object, act, event, quality, or relation which serves as a vehicle for a conception—the conception is the symbol's 'meaning'" (5). Referring to the "long-lasting moods and motivations" that a cultural system like religion provides, Geertz explains the following:

Consciousness of defaulted obligation, secreted guilt, and, when a confession is obtained, public shame in which Manus' séance rehearses him are the same sentiments that underlie the sort of duty ethic by which his property-conscious society is maintained: the gaining of an absolution involves the forging of a conscience... (9)

To put this this theory in dialogue with all three of my research sites, perhaps "absolution" can be re-appropriated as forgiveness, or penance; and conscience can be folded into elements of group consciousness and shared shame that justice scholars like Braithwaite (2000) reference. Rituals of shaming—specifically offender self-expression— in justice circles resonates with pervasive therapeutic "cultural tools", as Ann Swidler would term them, that support one's membership in a distinct cultural community while making them accountable for

their criminal deviance (Swidler 1986: 273). Specifically, I discuss how structures of ritual reflect concrete tools of therapeutic culture.

At all three of my sites, values and practices concerning the reintegrative purpose of justice are paired with ways of activating a pervasive “therapeutic culture” as Philip Rieff (1987) describes. Rieff explains that “therapeutic culture” entails systems of therapy that “preserve a certain established level of adequacy in the social functioning of an individual” (36). These systems may be “systems of control” embedded in communities which might shame offenders away from future criminality; or they may also be systems of “respite from control,” where authoritarian institutions like incarceration are replaced with more reintegrative or restorative sentencing (36) around rituals of shaming—a culture intended to inculcate participants with lasting experiences of self-awareness. The programs are therapeutic institutions, or “systems of order” which govern participants’ acceptable social behaviors during rituals of shaming. Further, there are symbolic ritual actors such as Aboriginal Elders or restorative justice facilitators who become representatives and watchdogs of that therapeutic culture.

When considering these adjudication settings as institutions of therapeutic culture, Rieff’s (1987: 31-38) ideas about “systems of control” and “respite from control” complement Goffman’s (1968: 4) concept of “total institutions.” Goffman examines asylums, jails, and other settings which impose what Rieff would call “authoritative systems of control”: they are physically bounded, hierarchically “stratified” between caretakers and inmates, and dictate dynamics and spaces of work, sleep, and play (1968: 5-10). Total institutions like jails are precisely the retributive, non-therapeutic environments that my respondents opposed in enacting their reintegrative justice programs. The penal pilgrimage experiment gives juveniles “real

responsibility” outside of protective control, and the California restorative justice operation seeks an alternative to the totalizing control of the conventional jail sentence (Walgrave and Claes 1998: 368).

Rieff contends that systems of control can be oppressive and perhaps delimit the emergence of a therapeutic culture in which a participant becomes self-aware through honest reflection, action, and expression. My sites emphasize the importance of self-awareness—a therapeutic objective—through adherence to therapeutic standards such as honest self-expression and non-hierarchical dialogue. These therapeutic standards dictate the “rules” per se, of ritual shaming during adjudication. Surely, the therapeutic beliefs and values surrounding my sites are not stand-alone, but rather embedded in existing cultural understandings that come naturally to participants. However, some of the “rules” of ritual shaming and other therapeutic engagements must be *learned* from more experienced symbolic ritual actors, as I will discuss later.

Swidler (1986) teases out how culture, which is often cast ambiguously and broadly, is not an ultimate end to which values and according action lead; rather, culture is activated with a “tool kit” of “habits, skills, and styles” from which “strategies of action” are created (273). These strategies of action and the tools they employ may, for the purposes of this study, take shape in the courtroom as Elders attempt to reprimand criminal habits, skills, and styles by defining them as counter-cultural or anti-social. Swidler argues that culture itself includes “symbolic vehicles of meaning, including beliefs, ritual practices, art forms, and ceremonies,” which together comprise the interpretive framework for understanding culture in opposition to the “cultural explanation” framework (273). Swidler’s explanation of culture as an active mechanism helps us consider therapeutic sentencing as the activation of cultural symbols and

strategies for reconciling the harm done by a crime—it shows how culture can be a tool, rather than a goal or a state of societal being.

My data indicates that there are symbolic representatives of culture called “community representatives”: these are “Elders” in Australia, and “facilitators” or “guides” at my other two sites. Further, there are symbolic representatives for victims such as their mothers or good friends, who not only take their place in restorative justice sessions at my California site, but serve as a symbolic institution (the “mother figure”) to whom all participants can relate. Further, the mechanism of offender self-expression is an important symbolic cultural tool, serving to productively shame the offender.

### *Reintegrative Shaming*

“Shaming” processes, among other important emotional and psychological dynamics at play in different ways in both restorative and retributive settings, are part of important scholarship on ritual processes in therapeutic court settings. Braithwaite’s book *Crime, Shame, and Reintegration* (1989) argues that “reintegrative” shaming, in contrast to “disintegrative (stigmatization)” shaming, “means that expressions of community disapproval, which may range from mild rebuke to degradation ceremonies, are followed by gestures of re-acceptance into the community of law-abiding citizens” (55). He further explains that these processes are often family centered—as families can be potent agents of social control—and “culturally specific,” citing traditions in Rome, Cuba, and Crow Indian culture as examples of divergent approaches (58). Here, we see the importance of a multi-cultural analysis: in order to examine reintegrative shaming as a concept and a process, we must be able to determine how culture interacts with the

shaming by way of ritual. Who are the symbolic representatives of a culture in these processes? What processes and therapeutic cultural tools for justice might cultures have in common? My analysis addresses some of these questions.

Braithwaite further explains that shame is distinct from “formal punishment” because “public shaming” serves as a deterrent unto itself (59). His book integrates five of the major theories—labeling theory, learning theory, subcultural theory, opportunity theory, and control theory—welding them together at the community level, rather than the individual level (Hannem-Kish 2004: 1; Braithwaite 1989). His community-centered analysis of crime causality and justice response is what makes it so relevant to my community-level definition of Embedding Justice. He acknowledges that the demographic and environmental conditions that correspond with criminality—such as education level, gender, age, race, population density, and socioeconomic status—tend to contribute to criminality. Yet this relationship is concurrent with another, more active relationship: those who have an increased propensity towards crime have weaker ties to family and community and are concurrently less likely to respond to shaming by family or community representatives (2004: 1-2).

These relationships can be culturally - or politically- determined. Japan, he says, is a “communitarian society” that values family and community over individuality in a quite general sense. In contrast, the United States is a more individualistic society and thus has worse “violent and predatory crime” (2). In fact, Braithwaite cites commentary by Baley (1976) on Japanese and American apologies as a proxy for how each culture rebuilds relationships after a crime: “An American accused by a policeman is very likely to respond ‘Why Me?’ A Japanese more often says ‘I’m sorry.’ The American shows anger, the Japanese shame” (qtd. in Braithwaite 1989: 65).

In communitarian societies, Braithwaite writes, “while pressures for shaming are greater because people are so much more involved in each other’s lives, for the same reason pressures for stigmatization are less” (1989: 88). Here, Braithwaite presents fairly simplistic objectifications of complex cultural scripts. And the causality of relationships between *shameability* and criminality are difficult to distill. But Braithwaite targets “ceremonies” of shaming as a primary mode of action, which can have both positive as well as negative consequences if carried out incorrectly (Hannem-Kish 2004: 2). I examine the shaming rituals that occur in different cultural contexts at my three sites as an example of Embedding Justice.

Braithwaite writes that shaming “runs the risk of counter productivity when it shades into stigmatization” (1989: 55) which occurs when an individual is assigned a “master status” or a label that carries a stigma (55). Further, shaming must be public—a subtle sign of a community or cultural authority’s disapproval of the offender’s actions—whereas “guilt-induction” simply implies the imposition of guilt within oneself or by others (57-59). Shaming in public settings, both during official ceremonies and in daily life, can be reintegrative if the individual is treated as a “whole person” rather than a “criminal” (88). In reference to other theories of crime genesis in the context of informal interactions, Braithwaite explains that communitarian societies have “more gossip, more scandal, more shame, but more empathy, less categorical stigma, and therefore ultimately less criminal subculture formation” (88). These distinctions become vital in the introductions of my sites as restorative justice operations, as well as during my analysis of informal community interactions that help reintegrate offenders.

Braithwaite (2000: 115) explains the theory of shame-rage spirals forwarded initially by Thomas Scheff and Suzanne Retzinger (1991). Braithwaite expands on Scheff and Retzinger by



claiming that “rage both recalls and transforms the experience of humiliation,” which stems from “righteous indignation” from such humiliation (2000: 116). Violent rage can occur after a man is taunted by a partner about his sexual performance, or after an offender is shamed in the courtroom, or even after a person’s worth is challenged by structural barriers to success that face many disadvantaged populations—especially to indigenous populations in the flux of modernized integration (116). Braithwaite elects to reject the notion that “righteous indignation is the stepping stone from humiliation to rage,” and instead posits that “repentance ritual is the stepping stone from same to restoration of peace, dignity, and damaged social bonds” (116). Braithwaite introduces restorative justice not as a panacea for reducing indignity, but as a process in conversation with oppositional retributive justice philosophy.

Braithwaite asserts that retributive justice shaming mechanisms tend to be more “disintegrative” than “reintegrative”: “criminals turn out to be card-carrying retributivists...[in] the business of sustaining shame-rage spirals” (116). Initially he seems to paint shaming procedures like those used in Australian Indigenous circle sentencing courts with the same brush as humiliation regimes serving the downward spiral of shame and rage (116). But he goes on to argue that while stigmatization “accelerates the movement into a shame-rage spiral... reintegrative shaming can pull conflicts out of this tailspin” (118). “Reintegrative Shaming” treats the offender as a “good person who has done a bad thing” rather than a wholly reproachable person, and ends in “repentance and forgiveness” (118).

Strang et al. (2011) offer a detailed attempt at objectifying the processes and concepts activated in “reintegrative shaming experiments” (RISE) in Canberra, Australia. The authors’ analysis finds that certain emotions dominated during specific moments of conferences, as

opposed to traditional court proceedings. The authors claim that the conferencing sessions actually scored *higher* on measures of “observed stigmatic shaming” than conventional courts:

On all measures of observed restorative justice, observed reintegrative shaming and observed procedural justice, the conferences were significantly higher than the court cases. Likewise on almost every measure of observed stigmatic shaming, conferences rated significantly higher than court. (2011: ch. 4 p 1)

However, the shaming mechanisms in the conferencing court were effective in yielding an apology and transacting forgiveness: “Conferenced offenders also were rated higher on the extent of their apology and remorse and the extent to which they were forgiven. Conferences provided an opportunity significantly more often than court for the discussion of drug/alcohol or other problems” (ch 4 p.1). Heather Strang et al.’s study helps identify just how different and how effective the conferencing model is than the conventional court. Indeed, on some measures, the conferencing advantage is limited. Strang et al. write that conferencing does not inherently reduce the harm done by a crime: “Court and conference victims were very similar in the extent of emotional harm they had suffered” (ch 7 p. 2)

I build on analysis by Strang, Braithwaite and others by specifically referencing *cultural* norms and expanding the scope to three culturally distinct sites to search for commonalities in structure and ritual practices.

*Emotions and Admissions: The Micro-Social Dynamics of Shaming*

What emotions and verbal expressions occur if these shaming processes are reintegrative, rather than disintegrative? Halsey et al. (2014) examine processes of contrition and forgiveness apparent in conference settings. They conducted their fieldwork on a pilot conferencing restorative justice program in an Australian state. Their qualitative analysis suggests a code arising from victim-offender narratives called “the conference experience.”. Their research focuses on the outcomes of ritual processes, but scholar Meredith Rossner (2011) examines restorative justice conferences from a micro-sociological perspective, looking specifically at the emotional arc of each conference.

Rossner (2011) cites Emile Durkheim, Erving Goffman, and Randall Collins’ work on ritual as foundational to the restorative justice shaming and reintegration process:

...a focus on interaction, ritual and solidarity (Durkheim 1912; Goffman 1967) can add to our understanding of how restorative justice works. Working in this vein, Collins’ (2004) interaction ritual theory provides a set of principles for predicting when an interaction will ‘work’, and make us feel good, or ‘fail’, and make us feel bad. Briefly, Collins suggests that in successful rituals, a conversational and bodily rhythm develops over time. This is marked by a shared focus of attention and understanding that culminates in a distinct feeling of solidarity and group membership, where participants feel strong positive emotions of goodwill. (Rossner 2011: 96)

Rossner's detailed analysis of the emotional arc of every ceremony can contribute to our understanding of how shaming works—and specifically, how it makes people feel. She explains that there is an “emotional build-up” to each conferencing session: offenders feel anxiety, and victims paste half-angry “pan-american smiles” on their faces (100). Rossner tracks the stuttering speech patterns of offenders as they address the group about their crime (101). Silence accompanies especially “painful moments” in the offender's address or exchange with victims (102). There is a “rhythm” to the offender's address, most notable for moments when it is broken by the lack of response by other members of the circle at moments of emphasis (102). Consistent eye contact and un-stuttered speech indicate a position of authority in the dynamics of the circle (108).

Perhaps most notable in Rossner's study of one conference is that the “emotional turning point” occurs as the victim explains her story (107-109). This dynamic arose in my data as well, but at a different point in the ceremony. The facilitators in my California program called moments when the offender had a somatic experience of taking ownership for their shame “aha moments.” These, however, occurred even without a victim present. As I illustrate in my analysis, my data indicates that self-expression by the offender tends to be an emotional turning point, a critical moment in the ritual. Indeed, these *measures of success* are key considerations that could future research could expand upon.

### *Rituals in Criminal Justice*

#### *Therapeutic and Restorative Justice as Ritual*

Ritual is a vague and even hackneyed term that could arguably apply to any culturally-embedded ceremony. For the purposes of this study, I focus on scholarship about *reintegrative*

*shaming rituals* and offer my own analysis of shaming rituals as Embedding Justice. Focusing on ritual is a useful way to closely analyze the cultural context of the values and actions of justice enacted at my sites. With a ritual lens we can examine the process of crossing the threshold from criminality to reintegration as a “rite of passage.” Arnold Van Gennep’s (1960) dated, yet relevant explanations of this process as “preliminal rites (rites of separation), liminal rites (rites of transition), and postliminal rites (rites of incorporation)” help explain how shaming rituals function in my data, and how offenders might be reintegrated into the community upon completion (Van Gennep 1960: 11). I hesitate to apply this framework, as it operates on idealized notions of *communitas* among inmates, which may be an overly romantic estimation of prison populations (Eade and Sallnow: 2000). Further, the social statuses of the offenders—or initiates—as well as other participants in the ritual are not entirely replaced with liminal states of being. Rather, social statuses that sustain the offender as a valued member of the community are reinforced, while criminal labels are avoided. Yet Van Gennep’s three-step process of rites of passage aids in preparing us for a ritual analysis of shaming in reintegrative justice programs like those I studied.

Shaming rituals used at my sites began with pre-ritual preparations, such as official guilty pleas or admissions of responsibility (Van Gennep 1960: 11). While it would be convenient to apply Van Gennep’s framework of liminality and analyze pre-ritual procedures as *pre-liminal rites*, offenders and community representatives largely retain and reinforce consistent social statuses, thus not inducing an entirely liminal state.

Still, a ritual-based exploration of shaming and reintegration processes is useful. Prior to formal shaming rituals, ritual actors begin pre-ritual activities. These prepare the offender—or

initiate—for shaming and reintegration rites. Next, the three sites I studied activate shaming rituals, including self-expressions of remorse and shame: these shame expression rituals break down barriers of external environmental blame and force the offender to take responsibility for their crime. Finally, if these rituals are successful, the offender is able to also identify their value to society and use the experience of being reaccepted into their small circle community to replicate belonging in the greater community.

### *Reintegrative Shaming as Ritual*

Braithwaite and other scholars have described community- and culturally-specific shaming processes as rituals. A thorough analysis of their work is warranted, as it sets out the foundational details of the ritual upon which my ethnographic insights build. Braithwaite (2000) claims that a societal shift towards a more restorative justice approach “requires institutionalization of reintegrative shaming rituals. One such ritual is the restorative justice conference. The conference is a ‘common sense’ ritual (Braithwaite 2000: 118).

Braithwaite’s explanation of “reintegrative shaming” and “repentance rituals” is vital to the structure of the present study. Braithwaite helps explain the basic structures that turn conferences into shaming rituals. First, “. . . a facilitator invites to the conference the offender and the people who the offender and his family say care about them most. This structures reintegration into the conference. Also invited are the victim plus family and friends of the victim. Their concerns structure shaming into the conference” (2000: 119).

Shaming occurs when victims and their support persons describe their perspective on the crime and how it has affected them (120). This is consistent with Rossner's (2011) analysis of the emotional dynamics of restorative justice shaming rituals, but rather at odds with my data: my respondents indicate that shaming is potently felt even without a victim present during the offender's self-expression of the crime and its consequences.

Braithwaite argues that "there is no need to force the production of shaming. It happens through a natural process of dialogue" (2000: 120). This concurs with my data's indications that dialogical structure allows for shaming to happen where it would not in a retributive system of fact-based argumentation and legal submissions. This dialogue, Braithwaite says, occurs beyond the interpersonal level: it is symbolic for dialogue between "two communities of care" (120). He goes on to explain that power hierarchies are balanced out in restorative conferences, especially between men and women (121). My data indicate that dialogue is indeed one of the most important therapeutic structures—or cultural tools—used by circle courts, restorative justice conferences, and even penal pilgrimage.

Braithwaite explains that Family Group Conferences, community accountability conferences, diversionary conferences and other restorative justice conferences are all repentance rituals that come largely from New Zealand Maori justice traditions (119). Maori people spoke out in the 1980s that the justice system in place, which was based off of a Western model, was tearing at the seams of their traditional family structures, and that they would prefer a method for the family to "share the shame" incurred by an offense, and move towards forgiveness (119). The reintegration ritual ended with hugging or the shedding of tears restores family bonds within the broader "repentance-forgiveness sequence" (119). My respondents indicated that justice actors

used cultural beliefs and structures around kinship and family to shame the offender and prevent future offense. Braithwaite explains that conference ritual is adaptable to any cultural milieu: “[This conference ritual model] is proving to be an alternative ritual of social control for the multicultural metropolis because it empowers citizens to decide how to run the rituals in a culturally appropriate way to them—so they can end it with a prayer if they want (2000: 119).”

Shaming is naturally embedded in the process of sharing the story of the crime in full detail, with emotional overlays (Braithwaite 2000: 119). If shaming is forced, Braithwaite argues, it will “crush dignity through humiliation” in the same way as orchestrated punishment might (119). Orchestrated punishment is the type that sends criminals to jail, stripping their clothes, probing them for drugs, subjecting them to beatings, and generally dehumanizing them (116). Conferences are the “meeting of two communities of care, rather than a meeting of two individuals [as in the West]” (120). This invokes applications of interaction ritual in Western court traditions in contrast to native traditions.

Braithwaite’s explanations shed light on philosophy in the reintegrative California jail program I studied, specifically about how male participants can avoid future violent treatment of women. Braithwaite writes that humiliation of the offender “is implicated in the onset of his rage” when he lashes out at his victim, just as “the need to humiliate the victim enables her victimization” (116). Breaking these cycles is a key focus of the program in California.

In his book *Making Good* (2001) about the Liverpool Desistance Study (LDS), Shadd Maruna writes that inmates involved in “generative pursuits”—mostly manual labor tied together with peer-education models—took part in “redemption rituals” (117). These engaged each offender with the most important needs of each successful desistance (117). Those needs include



fulfillment (“meaning” and “achievement” in life), exoneration (helping others in order to “relieve one’s sense of guilt”), legitimacy (offender “tries to persuade others not to offend”) and therapy (“helping others...helps the offender maintain his or her reform”) (118-119). These needs share structural features with my three sites, specifically structures of peer education. But even more relevant is the way in which Maruna describes offenders becoming “embedded” in others and in their communities as part of reintegration:

...other-centered pursuits provide socially excluded offenders with a feeling of connection to or “embeddedness” in the world around them... by providing a supportive community and a network of people with shared experiences, these organizations can transform a seemingly individual process like desistance or recovery into a social movement of sorts...” (Maruna 2001: 119)

I offer insights about the networks and communities that Maruna refers to—specifically gendered family and kin figures as symbolic ritual actors for shaming rituals. Indeed, all of the programs I studied emphasized their reintegrative justice work in the context of social progress—of a new age of sensible justice practice.

Maruna indicates that offender reformation is an active and ultimately voluntary process: “Ex-offender narratives provide little support for the picture that offenders [are] passively reformed by social mechanisms” (152). The approaches Maruna studies are “motivational” rather than “confrontational,” and they are wrapped up in self-efficacy, just as my data indicate. Brickman (1982) offers the “compensation model” in which offenders accept responsibility for

their actions, even while acknowledging environmental stimulants for their crime: “It is not my fault, but it is my responsibility” (Maruna 2001: 163). Rituals provide structured opportunities for offenders to take initiative in their reformation, such as rites of self-expression that offenders at my sites engaged in. These rites have the potential to promote meaningful self-awareness and awareness of their culture with the hopes of reintegration into society. Maruna’s work indicates that these rituals deserve a careful examination.

Maruna identifies the “Critical Elements of the Redemption Ritual” (158-159). Maruna cites Garfunkel’s (1956) concept of “degradation ceremonies,” as well as Braithwaite’s “reintegration ceremonies” that assign deleterious “master status traits,” or labels (Braithwaite 1989; Braithwaite and Mugford 1994). Yet Maruna claims that simply shaming the offender is not sufficient; instead, “redemption rituals” must occur that resolve the shame and redeem the individual as a reintegrated member of society.

According to Maruna (2001), redemption rituals have several critical features. First, they are “unprecedented and unanticipated: offenders claim that “no one had ever taken this sort of chance on me” (Maruna 2001: 159). They are “merited”: offenders “perceived the event as long-awaited justice, not as a lucky break” (159). Finally, they are “formal”: the “rituals involved respected community members and took place under the auspices of the social control establishment. Narrators sometimes interpret the judgment as being the judgment of all society” (159).

The “symbolic ritual actors” such as “community representatives” that arose in my data from all three sites represent the community in similar ways to those “respected community members” that Maruna describes. However, in contrast to my data’s indications, Maruna

conceives of the *conventional* courtroom as “an ideal backdrop for recasting judgment on all three narrators’ lives” (2001: 161). Further, while my data indicates the primacy of offenders’ self-expression of both shame and value to the community, Maruna’s ideas about redemption rituals stress testimonies from external offender support persons: “the essential aspect of the ritual is the unexpected testimony of ‘normal-smiths’...or conventional others who impute normality on the ex-offenders” (161). The shaming rituals I examine are perhaps more private affairs in which offenders were the conspicuous, *explicit* objects of shaming attention, and are more *implicitly* the objects of redemption support. The act of verbally encouraging the offender or giving explicit compliments is less important than symbolically representing reintegration (versus “disintegration” and stigmatization (Braithwaite 2000)) with community-replica circle structures, vocabularies of trust, and restorative community sentence plans that emphasize the offender’s value to the community. Still, Maruna helps explain how institutions like schools and courts can be important for shaming delinquents, but also for reinforcing positive feelings of self-worth, as with all of the reintegrative justice programs I studied (2001: 163).

In what specific ways are justice ritual spaces constructed? One study by Benjamin Smith and Frances Morphy (2007) entitled “Performing Law: The Tolngu of Blue Mud Bay meet the Native Title Process” expands on these concepts of court ritual specifically in a chapter on “performance and enactment” in an Australian court setting operating with civic laws for native title cases. Smith and Morphy describe the “constructed ritual space” of the court: An otherwise unremarkable teaching and meeting room at a Yirrkala adult education center was transformed into a courtroom using symbolic objects and symbolic ritual space-making (34). The national symbol of Australia, the emu and kangaroo figure, is placed at the front of the court, and

separates the Judge's space from that of the public. The public can occupy the back of the room, while the judge's seating area is designated at the front of the room and the most active speakers and expert witnesses (34-35). Geertz (1966) would note the importance of this symbology as a means of non-verbally communicating the shared cultural understandings on which the ensuing justice proceedings will operate. Smith and Morphy help us understand the importance of symbols in these court rituals, but the Australian circle courts I studied lacked the physical symbols they describe—in fact, they took place in drab government office spaces with only a circle of chairs as a structural implement. Instead, *people* like Elders became *symbols* of their culture and of its moral code.

The court Smith and Morphy studied, as well as the Australian court system in general, are governed by an “elaborate set of rules for proper discourse, in which different actors have different roles according to their status and function” (35). There is a hierarchy of speaking liberty—the judge having the most freedom to speak when he or she pleased. Some actors understand the explicit speaking rules and other “lay” actors have to try to “learn the rules as they go along” (35). Smith and Morphy further explore native vocabulary used in the courtroom, which cannot be translated into English directly, creating “inherently indeterminate” meanings that cannot be confirmed nor denied by the participants (40). As such, many of the exchanges are simply “formulaic ritual” exchanges that offer little room for direct and meaningful impact on the part of participants (40). My data also indicates that a structured, culturally unique therapeutic vocabulary at each setting helps participants engage in similar ritual exchanges, and especially helps offenders deeply understand and remember the concepts they encounter during the ritual processes.

In Morphy and Smith's study, the thoughtful construction of the court setting from an originally unstructured space using designated spaces helped dictate a pattern of discourse for participants; in fact, the structure of the court *taught* participants how to behave who otherwise would have been unaware. In my analysis, I show how justice ritual spaces are similarly *constructed* for the occasion using symbolic structures like circle seating arrangements. While cultural understandings inform these constructions in my study, it is clear that many of the shaming ritual participants are "learning the rules as they go along": my sites are dynamic spaces where peer education informs newcomers of the process of the ritual with the help of structures and symbolic ritual actors. Throughout my data, this interplay between inherent cultural understandings and inherited cultural knowledge pervades. In many ways, the justice process is a cultural rite of passage through which an offender *gains* understandings from older cultural representatives such as Aboriginal Elders.

Other studies have examined ritual and ceremonial performance in American courtrooms, providing somewhat of a foil to the previous analysis. A study published in the *Yale Journal of Law & the Humanities* by Oscar Chase and Jonathan Thong (2013: 221-243) explores the "effect of [American] courtroom ceremony on participant evaluation of process fairness-related factors." The authors assert that the very robe that the judge wears is a uniform—or "august apparel"—that contributes significantly to the attributed respect for the "rule of law" (2013: 222). They explain that court is a ceremony in the sense that it conveys some sort of symbolic meaning (224). The authors hypothesize that judicial attire and setting collectively contribute to participants' evaluation of judicial behavior measured by process satisfaction (225).

Their findings indicate that courtrooms convey more dignity than moot courtrooms, and judicial robes elicit higher perceptions of judges' knowledge (232-233). Chase and Thong's investigations help us understand some of the important structural and ritual factors that influence the functioning of courts. Their mention of "dignity" here calls back to memory the Braithwaite study, which also addresses what might occur when offenders don't engage in a trusting and meaningful relationship with the restorative conferencing process. Western courtroom rituals use these structures, just as rituals in reintegrative circle court settings use quite opposite structures. Structures at my sites stress non-hierarchy, open dialogue, and lack of traditional judicial pomp and indifferent legal imposition.

Braithwaite notes that like habitual, un-deterrable recidivists, some offenders in restorative justice settings are shameless and unmoved by the dialogue of restorative justice conferences (Braithwaite 2000: 119). Interestingly, Braithwaite invokes the image of the offender's mother beginning to cry as she sits next to her shameless son, which eventually breaks him down and impels him to repent (119). Respondents in my study also brought up the mother figure as both a proxy representative of the victim and a universally relatable cultural construct of moral conscience and affectionate accountability. While Braithwaite refers to his earlier research which found that "women do not assert themselves less than men in conferences" (Braithwaite 2000: 121). Gendered observations of courtroom rituals are critical, yet my ability to use observational methodology was limited due to ethical concerns; I instead witnessed themes arise from my interview data about gender-distinct family and kin actors in justice rituals at my three sites.

Studies like Braithwaite's (2000) foreground examples and analyses of ritual in courtroom settings, the position of restorative practice and specific approaches like shaming, and the structural forces (both morphological and process-oriented) that are potentially at play in criminal sentencing. Yet they leave significant room for debate and expansion.

First, few offer the breadth and depth of comparison between the specific sites that my research provides. Many studies tangentially note that restorative or therapeutic justice practice allows for diverse adaptations with cultural appropriateness, but few go so far as to compare how this may occur in different cultural and legal settings. Second, few concurrently examine *how* cultural understandings and structures take part in shaming rituals while centering that analysis in *ethnographic data* from real communities and cultural representatives therein.

## CHAPTER III: METHODS

This study is the compilation of interview data from three sites where I conducted my ethnographic research over the course of three summers of fieldwork : penal pilgrimage on the Camino de Santiago in Northern Spain, an urban restorative justice operation in California, and circle courts in New South Wales, Australia. Under the broad umbrella of reintegrative justice operations, each site demonstrates a slightly different model of justice based on its specific cultural context. My comparative analysis allows me to synthesize the commonalities in therapeutic approach and procedural structure among shaming in a number of cultural contexts, all of which exemplify Embedding Justice.

Through theoretical sampling (Corbin and Strauss 2007: 5), the data I collected at my first two research sites and relevant theory generated new questions that shaped the questions I asked and the data I collected. While researching youth offender pilgrimage on the Camino de Santiago, I became interested in restorative justice, and generated questions that took me to one of the most innovative restorative justice programs in the country in California. In California, I interviewed staff members and justice facilitators at a juvenile program and a rehabilitative jail program. I then found that the roots of restorative justice could be traced to Australia and New Zealand, so I chose New South Wales as my final site. I interviewed Aboriginal Elders—or more generally, “community representatives”—who decided sentences in the circle courts, as well as court magistrates and other staff members who could help me answer questions about how these shaming rituals are constructed and what the rituals were intended to do.

I conducted a total of 44 interviews. Of those, 27 were formal interviews lasting an average of about 20-30 minutes each; I additionally conducted informal field interviews with 17



people. I was able to observe some of the rituals upon invitation from representatives on site; however, because I did not have permission from my Institutional Review Board to use these for data collection, I made sure not to interview offenders or report observational data on offenders. While an intern at the California site, I did not record any data on any justice clients for the purposes of this study. I also walked the Camino de Santiago and so have field notes from that experience/community, but did not interview youth offenders.

I engaged in an initial round of open coding of all the data, identifying 108 total thematic codes. I narrowed that list to 69 codes that pertained to all three of my sites. Through axial coding processes, I began to concentrate on two *in vivo* codes and over-arching themes that pertained to ritual mechanisms for shaming rituals and the structures that contributed to those rituals (Corbin and Strauss 2007). Below, I present my site-specific methods along with background information on each site. They are ordered sequentially according to when I visited each site to conduct my fieldwork: Site 1 in June 2012, Site 2 in July-August 2013, and Site 3 in July-August 2014.

### *Site 1: Northern Spain*

My investigations of restorative and therapeutic justice began on the Camino de Santiago in Northern Spain, where I had chosen to investigate modern iterations of an ancient practice called penitential pilgrimage. This ethnographic field study was conducted along a modern pilgrimage trail called the Camino de Santiago in northern Spain over the course of six weeks while walking from Pamplona towards Santiago de Compostela. Data for this study are compiled from interviews with pilgrims and pilgrimage professionals designed to assess the

prevalence of penal pilgrimage. I conducted 10 short, informal with fellow pilgrims about whether they observed penal pilgrims on the Camino and generally how they would respond to the idea of walking amidst juvenile delinquents. If they had seen these type of pilgrims, I asked for details about their encounters. If the pilgrims had not seen these troubled youth on the Camino, I followed up with hypothetical and value-based questions about what feelings and perceptions would dominate their thought processes as they interacted in an intimate way with the troubled youth in the *albergues* and on the trail.

I also conducted more developed informal interviews with seven *hospitaleros*, inviting respondents to share stories about their past experiences with these young troubled pilgrims. I also interviewed I interviewed officials at the Pilgrims' Office in Santiago as well as a staffer of a pilgrimage cultural organization in Santiago de Compostela to get professional perspectives on this type of pilgrimage. I also extensively interviewed the German guide of a 13-year-old penal pilgrim who was also from Germany. I supplemented my interview data with analysis of 3 penal pilgrims' diaries posted publicly online for a Belgian organization. All parties offered informed consent. I promised confidentiality and have not released the names of my participants or the specific programs they were a part of.

### *Site background*

The contemporary practice of penal pilgrimage for European troubled youth has recently re-emerged after being overlooked for hundreds of years. Gaining prevalence in the early 1980s, penal pilgrimage on the Camino de Santiago in northwestern Spain is a state-supported voluntary alternative to traditional forms of incarceration, operating most substantially in northwestern

European nations such as Germany, the Netherlands, Belgium, and France. In addition to being an alternative to incarceration, penal pilgrimage functions as a preventative practice to forestall incarceration and recidivism.

Penal pilgrimage can be traced back in history to penitential pilgrimage in accordance with the Catholic Church in the 6<sup>th</sup> century and later among civic jurisdictions in East Flanders in the 13<sup>th</sup> through 15<sup>th</sup> centuries (Ashley and Deegan 2009). The *Codex Calixtinus*, a 12<sup>th</sup> century text of the cult of Saint James and the pilgrimage to his remains, indicates that priests sent sinners on pilgrimage to Santiago and other sites; these pilgrims allegedly wrote their sins down on a piece of paper brought it the feet of of St James's shrine in Compostela, where their sins were said to be erased from the paper (58). By the mid-1300s, civic jurisdictions began to use penitential pilgrimage in France, Italy, Belgium, the Netherlands, and Germany (Davidson and Gitlitz 2003: 298). Records from Ghent, Belgium indicate that between 1350 and 1360, 1,367 guilty civic offenders were sentenced to complete a round-trip pilgrimage to Santiago de Compostela, among 133 other pilgrimage sites (298). In many cases, it was a means of ridding the community of offenders and avoiding family feuds. To this day, Belgium and other countries in Northern Europe have continued to offer pilgrimage for troubled juveniles (Walgrave and Claes 1998: 368).

Penal pilgrimage for troubled youth began to be an institutionalized and state-supported rehabilitative juvenile justice experiment in the early 1980s (Walgrave and Claes 1998: 368). Juveniles with records of previous delinquency who risked jail time before a juvenile judge would choose to walk the Camino in lieu of traditional incarceration, and were evaluated in advance either in court or by social service systems as to the nature of their issues in order to

determine likelihood of reformation during the program (1998). Programs in Belgium like “Oikoten,” a Greek derivation meaning “away from home” and “by your own means,” began in 1982 and were officially recognized by the state judicial system by 1987 (“Juvenile Penitent Pilgrims” 2006; Walgrave and Claes 1998: 368). By 1998, the organization had sent 200 young pilgrims to Santiago and other pilgrimage destinations (1998). Oikoten’s operation was temporarily stymied in 2012 due to government funding cuts, but similar programs have sprung up across Europe, predominantly in France, Holland, and Germany (Weymouth). The trips are commonly as long as 2,500 kilometers, and are considered “*caravanas de la última oportunidad*”—or a last chance effort at behavioral redemption before formal sentencing occurs (“Asociacion Oikoten”). Reports on Oikoten recognize an important de-stigmatization process that occurs when juveniles are taken away from their home communities and placed in a new social setting in which they can choose a new identity. My translation of a report in Spanish by the Society of San Guillermo de Arnotegui reads, “They are not thrown into a social vacuum [on the Camino], but rather they are offered the challenge of adopting a role that presents a different scheme of social relations (for example: a pilgrim to Santiago de Compostela rather than an “incorrigible delinquent)” (“Asociacion Oikoten” 3). I discuss the avoidance of labeling and stigma in relation to shaming rituals which are part of Embedding Justice processes at my three sites.

Success is hard to measure for programs like these, but Walgrave and Claes (1998) reports that a study by Van Garsse and Vander Zande (1993) have facilitated positive reintegration of participants into society specifically by way of improved self-esteem. The program operates on “emancipation pedagogy” philosophy—that is, the belief that youth redeem

themselves by gaining “real responsibility” rather than being constantly protected by government custodians (1998: 368). This concept resonates with over-arching approaches of rehabilitative and reintegrative justice at my three sites, and perhaps more notably resonates with a pervasive “therapeutic culture” at the three sites. Rieff (1987) explains that therapeutic culture often offers “respite from control,” which is precisely what youth pilgrims might feel when liberated from the conventional authoritarianism of the criminal justice system and afforded the “respite” of walking on pilgrimage (36).

In addition to offering respite from complete custodial control, the Camino also represents a therapeutic “system of control”: the simple lifestyle of walking, eating, sleeping, and sharing simple experiences with relative strangers is a socially controlling lifestyle (Rieff 1987). There remains little to do beyond the basic demands of the trek. Further, systems of care on the Camino—involving rituals like massaging one another’s feet or offering unwanted clothes—establish a culture of care and therapy. Any transgression against another pilgrim would be defaming and personally embarrassing for the transgressor, and there are few deviant subcultures to support such action.

When a penal pilgrim returns home, the therapeutic environment of the Camino may be replaced with a more criminogenic environment in the penal pilgrim’s home community. So that penal pilgrim must tap into a fortified sense of *therapeutic self* which he or she worked to develop on the Camino in order to resist what Rieff (1987) calls the “penetrative thrust of [criminogenic] culture” (Rieff 1987: 31).

In addition to my 20 interviews with pilgrims, *hospitaleros*, pilgrim officials, and the German penal pilgrim’s guide on the trail, I analyze two diary blogs written by the Oikoten youth

themselves and posted publicly on the program website. These blogs do not indicate success rates; however the pilgrims do seem to undergo rituals of self-expression which may lead to meaningful self-awareness of how their behavior was unhealthy in the past. Thus, they complement my interview data in hinting at rituals that represent Embedding Justice on the Camino.

*Site 2: California*

My interest in California restorative justice traditions spawned from my experience with alternative, therapeutic models of justice on the Camino de Santiago in Spain. I turned to the literature on restorative justice theory, and discovered that amidst high incarceration, California has some of the most advanced restorative and reintegrative justice operations in the United States. In California, I took up an internship with a non-profit that operated restorative conferencing for juvenile offenders and helped operate a violent offender rehabilitation pod at a local jail, among other justice-oriented services. I considered two of these programs for my data analysis: a juvenile restorative justice conferencing program and an inmate rehabilitation program. I conducted 13 in-depth interviews with program staff, including one interview with four facilitators in the jail program. I do not report any observational data on individual offenders or their comments in this study. All parties offered informed consent. I promised confidentiality and have not released the names of my participants or their programs.

These programs are some of the most advanced and well-supported in their field, and they are of particular interest considering the high rates of incarceration in California and the United States in general.

*Site background*

The United States has established itself as a leader among industrialized nations in incarceration. Corrections have simultaneously crept to the top of the charts, with 1 in 35 adults in the United States population currently under correctional control (bjs.gov). Traditional incarceration is often labeled as a “retributive” exercise—one that does not privilege rehabilitation during the course of a sentence (Zehr and Gohar 2002: 59). Other strategies propose more resource-intensive rehabilitative programming for inmates as well as restorative and reintegrative justice for offenders in community settings, which can increase the potential to decrease the likelihood of re-offense (Zehr and Gohar 2002).

The juvenile restorative justice conferencing program I studied offered diversionary sentencing for primarily non-violent juvenile offenders. They followed a slightly more complex model than the classical victim-offender conferencing structure. Zehr and Gohar (2002) explain the victim-offender conferencing model in the following terms:

Victim-Offender Conferences (VOC) involve primarily victims and offenders. Upon referral victims and offenders are worked with individually. Then, upon their agreement to proceed, they are brought together in a meeting or conference. The meeting is put together and facilitated by a trained facilitator who guides the process in a balanced manner (49).

The juvenile conferencing program also involves support persons, including family members, and police officers as representatives of the community. Indeed the California model

more closely resembles adaptations of Australian and New Zealand (Maori) Family Group Conferencing (FGC) models, which “enlarge the circle of primary participants to include family members or other individuals significant to the parties (Zehr and Gohar 2002: 50). FGCs that have been replicated in the United States from Indigenous models were constructed out of interest in the concept, while FGCs were created in 1989 in New Zealand for all juvenile offenses beginning in response to a “crisis in the welfare and justice system for juveniles” (2002: 50). These programs appoint Youth Justice Coordinators who “help the families determine who should be present and to design the process that will be appropriate for them” (2002: 51). This model is perhaps truer to the Indigenous circle sentencing courts I studied in New South Wales in its approach to “cultural appropriateness”: “One of the goals of the [conferencing] process is to be culturally appropriate, and the form of the conference is supposed to be adapted to the needs and cultures of the victims and families involved” (2002: 51).

*Site 3: New South Wales, Australia*

I became interested in circle courts in Australia after hearing respondents in California discuss the roots of restorative justice traditions among native peoples throughout New Zealand and Australia. Australian circle courts are a unique blend of modernized, integrated cultural communities with Western laws and yet lingering structures of Aboriginal kinship and cultural understandings. They serve as ideal models for the study of cultural representatives (Elders), ritual shaming, and symbolic structures used in adjudication procedures.

In New South Wales, I conducted 11 interviews with Elders, Project officers, Magistrates, and other staff working at three indigenous circle sentencing courts in New South Wales, and



fully transcribed all relevant interviews. One of the interviews included 5 interviewees. I connected with Elena Marchetti at the University of Wollongong in order to reach administrators and officials who direct the courts. If they consented to be interviewed, I asked them open-ended questions that roughly adhered to the same interview guide I followed in California.

Just as in California, the respondents in this study were drawn from these two organizations using convenience sampling methods. I was able to interview on average 3-4 staff from each of the three courts I studied in New South Wales. They were all over 18 years of age, and mostly over 40 years of age, and were Aboriginal as well as non-Aboriginal men and women. Some snowball methods were used in terms of recommendations for other interviewees (Project Officers), as well as Magistrates. I asked the project officer to provide several more contacts of paid staff or administrators who would be willing to be interviewed. I achieved informed consent from all parties and I promised confidentiality and have not released the names of my participants or their programs..

### *Site background*

Many scholars and reporters have attempted to classify Australian circle sentencing courts as either restorative justice or therapeutic jurisprudence (King 2008). Others have argued that they are both, or something else entirely. Harris notes that circle courts share much in common with “community courts” in the United States, perhaps like those in California; yet he also argues that they are “something unto themselves” (Harris 2006; 134; Daly and Scifoni 2009: 9). Daly and Scifoni go on to explain that the political dimension of indigenous community involvement as the unique and defining element of Indigenous circle courts which distinguishes

them among other restorative justice and therapeutic jurisprudential phenomena (9).

“Specifically,” the authors explain, “these courts have the potential to empower Indigenous communities, to bend and change ‘white law’ through Indigenous knowledge and modes of social control, and to come to terms with a colonial past” (Daly and Scifoni 2009: 9).

The circle court method was originally adopted from practices in Canada with First Nation peoples (Marchetti 2009). The first circle courts were put into practice in 2002 in Nowra, New South Wales, and have since spread to nine locations around the state (Marchetti 2009). The courts operate according to state and federal criminal laws—not Indigenous customary laws—and sentences carry the full weight of official enforcement. Indigenous Community Representatives—or “Elders”—offer their recommendations for the sentence either in privacy after the hearing has concluded, or rather with the entire circle present (Marchetti 2009). The local Magistrate reserves the right to commute the final sentence.

It is important to begin our reading of this literature on both circle processes and specifically Indigenous circle courts with the following caveat: it is possible—and even common—that progressive social justice agencies publish reports on the use of circle courts around the world and espouse the principles of circle processes openly without quantitative proof of effectiveness. That said, past studies have found some difference in re-offense rates for circle courts, and the courts proved effective on qualitative metrics such as confidence in the court system to have altered the behavior of the offender (CIRCA 2008; Marchetti 2009).

Yet conclusive data demonstrating the objective success of New South Wales circle courts in reducing re-offense is minimal. A study headed by Jacqueline Fitzgerald for the New South Wales Bureau of Crime Statistics and Research investigated rates of re-offense among

defendants in the Brewarrina, Nowra, and Dubbo circle courts (Fitzgerald 2008: 3). The study recorded defendants' proven charges and convictions 15 months prior and 15 months following sentencing in a circle court. A total of 68 participants were studied with an average age of 29 (2008: 4). The results show that a slightly greater percentage of circle court participants (8.8%) than conventional court participants (5.9%) maintained stable rates of offense prior to and after sentencing (2008: 4). However, a smaller percentage of circle sentencing participants (13.2%) compared to conventional court participants (17.6%) increased rates of offense after their sentence, while a slightly higher percentage of circle sentencing participants (77.9%) compared to conventional court participants (76.5%) offended less often after their sentence (2008: 4).

Qualitative studies on circle courts in New South Wales offer two important categories of information: (1) an explanation of the overall process of circle courts, and (2) qualitative measures of success and failure according to the stated goals of the courts. It is important to first note that the vast majority of Indigenous offenses is sentenced in circle courts. In 2006, only 231 cases out of 2,270 total indigenous offenders appeared in a circle court in New South Wales (CIRCA 2008). All offenders must enter a guilty plea to participate in a circle court. Most offenders accept their sentence during the circle session, but if they deny their sentence, their case may be sent back to the magistrate for repeal. This had only occurred once in NSW prior to 2008 (CIRCA 2008).

The courts have also successfully met seven objectives set out by the legislation that established them, including inclusion of tribal leaders and indigenous communities, fosters "healing and reconciliation" between victims and offenders, and promotes the "empowerment of Aboriginal persons in the community" (Potas, Smart, and Brignell 2003: iv). Yet other reports

refute the claims of Potas and his team, as their methodology was unsound (Tumeth 2011: 22). They used longitudinal measures of recidivism that were far too short (under 6 months), and only 4 out of 8 cases were followed in depth (15).

Circle courts in New South Wales are not only situated in the field of restorative justice, but in the field of ritual circle processes in general. While ritual demonstration varies from culture to culture with circle processes, all circles carry a definitive element of sacredness. For instance, the importance of the circle as a symbol is evident in circle sentencing in Mi'kmaq territory in Canada: the circle manifests the meaning of 'holism' and 'harmony,' as the entire essence of the harmonious circle would be compromised if one participant was lost or violated its integrity (Gloade 2011 p. 22). In other North American traditions, "talking circles" used a "talking piece" to pass around the circle and control the flow of the dialogue (Greenwood 2005). Circle processes are also common in restorative justice theory and practice around the world, as well as 12-step therapeutic support programs for many purposes.

Circle processes for justice operate alongside retributive justice mechanisms. For instance, referring a juvenile Aboriginal offender in Australia to an Aboriginal circle court to be tried for trespassing on government property would be an appropriate course of action; doing the same for a non-indigenous murder trial would not be functional or appropriate.

Is circle sentencing indeed more "culturally appropriate" for Aboriginal and Torres Strait Islander offenders? Circle sentencing takes into account individual cases on individual bases, and popular discourse supports the idea that cultural and community knowledge is activated in the sentencing procedures (CIRCA 2008). However, in the case of alcohol and drug offenses, there was a paucity of support services, which limits the overall effectiveness of sentences. While

circle sentencing may or may not be more resource-intensive, the expansion of services for drug and alcohol addiction will require more resources that the state may not be able to provide.

Sentences may also take longer to fulfill under the circle sentencing system. One Elder in the CIRCA study explains: “Circle isn’t about getting a sentence, it isn’t about finishing a sentence, it’s about changing lives. You won’t see results of Circle until a few years down the track.”

Marchetti (2007) explains differentiates between the circle court approach and restorative/therapeutic jurisprudence:

These courts have broader aims and objectives in that they seek to achieve a cultural and political transformation of the law, which is not as evident in other new justice practices such as restorative justice or therapeutic jurisprudence [...] the [circle] courts have common goals: to make court processes more culturally appropriate and to increase the involvement of Indigenous people (including the offender, support persons and the local community) in the court process” (415)

### *Site Connections: The Process and Sentence of The Three Reintegrative Justice Sites*

#### *Opposition to Retributive Justice*

The blend of therapeutic jurisprudence, restorative justice, rehabilitative justice, and community justice approaches at my sites is united by a common apprehension towards incarceration. A judge in California represents this perspective:

...Under our retributive system of justice, because no services are being offered

while they're being incarcerated, what often happens is that they return to the community in a worse condition, and they wreak havoc and do more harm, greater harm, on the community.

Policymakers are facing funding limitations to keeping such high numbers of incarcerated individuals under the control of the state and many scholars attribute the breakdown of family and prosocial structures to incarceration (Rose and Clear 2003). Devah Pager (2003) specifically examines the deleterious effects of the formal label assigned by an incarceration record in paper "The Mark of a Criminal Record" (2003). As such, my interviewees tended to demonstrate apprehension towards—or complete dismissal of—incarceration in favor of more reintegrative justice processes. A restorative justice program official in California explains that this can be an impetus for a "paradigm shift" to restorative justice:

[Restorative Justice] is a whole paradigm shift. I think it's not just for incarcerated populations, it's for everyone. It's a way of rehumanizing us. And as it pertains to incarcerated populations, that's like the super-marginalized population so just restoring humanity to people empowers them to continue that process in their own communities, in their families.

Another respondent in California classified retributive justice as a system predicated on revenge—a zero-sum violent transaction: "[Some] people believe in law and order, and they have very little sympathy for people who commit crimes and they want to see them locked up

rather than rehabilitated. I think there's an element of revenge." Throughout my data, it is evident that there is no place for vengeful participants during shaming rituals. Vengeance is a retributive justice disposition

The differences my interviewees demarcated between restorative and retributive paradigms fall into two possible categories: *process* and *sentence*. Scholars tend to atomize their assessments of justice models into one of these categories, often failing to consider how they might actually occur at one moment, in one fell swoop, during the ritual event of adjudication shaming. For instance, a study by Meredith Rossner explores the "ritual production of shared emotion" through a micro-sociological lens, but is specifically concerned with interaction rituals within the adjudication process, rather than those which follow the offender through his or her sentence into the community (Rossner 2008). My data indicate that both the process and sentence of reintegrative justice models tend to convene during shaming rituals, which can occur in the courtroom, on the trail, and on the streets of offenders' communities long after the trial is over.

Shaming ritual *processes* are Embedding Justice ceremonies which occur at a designated place and time. Embedding Justice *sentences* play out into the greater community and remain embedded in participants' lives and cultural knowledges beyond the ritual event.

### *The Shaming Ritual Process: An Example of Embedding Justice*

My analysis focuses on shaming rituals as examples of Embedding Justice— which occur both in and out of formal adjudication settings. Shaming rituals embed crime-detering significance in culturally appointed representatives, demand that the offender take self-

expressed, vocal responsibility for their crime, and activate culturally-embedded structures which shape the ritual. These shaming processes become one with Embedding Justice sentences, which place the offender back in the community rather than in jail. Shaming rituals follow a rehearsed itinerary that I present in sections to follow, but it is important to first establish how important shaming rituals are to justice processes at my sites. One magistrate in New South Wales discusses that the process by which that sentence can “shame” the offender into feelings of responsibility is more prominent in circle court than conventional court:

I think the primary objective in regard to circle is to impose a penalty that’s appropriate according to law. That’s the primary thing. I think there’s a greater emphasis in terms of potentially shaming the defendant for his actions and making him accountable. Whereas in the court you don’t necessarily get the opportunity to do that...it’s just in and out and it’s a constant treadmill whereas there’s more time at circle to sit down and thrash through the issues and actually be able to identify those areas of need—criminogenic need—particularly for a defendant and and to some emphasis or focus being placed on them in terms of the penalties that are being [handed down].

This magistrate claims, however, that handing down a sentence is the most important function of a circle court.

*Post-Ritual Sentencing: Community Reintegration as Embedding Justice*



Sentences handed out in these shaming ritual processes are embedded in community structures, and representative of cultural beliefs and values. As such they are served in—and embedded in—the community, rather than in isolated jail settings. My respondents noted that this is a substantial departure from retributive justice sentences, which rely heavily on jail isolation.

Sentences at my Australia site were handed down largely within the bounds of conventional Australian law, though circle sentences did differ at times. One magistrate in New South Wales outlines the important aspects of a sentence, emphasizing the differences in the types of sentences they can hand down in a circle court:

Rehabilitation and preventing the occurrence of further offenses is paramount anywhere in a court. The appropriate punishment is always paramount. The one thing you said that they're the usual type of sentences...they're anything but the usual type of sentences. We can get people to do extraordinary things. We can adjourn, as we said, to send them to [name of the jail place that I have the movie about] to get some further training. We can send them down to cut their grandmother's lawn because she's not well. We can get them to go and look after little kids in the area. We can get them to do extraordinary things. It's not typical, the sentencing.

An Elder I interviewed at one of the circle courts explains that exile from the tribe is a possible sentence for pernicious disavowal of the tribe's values: "Some people came to be exiled. Men or women if they're doing the wrong thing. Say like you're...you and I are running around but I've

got a husband and partner there, we can be exiled out of the tribe. Get out. Those things are not allowed.” Her mother and father were effectively exiled for not complying with their parents’ assignments of their partners.

A project official in California explains that their program has offenders design plans to carry out in the community as their sentences. Collectively designed by the offender, the victim, and the community representatives (project officials), these plans carry the weight of a conventional sentence under the law. If they are not completed, the offender will be diverted back to the district attorney and lose the privilege of restorative justice services. Interestingly, this respondent explained that their sentences can also include items like cutting someone’s lawn, or simply committing to something productive that they enjoy:

[They say] “I’m gonna do this for the victim. I’m gonna go cut the grass everyday, for the next week.” [I say] “oh great...” [sic]. [And they say] “and for myself, I’m gonna sign up for football. I’m gonna play football.” [...]this kind of plans for most of the year. And...it really means “what are you gonna do for yourself? What do you like to do? When you’re not causing trouble and snatchin’ iPhones...what do you like to do that’s positive?” [They say] “Well I like to do something...” [I say] “Great! Well let’s see if we can get you involved in that.”

Surely these sentences appear to be less stringent than alternatives such as jail time or even conventional community service labor. Yet my respondents denied the fact that these sentences were “soft options.” A judge I interviewed in California explains: “One of the things that a lot of

people think is that, when we're talking about restorative justice, you know, we're talking about being easy on people. Well, as a judge for 22 years, that's not what I'm talking about..."

The reintegrative sentencing ritual is dynamic, culturally appropriate, and born of a therapeutic—or rehabilitative—endeavor: to use the cultural community as a “system of control” (Rieff 1987). This system shames the offender in everyday interactions with symbolic ritual actors such as Elders, family members, or even police officers. By activating cultural beliefs and values through ritual in these specific ways, the shaming rituals at my sites exemplify Embedding Justice.

## CHAPTER IV: DATA ANALYSIS

Despite different cultural environments, all three sites share in common **three ritual mechanisms** for shaming the offender and subsequently reintegrating them into the community as a productive member of society. The first ritual mechanism is appointing community representatives as symbolic ritual actors to serve in hearings or sentencing procedures. The second is requiring the offender to verbally or symbolically articulate the crime they committed with his or her own expression, and thus to accept rehabilitative shame for the harm his or her crime did to the community. The third mechanism is the collection of structures that contribute to community-centered restorative dialogue, self-expression, and therapeutic circle itinerary.

As a point of reference for the following analysis of shaming and reintegration rituals, it is important to first establish a basic understanding of the itinerary of these rituals. Each step is explained with a corresponding short-hand term or phrase which will be used throughout the following analysis for easy reference.

### *Site 1: Spain*

#### Before Ritual Shaming

- 1) Youth demonstrates deviant social behavior
  - a. Youth (13-21 yrs) is referred to penal pilgrimage program by social worker
- 2) OR, Youth commits crime
  - a. Low-profile, non-violent cases in which youth is not deemed a danger to society
  - b. Frequently cited for social involvement in criminal circles

- 3) Case is diverted by judge or voluntarily referred by offender to therapeutic justice program including walking pilgrimage or working on a farm, among others

#### Ritual Shaming

- 4) Youth begins penal pilgrimage journey from near hometown towards Santiago de Compostela (1500+kilometers)
- 5) Guide leads only one such trip in his/her lifetime
- 6) Youth pilgrim gradually gains privileges
- 7) Youth pilgrim blogs about his or her experience, or records reflections by hand
- 8) Youth pilgrim gains responsibility for money, belongings, food preparation, etc
- 9) Youth pilgrim completes journey and returns to live in isolated cabin with guide for several months in the Pyrenees
- 10) Many pilgrims keep a journal (several are published) and sometimes send updates from their trail

#### After Ritual Shaming

- 10) Youth pilgrim is reintegrated back into his or her community; ties with the guide are formally cut off

### *Site 2: California*

#### *Program 1: Juvenile Offender Restorative Justice Program*

#### Before Ritual Shaming:

- 1) *Offender commits crime*: Most offenders are middle-school and high-school aged.  
The crimes that bring them to the RJ program most frequently include theft, burglary, assault, truancy, drug and alcohol, and/or repeated school misconduct.
- 2) *Offender is convicted in formal court*: Roughly 99% of crimes are pre-adjudicated in a conventional court, meaning that the juvenile arrives at the RJ program with a guilty conviction and the potential for substantial jail time or other punishments.
- 3) *Case is referred to RJ program*: The DA or another agent with conventional legal authority refers select cases on a relatively arbitrary basis to the RJ program, and turns over the authority of carrying out a suspended sentence to RJ facilitators. These facilitators are then in charge of reaching out to the victim, the offender, the victim's family or support persons, the offender's support persons, police officers, and even the District Attorney in order to request their presence at a culminating circle mediation session.
- 4) *RJ facilitators meet with victims and offenders individually*: The facilitator meets 1-2 times with both the victim and the offender individually to diagnose the ability of the victim to contribute constructively to the session, and whether the offender has the potential to take responsibility for their crime and serve out their plan for restoration (their alternative sentence) in the community. These meetings between the offender and the facilitator are also where the facilitator communicates to the offender areas in which their behavior and personality tendencies may become problematic during the circle discussion—may run against the approach of the circle process. The victim has

the opportunity to make requests for what they would like the offender to do in order to repair the harm of the crime.

Ritual of Shaming:

- 5) All parties meet for the *circle session*:
  - a. The police officers read the charge and state the consequences were the offender's case to have been sentenced in conventional ways
  - b. The offender and the victim all have a chance to express their sides of the story of the crime
  - c. The victim requests certain elements of a sentence that might repair the harm done by the crime
  - d. The offender expresses an apology for the crime

After Ritual Shaming:

- 6) *The plan*: The offender carries out the plan of restoration—their sentence—under the weekly supervision of the facilitator
  - a. The plan may include getting involved in more activities at school or mowing the victim's lawn
- 7) *The offender completes their sentence* within several months of the mediation session with the victim, and their case is reported back to the District Attorney, resulting in the dropping of all charges
- 8) *If the offender fails* his or her plan, their case is referred back to the DA early for the assignment of a conventional sentence

*Program 2: Incarcerated Violent Offender Program*

Before Ritual Shaming:

- 1) *Offender commits crime*: All offenders are male and are being held for alleged violent offenses
- 2) *Offender gains acceptance* into restorative circle program: The program splits its members into groups of 15-16 for circle sessions
  - A. Offenders undergo two 1-2 hour circle sessions each day for a minimum of 52 weeks. Circle sessions last 3 hours. Facilitator leads the session and stands in front of the seated men in the jail; the men are seated clockwise from left to right according to their years of experience with the circle
- 3) *Open commitment to not offend violently again*: The prerequisite to all activities in the rehabilitation program; all participants must make a personal commitment to the program and to stopping their violent criminal tendencies

Ritual of Shaming:

- 4) *Self-Expression*: Self-Expression is the element that most consumes the efforts of the facilitators. One of the most important exercises in the circle occurs as each man sits before the circle with a chalk board behind him and reconstructs every moment that led up to his violent crime. Each decision in each minute moment is plotted on a diagram by one of the fellow inmates on the board behind the man who is sharing, and the facilitator prompts the man to give as much detail as possible. The man turns around to face the diagram at the end of his story and sees a detailed description of the beliefs, decisions, and actions taken that led to his violent episode.



- 5) *Offenders reflect*: Inmates reflect on their own and on other inmates' beliefs, decisions, and actions in the circle following each violence cycle diagramming session. Facilitators assist in driving the conversation back to the decision to stop violent activity and beliefs.
- 6) *Self-Awareness*: Offenders Internalize responsibility for their crime; they become more self-aware of their own beliefs and behaviors and more aware of how their culture disapproves of such criminal tendencies. Reaching self-awareness is a successful ritual in the perspective of my interviewees.
- 7) Somatic "2-foot drop": Offenders internalize the experience of accountability, becoming self-aware of the beliefs and decisions that led to their violence. They are able to reflect on this after reaching what facilitators call the "aha moment" during the circle sessions, in which the offender comes to recognize these tendencies and the same tendencies in others in the circle.

After Ritual Shaming:

- 8) Offender graduates from 52-week program: When the inmate completes the minimum 52 week requirement and/or is released from jail, they often tap into resources for ex-offenders, and work with authorities to be more productive members of society.
- 9) Identifying small steps for improvement: Facilitators emphasize that successful interventions involve improved relationships between inmates and their partners or friends, as well as the complete avoidance of violence.

**10) Maintaining incidental contact in the community:** Facilitators often see ex-participants from the program around the community. Their interactions with these individuals become litmus tests for gauging the extent of their rehabilitation. This also embeds socially controlling interactions in everyday life, an important component of highly personal justice operations like rehabilitative circles.

### *Site 3: Australia*

#### Before Ritual Shaming:

- 1) Offender commits crime: Most crime types can be referred to circle sentencing, but murder, rape, and other highly serious crimes are often precluded from circle court
- 2) Offender enters guilty plea: Each offender must plead guilty to all charges prior to entering the circle court
- 3) Elder panel assembled: An elder panel of 4-5 is assembled by the Project Officer, or the coordinator of the circle. Project Officers take care to appoint elders (or “Community Representatives”) who do not have pathological interpersonal or cultural conflicts with one another, with the offender, or with the victim.

#### Ritual Shaming

- 4) Circle Sentencing takes place: The circle runs according to the standard format explained in the literature review, with several critical elements that pertain to my analysis.

- a. Magistrate reads charges, prompts Elders to shame offender, and offers advice:
  - i. A magistrate’s explanation of his role in sentencing: “As far as sentencing, [the project officer] gives me the facts beforehand. The prosecution and the defense have to sign off on the facts. And agree to the facts—“remember that?” Those agreed facts come to me, I give an outline of what varies, and I have the record or lack of record of what variations there could be in the sentences from the heaviest to the lightest. And they can work it out. Then [PO] has a sheet with all the penalties. A monetary penalties, different types of bonds, recognisances, sentences, community sentences, community service, and a periodic detention.”—Magistrate, NSW
  - ii. The magistrate represents the civic authority during the circle sentencing session, and if the Elders fail to harshly convey the severity of the offense, the magistrate intervenes and prompts them to do so with guiding questions and comments
  - iii. The Project Officer may also serve this function.
- b. Offender tells their story
  - i. Offender has the opportunity to share their story and sincere apology in their own words, rather than by way of their lawyer or representative. Their story is not a chance for exoneration, but more a

practice in honesty and accountability without the buffer of a legal counsel.

- c. (Victim shares their story)
  - i. If the victim chooses to attend the circle, which they are not required to do, they share their story about the crime and are supported by an individual of their choosing as well as a legal representative.
  - ii. They speak directly to the offender and others convened in the circle, initiating an immediate shame response.
- d. Elders shame offender:
  - i. Elders explain the extent to which the offender's crime harmed the community. They invoke relationships to the offender's family and childhood, as well as legacies of non-criminality handed down through families and cultural affiliation (Aboriginality).
  - ii. Offenders are to look elders directly in the eye and accept their comments with shame, but without disrespect. Breaking eye contact, interrupting, or contesting claims are signs of disrespect.
- e. Elders agree on sentence:
  - i. Elders convene and deliberate about the sentence either secretly or still in the circle, discussing the individual's level of understanding of shame and the sentence that would most effectively rehabilitate them and restore the harm done to the community

- ii. Elders hand down a suspended sentence to be served in community, which may include attending a substance abuse treatment program or performing community service
- iii. Any exceptions to normal sentencing timelines are discussed, such as delaying incarceration until the offender's partner has a child, or until they have served other family obligations
- iv. Suspended sentences may be served after a sentence in the community

#### After Ritual Shaming

- 5) Circle is concluded and sentence is sanctioned by the magistrate—the conventional criminal justice authority
- 6) Embedding Justice shaming continues in the community:
  - a. Offender eventually returns to the community and interacts with Elders in everyday situations
  - b. These encounters are embedded, ongoing justice processes—the symbolic presence of elders in the community represent an impetus for changes in behavior after initial shaming ritual
  - c. Elders report that offenders are more willing to speak frankly and extensively with elders following circle sentencing

### *Three Ritual Mechanisms*

#### *Ritual Mechanism 1: Symbolic Ritual Actors*

Prior to each ritual shaming—during pre-ritual preparations—symbolic ritual actors such as community representatives, police officers, family members assign themselves to symbolic roles which they will play during the ritual shaming process. Symbolic ritual actors can represent families, conventional legal authorities, or most notably, cultural communities. In order for the community to be a stakeholder in criminal justice, that community must appoint official representatives to be physically and symbolically present during justice procedures and the subsequent sentences carried out in the community. During rituals, these representatives use personal testimonies and appeals to cultural norms in the community to show how the offender’s crime has harmed the community, besmirched its cultural fabric, and made that community ashamed of the offender. This compels the offender to take personal responsibility for the crime.

Shaming through symbolic ritual actors embeds judicial power in those community representatives, as well as in the court setting. In order to accomplish this important shaming task, community representatives (CRs) must practice certain ritual interactions with offenders both within and outside of formal ritual shaming settings—adjudication spaces. These ritual actors are symbolic cultural tools—or as Swider (1986) explains, “symbolic vehicles of meaning” through which cultural norms are communicated (273).

But before any of this can occur—during pre-ritual preparations—community representatives must acquire a status of cultural significance—they must be distinguished members of a certain culture such as Elders in the Aboriginal community or reformed ex-convict facilitators in California. Once chosen by the Aboriginal Project Officer for that community’s

court, CRs become symbols of that community, as well as agents that speak on the community's behalf. In addition to official Aboriginal CRs, there are gendered representatives of family and kin, and conventional Western justice authority. All of these symbolic actors undergo pre-ritual activities to embody the symbols they represent.

### *Australia*

*Community Representatives (CRs)*: Elders become symbolic cultural tools through which abstract notions of cultural norms take shape during rituals; they are the symbolic vehicles for cultural meaning. Especially during the ceremony of ritual shaming, the symbol of the Elder acquires an elevated symbolic power. According to one of my respondents, Elders in her tribe are esteemed as bearers of a certain sacred cultural mantle called "Lore." The Lore is a moral and legalistic code of sorts, yet it is not written. Only a relatively exclusive collection of elder tribal members remain custodians of this Lore today, including my respondent, an Elder—or community representative—for a circle court in New South Wales. She explains her perception of the difference between law and tribal "Lore":

Our laws are strange. They're right "Lores," stronger than L-A-Ws. In our L-O-R-ES, there was no second chance. You had to obey without even questioning. You had to accept without questioning.

This Elder, a community representative from a circle court in New South Wales, is one of those responsible for sustaining the Lore and other general cultural understandings from their parents, grandparents, and Elders; they are also tasked with bequeathing it to future generations:

Because my grandfather on my mother's side was my great grandfather; was King [name] of the [name of tribe] tribe over there. [...] my grandmother was a princess. When she died [the title] came to my mother because she was an elder's daughter and had a son. [You can] trace my family back to before the 1800s. And my father was the last one to be initiated in a [tribe] way.

Formal initiation of Elders into the tribe may be declining as the tribe becomes more and more influenced by modern Western culture, but eldership as an informal concept remains a staple mark of distinction in this Aboriginal community. It is through this family legacy that my respondent inherited the mantle of Aboriginal stewardship to pass along the Lore and other cultural values and beliefs that become vital to shaming rituals and reintegrating offenders.

By taking on the cultural mantle of eldership passed down through her family, my respondent had the symbolic cultural power to show the offender what kind of shame the offense brought on their community and on their culture. Sometimes, young delinquent tribal members will not respond to their parents, and Elders become the last resort to connect with them and pass along cultural understandings and values: "...sometimes your parents had no say in the matter. It was the Elders who did all of this. [...] We...the Elders keep [the Lore] alive; we pass it on... I'm only picking on what I've been told by the....and also what I've learned from aunties and



uncles.” By reconnecting with cultural roots and family history in preparation to communicate these cultural understandings to offenders during ritual shaming activities, this Elder was performing pre-ritual preparations.

There is no written Aboriginal code of conduct; rather, as Hillyard et al. (2004) would say, it is “rendered natural...normalised...and taken for granted” in the “ethos” of Aboriginal culture, sometimes in contrast to white Australian culture (125). So symbolic ritual actors—the Elders—must communicate those cultural morals to younger generations. What is important in the consideration of these cultural processes is not so much the Lore itself as code of conduct, but the means by which symbolic cultural actors such as Elders communicate this code of conduct to offenders to shame them during the ritual. Indeed the immediate aftermath of a crime can be a critical time for Elders to bestow these understandings on younger offenders, and not all mature-aged tribe members are up to the task.

#### *Appointing CRs for circle court: personality and gender*

A CRs’ culturally symbolic identity may be powerful, but it is not independent of their personal identity: the personality and the gender of the Elder are important factors in how effective they are in circle court. *Prior to the ritual*, Aboriginal project officers at each court are careful to assemble a panel of four to five Elders who have no inter-neighborhood rivalries, no disadvantageous history with the offender’s or victim’s family, and no overwhelming personality tendencies that might combine with deleterious consequences to the circle. These are careful pre-ritual procedures in preparation for ritual shaming procedures. One of the magistrates I interviewed explained that he trusts his project official implicitly to compose the panel to the best

of his cultural and local knowledge. Even last-minute changes to the Elder panel are permissible:

If there was a good and personal reason, not just because they knew [the offender] but for example...North street versus versus Middle street right? [...] if you can at least get rid of the negativity before you get there, then you can get on with the job. And that's why I had all the confidence in [the Project Officer (P.O.)]. I didn't have anything to do with it. If [the P.O.] changed it at the last moment he'd tell me why and I accepted that.

Another Elder noted that sometimes it is advantageous to have a community representative from out of town so the offender does not feel too ashamed to speak the truth amidst their immediate neighbors. Here, Aboriginal project officers appoint CRs to the circle court because they are familiar with each CR personally and familiar with how they represent the cultural community.

Each Elder has a personalized contrivance for discipline and shaming. Their dispositions migrate fluidly between their everyday function in their community or family and the circle court room. My respondent noted that her family's legacy also lends her a brand of forcefulness and bluster that contributes to other members of her community showing deference to her as a leader: "I had all this history on both sides and...I didn't take any no's." Some are more assertive; some are more docile; some are irascible. One magistrate explains that some Elders express commonly negative personality traits, yet they can be balanced with another Elder on the panel with opposite traits:

[One of the female Elders always says to the offenders] ‘thank you very much indeed my son, or my cousin, for having confidence in coming to our circle’...And this and that....she’s like Mother Hubbard. And it’s very rare that she will rip into anyone. On the other hand we had a fellow there who was also a straight-gamblin’ man and he would tell em. ‘now don’t give me that bullshit. How would you like this happening to your little brother or your sister or your mom and pop?’

The project officer identifies the most effective actors in the shaming ritual, such that the offender is made vulnerable and responsive to their constructive shaming. It is a culturally-insular process: an Aboriginal authority (the PO) decides upon the representatives of Aboriginal culture for Aboriginal cases.

When the Project Officer knows the personalities of each Elder intimately, he or she can identify any maladies in the affect of each Elder during circles, which can help prevent any biased or insincere feedback from the panel. A Magistrate explains in an interview that honesty is critical, and can be regulated by the Project Officer:

Because by taking their character and their personalities in, you know [when] they’re honest. [...] if Aunty [name] started to swear at people, we’d know she wasn’t talking the truth and she was just playing the game. And the whole idea is honesty. So yes they all have personalities.

Some Elders who normally behave with placid respect and are known by this persona use expectations about this behavior to shame the offender. One magistrate explained in an interview

that one female Elder with a gentle disposition sometimes exploded with anger or even spoke with uncharacteristic sternness in the circle, bringing considerably heightened levels of shame on the offender.

Here, the *gender* of the Elder as well as her commonly docile disposition contribute towards a typified symbology of her persona—a set of expectations and modalities that she is known for reciting. She can use this symbolic form in the circle court to first invite offenders to familiar, mother-like dialogue, and then subvert that identity with expressions of commanding sternness for dramatic effect. She can use her gender as a *tool*—a means of eliciting gender-based expectations and subverting them with alternative modes of action, which is a potent function of ritual.

Some Elders demonstrate habitual abrasive or explosive personality tendencies, but these, too, can be beneficial if used organically and sincerely. One project officer explains,

We've got [name of Elder] who was gonna spear one of the blokes—he lost his temper.

His volatility came out to the fore. Now...

Me: And that was positive...?

Resp: [It was] Great. The young fella—his eyes went white. He realized this bloke was one of his blokes.

Here, a common membership in a family group or clan—“*his blokes*”—shames the offender for besmirching the clan's good name. Family and kinship ties, much like neighborhood affiliation, can create conflict as well as cultural solidarity. And this magistrate explains that if an Elder is

challenged on the basis of their “seniority in their Aboriginality,” they may defend their cultural status. But representing one’s culture as an Elder does not equate with competing for Aboriginality: Elders are not more Aboriginal than other Aboriginal people, but rather have gained a certain position based on their personalities, abilities, or family history.

One magistrate I interviewed in New South Wales notes that any conflicts that may arise between Elders should not be a matter of negotiating a strength of Aboriginal identity, but rather a social status within that culture: “[Someone] might be saying, “but I’m more [name of tribe] than you.” But that’s personal ego. You’re either [tribe] or you’re not [tribe]; it depends on the hierarchy. But yeah it’s not as important once they’re of the mob.”

Project Officers and Elders, as Aboriginals, must also serve as mediators between the Western retributive justice culture and the culture of Embedding Justice for Aboriginal clients. The Magistrate, a conspicuous cultural visitor, occupies a position of outside authority that can shame the offender by communicating the legal gravity of their crime. The magistrate is in charge of facilitating universal agreement on the facts of the case prior to the circle session. Thus he or she essentially transcribes from Western to Aboriginal terms the bearing of the legal codes into sentencing options which the Elders can consider.

#### *Western legal authority actors*

Judges and magistrates are typically cultural outsiders. They often live out of town, they are often not racially or ethnically similar to those who they are judging, and they lack the natural kinship and social networks that bind cultural communities together. And while they may intend to use their post as a means to espouse restorative justice principles and favor their

constituency's cultural values of justice, they inevitably face an identity barrier. So despite their conventional legal authority, they must be integrated into the Aboriginal community to have any power in Aboriginal court. And their authority is only powerful when mediated through Elder CRs, who are cultural liaisons in the court.

A magistrate I interviewed in New South Wales explained that he had to be accepted into the Aboriginal community by an Elder (CR), who was also the uncle of the court's project officer:

[PO's uncle] was a very wise man—still is. And he's an Elder in the community up there. And he taught me a lot—introduced me to places and to the culture, and he and I together were partly responsible for setting up a jail—he did the cultural side and I did the security side and we worked on it together...

Police are similarly emissaries of a Western retributive system. The simple presence of police, district attorneys, or other retributive justice officials during circle conferencing sessions in California as well as New South Wales is powerful. Their presence can function as a powerful ritual symbol—a cultural tool—of what might have become of their sentence in the realm of retributive justice, without the relative sympathy of restorative justice. One project officer explained that they always invite law enforcement and/or the District Attorney to attend conferencing sessions with offenders. Here, it appears that combining the presence of restorative and retributive authorities can be symbolically powerful regarding shame. They appear to be

tools used to non-verbally acknowledge the legal gravity of the offender's crime; in fact, they seem at times to simply be props, or static tools that set the scene in the ritual space.

My interviewees from Australia also indicated that experiencing the power of conventional law in a restorative justice setting can be intimidating for the offender in a positive interventional sense: one magistrate says simply that "...they realize that it is a real court."

Police and justice officials' presence is especially potent when the offender has known them for many years:

So to have to speak to these people, many of whom have known them since birth; a magistrate whom they fear because he or she might have a reputation; the police, because they're gonna vote on whether that person goes to prison or not; it can be intimidating.

Yet when police officers behave in unexpected ways—such as to petition for a less severe sentence—the power that of their symbolic post as a symbol of the police force in general is felt more acutely. That is, when one inverts expectations about how a “retributive, unpitying police officer” might act, then that actor's actions are seen as exceptional, and thus more impactful.

This is similar to the subversion of female docility expectations from one of the Elders mentioned earlier. One magistrate explains:

And sometimes the police were even pushing for the lighter sentence. And that gave a greater weight to it. Because it was a lighter sentence like a bond without a conviction.

[...] That person would realize that the police had supported the reduced sentence so that it didn't negatively impact on their chances of further education. [...] So working the police that way was wonderful.

Both Magistrates and police officers manage and subvert others' expectations about their symbolic position as if it were a cultural tool. Traditionally, a police badge represents the conventional law's indifference and harshness, and the Magistrate's ultimate sentencing authority represents the fact that the Aboriginal community is only a small bubble of cultural autonomy within a much broader legal system. Despite these assumed *types*, Western legal representatives take advantage of opportunities to subvert and contradict assumptions about their role in the ritual in order to communicate a powerful message.

## *California*

### *Facilitators as symbolic community representatives in the jail program*

In California, community representatives arrive at their posts from a variety of backgrounds—from elite undergraduate institutions to deep criminal histories—but they continually emphasize how their experience makes them relatable and respectable from the offender's point of view. The jail program I studied requires that all facilitators first pass through the program as inmates, and then apply to become facilitators following their release. They bear the conspicuous mark of a reformed criminal within the circle sessions, which lends them legitimacy within a subculture of inmates. If incarceration is a rite of initiation, facilitators are uniquely positioned as seasoned initiates amidst a congregation of inmate neophytes.



In this program, the facilitator's cultural status is negotiated with little to no extra effort—their position *implies* former criminality like the inmates, but also demands respect. The acknowledgement of a common criminal background de-reifies the facilitator, placing him on relatively equal footing with the current inmates, and exceptionally suited to shaming them. Yet at the same time the facilitator also gains credibility for his initiation, or matriculation, from incarceration a positive position of leadership.

The challenge in managing this facilitator status is maintaining non-hierarchy within the circle. Facilitators attempt to physically symbolize the academic content of the curriculum, which one facilitator I interviewed said combats “the old patriarchal way of relating to people [which] has to do with how we assert sort of our superiority over folks” (from facilitator interview). This facilitator claimed that these competitive tendencies are male-gendered, and are pernicious in the context of criminals with violent records. The program attempts to combat these tendencies by *structuring*—as discussed in the third mechanism section of this analysis—non-hierarchy with physical and dialogical circles. These are designed to reinforce a culture of intimacy and support rather than explosive anger and violence.

#### *Facilitators as symbolic community representatives in the juvenile RJ program*

For facilitators in the California juvenile restorative justice program, the most demanding task in negotiating their status identity is building rapport and approachability. Their status as employees of a well-reputed non-profit organization presupposes them as authorities to which a didactic approach would come naturally. They have largely different life experiences from those they are counseling. Some facilitators are graduates of top liberal arts colleges or arts programs;

some are glorified secretaries; some are residents in the community, while others live far away from their clients. From the offender's perspective, the facilitator cannot assume that a "one of us" status does precede them when they enter the counseling room. Indeed race, age, and gender all become relevant features to which offenders can relate. Yet those facilitators who recognize their estrangement from the conditions of poverty, crime, discrimination, and disintegrated families must consequently work harder to establish their status as a member of that culture.

However, facilitators make efforts to combat this predisposition. They direct the circle using open dialogue facilitated by the physical—circular—seating structure of the victim-offender session. They also foster expectations that participants may be moved by the trusting environment to break their initial reticence to share true thoughts and emotions. Several of the facilitators note that establishing the trust that nobody is "there to judge" is vital: "We're not here to judge, we're not here to place a label on you, we're not here to say "that's what you get"; and I think just...without, not having that criticism it can you know we can be honest about some stuff that we're really trying to act like we're not like that...we're not like that." This clearly hints at therapeutic culture—fostering self-efficacy and self-esteem through mutuality and non-judgment.

Strictly speaking, the facilitators *are* there to judge—they receive the legal authority from the District Attorney to monitor the youth's progress and kick back the youth's case if the youth wavers in their commitment to the program. Yet their concerted effort to make it appear that they are non-judgmental is a preparation for a special ritual of shaming, not blaming.

In order to establish a non-judgmental rapport, facilitators involve themselves in the dialogue, purporting to be willing to share personal information and to reciprocate what they are asking of the offenders. One facilitator I interviewed explains: "I think it's the "Namaste" that

happens...because I'm willing to share me and all my imperfections it makes it okay for them to share their imperfections.” The non-judgmental rapport that facilitators attempt to establish is negotiated here by the open espousal of eastern concepts such as Namaste, a sort of “cultural belief,” as Parsons might classify it, which my respondents activate (Swider 1986). Further, if the participant does not engage in the dialogue, then they incur shame from not taking the therapeutic culture of the ritual seriously.

Familiarity and experience with these concepts can become a stamp of status: while a facilitator naturally occupies a position of didactic authority as an educated outsider, they must undergo a training process to gain a less didactic status as a restorative justice leader. One facilitator began in a teaching environment in prisons and underwent training on circle processes, which qualified him for work as a facilitator. Achieving this status takes time, as does the process of establishing rapport individually with the offender during pre-ritual preparations, prior to the circle with the victims. Each facilitator spends hours with both the offender and the victim in preparation. These are pre-ritual activities—preparatory rites in which each party is assessed and prepared for the liminal rites of shaming that they are about to enter.

It is through these meetings that the facilitator can feel out the cultural conflicts that may arise in the meeting. In many cases, the facilitator must be a mediator not only between an offender and the party they offended against, but between two clashing cultures. In these cases, the cultural status of the facilitator as an outsider can help. A white facilitator explains that the geographic and racial identities of victims and offenders can be a hindrance to the integrity of the shaming process. Fear and stereotyped misunderstandings of the “other” must be broken down

in order for the shaming to peak effect—that is, to understand that those who are doing the shaming are peers, not enemies:

I think a lot of it depends on the race and the cultural background of the victim. If they're of a different grouping than the kid that did the harm I think there's less um willing...to participate. And I think there's more fear and there's more otherizing, you know? If I've got a black kid and a white victim...so far...the white victim always thinks the black kid is older and much scarier than he is.

Facilitators must at least temporarily become neutral arbiters serve to diminish the fear both the offender and the victim feel towards each other on a daily basis. This fear can cause offenders to react in aggressive, criminal ways and victims to react with resentment and lasting generalizations about the offender's race, social status, or geographic location. One facilitator explains that when victims come from a different neighborhood or are of a different race, they actually assume that criminals are older and more intimidating than them. Referring to an offender that was 15 or 16 years old, one of the facilitators explains this phenomenon:

This [victim] looked at [the offender]—he thought they were like 20 something years old. These are kids and they gotta put on these airs; [...]I understand how some people look at em and are afraid of em...but they're just as afraid of you as you are of them.

The facilitator's status is that of a cultural and interpersonal mediator. He is charged with creating an atmosphere in the circle where neither victims nor offenders are afraid of each other, afraid of the facilitator, or resentful of the justice system. Again, the key is to shame the offender, not to exchange blame between participants. This is, in effect, a process of building micro-level communities in the circle and in neighborhoods (Karp and Clear 2003: 13). The facilitator strives to hold victims, as well as offenders, accountable for the safety of their community:

...if this [victim] is gonna live in West [Town], maybe he should be trying to build community while he's there, you know? ...try to face these guys and build community. As opposed to saying...“I'm moving out of West [Town]—too much crime. I'm moving out”. [And I tell them] “But you moved into a community, with people in it, crime-ridden, whatever it is.”

By working from their status as a neutral cultural arbiter, a facilitator can facilitate shaming rituals. When the facilitator invites participants to share their stories in the presence of families and community members, they strive to expose how the crime affected the daily lives of those who live in the community:

...what this process does is it brings all that into the room. So the victim gets to say to the youth what it is they felt, what it is they did, how they were violated, and what that did to their world. “You know it shook my whole world. I live here and I can't even go outside anymore.”

In this case, the victim explained that they could not even participate actively in the community following a robbing—they could not even leave their house.

*Western Legal Authority Actors*

The district attorney or police officer present during circle mediation sessions at the juvenile symbolically represents the Western retributive justice. Their presence is intended to be intimidating and sobering—a deterrent from future offense. One interviewee in California—a staff member for the juvenile restorative justice program—commented that law enforcement’s participation in the victim-offender meetings often reminds the offender of the gravity of their offense and puts the relative benefit of restorative justice in perspective: “the law enforcement’s role is to basically read the charges and to talk about extenuating circumstances... ‘If this had not come to our program, this is what we normally do with these types of cases.’” Their simple presence at the meeting also communicates that the offender is fortunate to be granted a chance at restorative justice—a chance to mitigate the harm that the offender’s crime may have done to their future prospects as a citizen in the community.

*Spain*

*The penal pilgrim’s guide as symbolic Camino community representative*

The cultural status of community representatives in California and Australia is far more concretely negotiated than on the Camino de Santiago in Spain. I would argue that there is, however, a distinct *Camino cultural community* with porous boundaries: participants of differing

ethnicities and cultural backgrounds flow in and out of it, but share important understandings and values. Among those values are mutual trust among pilgrims and temporary anonymity behind the pilgrim's identity veil.

My data hints at strong feelings of trust in fellow pilgrims regardless of one's criminal or delinquency history. All but two of the pilgrims I interviewed on the trail claimed that they would not distrust their fellow pilgrims if they knew one was a delinquent juvenile. This encompassing, cloaking, ensconcing "pilgrim" identity is part of an experience of anonymity on the trail—other identities can be temporarily cast away and one can experience interactions without pre-existing labels (Greenia 2010). The dynamic and de-stigmatizing identity of the penal pilgrim within the pilgrim community are a boon for the "reintegrative" (see Braithwaite 2000) rather than "disintegrative" justice process.

For this community, the symbolic ritual actor who represents the community is the penal pilgrim's guide. He or she translates the script of pilgrim conduct for his or her penal pilgrim. The guide I interviewed—like many of the guides for these experiences—was previously an educator, and thus well-versed in dictating rules and standards. Indeed the guide's function at the beginning of the journey was didactic and controlling: when he first met his penal pilgrim, the youth ran away from him and the guide was forced to chase him and physically embrace him to prevent his escape. The hierarchy of their relationship was vividly clear at this moment. In other ways, the guide initially functioned as a parent—he managed the youth's money at first, carried the youth's pack when it got too heavy, and set ground rules for the youth's activity on the Camino. However as time went on and the young penal pilgrim came to better understand the community standards of pilgrims—such as returning to the *albergue* by 10pm, being silent in the

sleeping spaces, and respecting the personal belongings of others—the guide’s didactic and controlling functions diminish. The guide said he eventually allowed the youth to roam about the city upon arrival in the early afternoon until dinner time. The guide slowly permitted the youth to manage his own finances. By translating and symbolically representing the Camino community’s cultural norms to the youth, the guide had reintegrated the penal pilgrim into the Camino community prior to reintegrating into his own community in Germany.

Each youth undergoes some preparations for the journey, but the first meeting between the youth and the guide before the walk begins can be considered a pre-ritual activity. The youth—or initiate—is still in his home environment, with his home social status still intact. Once he begins the journey, he sheds this social status, at least in part, and enters a socially liminal state in which all labels and original social controls are lifted as the youth assumes an otherwise anonymous “pilgrim” status. This process begins, however, with the negotiation of the guide’s status as a symbolic ritual actor—a Camino community representative.

Along the way, then, the guide continuously negotiated a status that represented the norms and standards of the pilgrim community. In order to do this, the guide had to be a positive role model but also an approachable—even somewhat *equal*—actor with which the youth could be honest and intimate. Perceptions of status equality facilitate shaming. Several features defined the guide’s status as a relatable and respected symbol of the Camino community. The guide was young—able to sustain the strenuous physical demands of the walk, as well as the demands of managing a youth’s energy—which perhaps made him more accessible than an older guide. The guide translated from German to English and Spanish for the penal pilgrim, creating an instant bond of dependence and affinity. Indeed, the guide was essential to the youth’s cultural



and physical survival—the guide was the penal pilgrim’s source of funds, his linguistic translator, and his Camino culture translator.

There is also a natural element of vulnerability in the guide’s status that fosters intimacy between the guide and youth—a critical component in all of my restorative justice cases and significant in the ability for the ritual to induce shame for the offender. The guide is bathing, sleeping, eating, and physically exerting himself alongside the youth every day. The guide is not wearing a suit, sitting in a counseling space or a confessional booth, or reading the youth’s charges off of a sheet of paper. Instead, the guide is having natural, spontaneous, everyday interactions with the youth in neutral spaces, wearing neutral clothes.

The shared spaces of the Camino are indeed conducive to a therapeutic culture of non-hierarchy and suspension of judgment. Pilgrims bathe and change clothes generally with less concern for privacy; and the mutuality of every shared experience seems to shade in the seams between social class divisions, education level, race, and even age. So the non-hierarchy that the facilitator pursues is naturally afforded by *culture* of the Camino—it is *embedded* in the structure of the Camino.

The guide’s natural mode of interaction, dress, and space occupation is not only neutralizing of hierarchy, but also shared with the penal pilgrim. As such, the guide is instantly and unavoidably relatable. Guides are required to embark on the journey without any previous experience guiding a youth on the Camino, which is intended to give the guide an unpracticed, unique, and fresh experience with his or her youth pilgrim. Effectively, it delimits their professionalism and makes them more equal to their youth. It ensures that both the youth and the guide are having similarly brand new experiences with the rituals of the Camino. Both are

neophytes in the process of integration into the Camino community, and both are similarly accountable for their actions in that community. While the guide specified that he is not legally liable for the youth's actions on the walk, he presumably shares the same degree of personal accountability that would lead to personal shame should the youth offend while on the walk. When one pilgrim's iPod was stolen in an *albergue*, the guide explained that he hoped that the youth wasn't suspected, as it could damage the code of trust that the youth had grown accustomed to within the Camino community. In avoiding blame in this situation, the guide is not preventing the process of shaming his youth, which happens implicitly and silently as the youth comes to reflect on how his deleterious relationship with his community at home is different than the harmonious relationship he now has with the Camino community.

The guide does not announce the pilgrim's status as a delinquent, which presumes that both he and his protectorate pilgrim are collectively avoiding the effects of the "penal pilgrim" status. The guide thus does all he can to make their experience one that is embedded in the most conventional pilgrim experience, not estranged from it. The guide also made decisions that placed him on relatively equal footing with the youth. Because the guide smoked, he allowed the youth to smoke one cigarette a day. He said he allowed the youth to climb trees and explore on his own, both mildly risky activities. He explained that permitting, but controlling, mildly risky activities was a means of gradually relating to the youth the importance of personal responsibility. One evening, the guide said he returned after the *albergue's* curfew from watching a sporting event at a local bar. He said his young penal pilgrim was waiting for him to return, and concerned about where he was. While this may have simply been an error on the guide's behalf, it was an indication that his relationship with the youth was changing—instead of being a

unilateral, parent-son relationship, the guide was actively fostering mutual trust and accountability.

By the end of their journey, the German penal pilgrim would be responsible for handling his own money. The youth was always legally liable for his own actions, thus lessening the incentive for the youth to be expressively deviant just to spite his guide and land them both in trouble. This also made the youth alone accountable to the community that surrounded him. Indeed there were no pilgrim jails for crimes against the pilgrim community, nor was there a recorded pilgrim code of conduct with which one pilgrim could litigate against another. Justice was, then, embedded in the community and the culture of mutual trust and accountability that pervaded camino culture. The status that the guide achieved here is representative of the pilgrim community—one of mutual trust and accountability. In such a way, the guide was not only a one-on-one mentor, but a representative for the pilgrim community, and a catalyst for gradual changes in how the youth related to his community back home.

Those that host pilgrims, known as *hospitaleros*, are another type of symbolic actor on the Camino, quite literally creating and providing for the Camino community. *Hospitaleros* welcome pilgrims daily into communal living spaces called *albergues*, provide communal meals, and set community standards such as what time the lights go out and where pilgrims can socialize or rest. They are regulators and cultural interpreters—often representing a certain country at their particular establishment—who dictate the terms of behavior to visitors. If a young penal pilgrim were to act out against their community standards, he would be disrespecting not only that individual *hospitalero*, but the ideal of the *hospitaero* in Camino

culture: the generous, voluntaristic, comforting host who under-charges for the hospitality he or she provides.

### *Dominant Themes Across Cases*

#### *Embedding Justice in Communities After Ritual Shaming Occurs*

At all three of my sites, symbolic ritual actors remain important after the ritual shaming has concluded in the adjudication setting: these figures remain a part of reintegrative sentencing, embedding justice in cultural communities by helping to restore the offender to a respected cultural status. Everyday interactions with symbolic actors—like victims, CRs, other pilgrims, or judges—made offenders accountable for their behavior wherever they went.

For example, in Australia the Elder's cultural status as a symbolic ritual actor in the court setting is simply a *ritually heightened* form of their status in the everyday community (Spaulding et al. 2010; Turner 2011: 94; Van Gennep). Many Elders claimed that their interactions with the offender were improved from before the court session. One elder recalls that an offender she sentenced approached her 3-4 months after a sentence, wanting to tell her all about his life. Prior to the sentencing, she said he "would never have given me the time of day." Symbolic actors like this Elder serve as a daily reminder of community standards, and establishing connections with that Elder indicates an investment in a relationship with the community at large.

Similarly, a facilitator at the California jail site explained that he also has positive, meaningful interactions with offenders following release from the program:

I think it does spill over into their everyday lives. And to relationships too; we bump into people all the time. ...most of the time they looked like they were doing well. You know I'd see them in parking lots and shopping malls with their kids. Buying things, being responsible; getting ready for the next soccer season.

These are among the few measures of success that facilitators can employ, but they point to the significance of relationship-building between community representatives and offenders. An Elder in Australia also speaks to lasting personal relationships as measures of success:

If you look at the individuals that go through circle and the impact that having the program has on the relationship between the court and the indigenous community it is a success. Even if on an individual basis that person ends up coming back to court they have a period where they have access to services, they have access to support, they're linked into their Elders, they're linked into their community and just the process of involving the Elders as a community with the court, with the Magistrate with the prosecutor is very beneficial for the way the justice works in a community like this.

When these relationships are ritually powerful during shaming in the circle, they become symbolically powerful in the greater community as a reminder of the norms and standards that the representatives espouse.

*Shaming Rather than Blaming*

As many of my interviewees explain, a crime can cause shame to and breakdown of the community by doing harm to the victim and the offender, and bringing about an atmosphere of resentment and fear within neighborhoods—and even between races. In retributive settings, a crime might cause resentment and stereotyping, as well as in the litigious dismembering of trust and communitarianism in the courtroom. As some of my respondents in California said, the conventional jail sentence is a simplistic “negotiation of blame” rather than a more involved shaming process.

Within the shaming ritual is an effort to “restore the harm” done by a crime (Zehr and Gohar 2002). A Judge in California explains:

It’s just that as a result of the harm or the crime that they committed, it brought shame on the community, it caused a breakdown in the community that needed to be repaired, and so collectively the community would look at how to repair that along with the individual who caused the harm.

Community representatives reflect the shame of that harm back on the offender by negotiating their status as a symbolic embodiment of the community with which the offender can personally connect, thus achieving respect and approachability at once. Once this status is negotiated, the community representative must assume that the offender feels personal responsibility for their crime, and does not simply blame the criminogenic conditions of their community. In fewer words, the objective of the adjudication process is shaming, not blaming.

Blaming is a feature of “disintegrative” justice processes, according to Braithwaite (2000), and often involves the application or reinforcement of a “label.” Judgement that labels the offender is largely opposed by practitioners of reintegrative justice in this study, though it may not be completely evaded in rituals of shaming. At the Camino site in Spain, the German pilgrim doing justice on the pilgrimage route was anonymous, released from possibly damaging and undoubtably sticky labels of delinquency. Ideally, he was simply a pilgrim—at no point did the German guide announce publicly that his youth was a delinquent, nor did he specify the youth’s crimes in our interviews. The guide actively avoided assigning blame and a label of guilt to his youth companion. When I asked if pilgrims had seen these juvenile penal pilgrims on the trail, many of them claimed to have taken notice of abnormally young pilgrims, but had not identified them as delinquents. Amidst much older and guide-less pilgrims, a juvenile penal pilgrim’s outward appearance was thus recognizable as unusual, and perhaps delinquent. Yet when an iPod was stolen in an *albergue*, the young pilgrim’s guide expressed his concern that the youth would be accused of stealing it—presumably based on his unconventional—that is, young—outward appearance. If he were to have been blamed, he may have internalized the weight of that label, and this process may have compromised the positive effects of an environment—a community—of trust and mutual accountability.

### *Gendered Family and Kin Networks*

Family and kin members are important symbolic ritual actors in shaming the offender during and after rituals. At each of my sites, family and kin were physically present at shaming ritual settings—circle courts, the Camino trail, and restorative justice settings in California—in

order to shame the offender for their crime and deter future crime. Their symbolic power was largely derived, however, from their position outside of the ritual setting—as a familial relation in the home. In other words, when one’s mother or father is involved in sentencing them, and also in disciplining them at home, the symbolic power of that ritual actor is embedded in their position as a parent—a power that is transferred back to the home following sentencing. In some cases, shaming rituals of adjudication might even strengthen those family members’ deterring power outside of the courtroom. Here, the continuity of the family structure between the community and the court setting evidences the extent to which justice is embedded in the cultural community. The ritual both activates the natural deterring symbolic power of family bonds, and strengthens or mends any bonds with family members that a crime severs.

Mother figures are especially potent deterrents, especially in California and Australia, because they are already *embedded* as discipliners per cultural norms. Mothers, as distinctly feminine ritual actors, become symbolically significant above and beyond the personal significance they hold to their own children. Organizers at my sites re-appropriate the mother as a kind of metonymic jury figure—a singular representative of mothers in general, of the institutional “everymother,” perhaps. Mothers’ discipline duties are, in all senses stereotypically, arresting. It is the affective nature of their presence, perhaps, that makes it possible to reference them an institution of moral conscience during the shaming ritual.

A facilitator in California explains that one of the victims’ mothers in their program felt a sense of redemption from helping young offenders re-activate empathy for their own mothers. If offenders considered the effect that their crime had on their mothers, perhaps the resulting sense



of personal shame and accountability would be potent enough to prevent criminal decision-making in the future:

...a lot of mothers who have lost their child don't want that child who killed their child to just go away for the rest of their lives. It's like 'do something with yours'. ...they want better, like almost transfers. I've heard from a lot of women who are doing this Restorative Justice who have lost their child, and this is their way of giving back, you know, to tell their story. If they can get one child to think about their mother the next time they're out and drinking and going wild; remember her. You know, remember her face, remember her story, and it kind of pulls on the heart...the humanity.

Here, the victim's mother effectively served as a proxy victim such that the offender could work towards restoring the harm done to the victim through symbolic or transactional, if not practical ways. She was also a memento, a reminder, an artifact of affection in conditions of *anomie* where offenders might feel emotionally disconnected from those to whom they would traditionally be accountable: their families (Spaulding et al. 2010). Mothers are often the only family figures present in a juvenile's life, and are thus the most critical representatives for shaming the offender.

Much of the disintegration that occurs after a crime results because the victim is taken out of the equation. They may be dead, geographically distant, or unwilling to face the offender in person. Conventional court can still function in these cases, as the punishment pertains to the law's demands, not the victim's. Without contact with the victim, however, there is no feasible

way to re-establish an affective relationship between the victim and the offender and heal the harm done. This is where family and kin figures as a structural items in each circle can become vital to repairing harm. One restorative justice facilitator in California explains:

...the [retributive] criminal justice system...takes that relationship away; it says that, “you cannot talk to the person who violated you. Legally, you can’t talk to them. And we’re not gonna let you talk to them, legally. Even though you—as the person who was violated—might actually have some questions that you might wanna ask them.” Like, “when you broke into my house and stole the money, you actually stepped on this really priceless—in my words—frame, that was given to me by my great great grandmother and now you broke it. And you got the money that you wanted.” And what this process does is it brings all that into the room.

So the family member of the victim can shame the offender simply with her presence. Or the victim’s mother can act as the victim’s surrogate during sentencing if that victim is absent, helping to communicate shame to the offender while helping the mother to mend the pain of loss that she feels following a crime.

Using dialogue to invoke family and kin relations seems to actually *create* symbolic family actors as if they were in the room. Becoming aware of and connecting with one another’s family can completely change deep-seated interpersonal hatred that often occurs between a victim and offender. Building relationships in the sentencing process between the family and kin of both victims and offenders can improve the chances of positively reintegrating the offender

into the community, rather than disintegrating the community. One facilitator in California explains:

I think that it's mostly about relationship building. And repairing the harm. ...what I've seen happen in conference, is that the victims... haven't met the youth who have done [the crime]. And a lot of times they have in their mind painted something about this youth and how this youth's family is. And so what they usually find out in conference is that "well wait a minute, I see the mom there," or "I see the dad or the grandparent or whoever's there" and the grandparent's saying "well we didn't teach him or her to do this and I'm so sorry that this happened to you. So sorry this happened."

The influence of family legacy as a tool of shaming is strong—symbolic actors can invoke an offender's family's legacy of non-criminality to shame them for their crime.

Mother figures are not the only figures that carry this symbolic power. An Elder in New South Wales explains the impactful dynamics of intimate grandfather-father-son interaction during the court shaming ritual:

I think by [the offender] saying how much his bad behavior affected his father and his grandfather and we know he loved them dearly, they've always been there. It affected him there; well, it pulled the blinkers off of his eyes.

In this instance, the offender and his father shared tears after a sentencing, which demonstrated the importance of physically integrating family members into the sentencing circle in order to shame the offender. The family as an intimate and personal social unit is permitted—even welcomed—into the circle. This adds a degree of intimacy to the trial process, whereas in Western connotations, a fair and legitimate trial connotes indifference and impersonality within a judge-jury-litigant structure.

Male Elders often address male offenders about their abuse of women, stating family histories of respect and non-violence as deterrents for future criminality. One Elder recalls a young male offender, stating that “This young man didn’t have a reason to do what he did. His father never bashed his mother up. His father always treated his mother with respect, same as his daughter.” Here, the Elder invokes a family tradition of non-violence among males to deter the younger generation from violence. Thus gendered family and cultural norms can become positive examples for offenders to emulate.

In Australian Circle Courts, many of the Elders are so well-acquainted with offenders and victims alike that they share quazi-kinship relationships with them even if they are not related by blood. This corresponds to cultural norms in which Elders are known as “Aunties” or “Uncles” by younger non-blood relatives. One interviewee in New South Wales remarks: “[In] circle, we know the majority of the people. And if we don’t know that person we know the mothers and the fathers and the grandfathers so the family connections...”

Elders will often remove themselves from the panel if their blood relative is on trial, as trying family members can be difficult. However, they frequently sit in on circle sessions in which they have known the offender since birth. In this case, shaming rituals can implicate a

family figure as a common point of reference between the offender and the Elder, thus making the offender more personally accountable to the Elder's judicial prescriptions, and the family more accountable for monitoring the offender's actions.

In Spain, the penal pilgrim's guide was ostensibly a father figure, which was as complicating as it was effective. The intimacy that the German guide claimed in his relationship with the delinquent youth contributed to the trust and accountability that the youth developed throughout his journey. The guide explained that he "couldn't let [the youth] out of his sight"—but not for liability purposes. The guide is not legally responsible for the youth, per the rules of the program. But the guide felt personally responsible for the youth, as a father would for his son. And yet one pilgrimage official in Santiago claimed that even when the program ended for some youths and their guides, the youth would voluntarily explore the city with their guide, almost as if they shared a friendship or father-child connection. Indeed, this evinces an element of temporary familial relationships embedded in a temporary walking community, where intimate engagements pervade the everyday experience of pilgrimage, and may stay with the youth as he or she returns to his or her permanent home community.

The youth pilgrim's guide connected with the youth in a naturally protective capacity at first, as he was responsible for the youth's everyday wellbeing. The German guide's first encounter with the youth was physically restraining him when they first met, as the youth tried to escape. Yet in a foreign environment, estranged from all biological kin, the youth's relationship with his guide took on familial significance, albeit temporary. When the youth returns to his home community, of course, this bond must be renegotiated with the youth's biological father. In

most cases, the bond with the guide is severed to protect the validity of his biological parents' efforts at meaningful guidance and support.

Engaging with this kinship bond as a means of survival is a formative experience for the youth. The youth is immersed in the “therapeutic culture” of the Camino, based on the Freudian framework that Reiff (1987) provides of the individual “self” as a mediator between “culture” and “impulse” (31). The youth is exposed to largely supportive and positive Camino *culture*, and is given the freedom and responsibility to control his *impulses*, such that he achieves enough self awareness to maintain behavioral improvements in a perhaps more criminogenic home environment.

Perhaps this removal is not coerced extradition of the penal pilgrim from family bonds, but rather “therapeutic exile,” as George Greenia (2010) describes in reference to more dated traditions of “penitential pilgrimage.” But exile from biological kinship bonds can be damaging. Indeed the German youth's guide said that part of the problem with the youth's delinquency is that he is “always sent away” from his family when he offends. Perhaps this means that penal pilgrimage is a misguided endeavor, especially because any father-son relationship the guide and youth develop will effectively disappear upon return: the program does not allow the guide to sustain contact with the youth after the trip is over. This is difficult for both parties, but is intended to honor the integrity of the youth's biological parents.

*Ritual Mechanism II: Ritual Self-Expression of Responsibility*

Facilitators and community representatives employ carefully negotiated cultural statuses to reflect community standards. In order to be accepted back into the community, the offender must accept responsibility for their crime. While the community context is important for defining the boundaries of acceptable behavior and cultural norms, the community's environmental factors must not be a crutch to lean on when the offender accepts shame for his or her offense. A restorative justice facilitator in California explains that their program's processes "help them with the accountability piece, with these life skills that are so important to get to start taking responsibility for your actions." This means "being able to say, 'Well, yeah, these are the systematic forces that...like racism and heavy policing in my community like put me at a greater risk for being incarcerated myself and that's really unfair, but at the same time I made a choice.'" Taking responsibility is a therapeutic process that can help the offender engage in meaningful dialogue with his or her peers and eventually be welcomed once again into the community.

Offenders at all three of my sites express their responsibility for the crime independently, without a legal mouthpiece. One magistrate in New South Wales says of the circle court's offender self-expression requirement, "...they're not used to speaking like that. Because they're used to having what we call the lawyer a mouthpiece do the talking for them." Through this ritual of self-expression the offender is made accountable for the shame their crime brought on themselves and their community, and ideally the offender takes ownership of this shame, demonstrating renewed self-awareness and awareness of the cultural beliefs and values surrounding them. This reintegrative ritual is an example of an Embedding Justice process. The self-expression ritual *is embedded* in therapeutic cultural beliefs and values held by his or her

audience—that is, the offender’s address is tailored to the cultural community represented by participants during adjudication, and to the beliefs and values the offender knows he or she violated. And conversely, the ritual *serves to embed*, or inculcate, these cultural understandings in the offender’s awareness following this ritual, thus reintegrating the offender into the community with deepened therapeutic cultural knowledge.

### *Spain*

The German guide I interviewed said that his youth pilgrim was required to submit reflections on his experience along the way, which constitutes a measure of self-expression. However this 13-year-old penal pilgrim was reticent to articulate any verbal reflections on the journey. The guide, then, was forced to interpret very limited, mostly non-verbal reflections of the youth’s progress and communicate those to me during our interviews.

His self-expressions of responsibility were physical and active, rather than verbal. The youth’s willingness to wake up every morning and walk with his guide as he was told to do was one non-verbal expression of contrition. The youth had to carry his own pack and was learning the responsibility of managing his own money. The youth had to find his way back to the *albergue* at night and help prepare dinner for the two of them. And perhaps it can be assumed that the youth’s full engagement with the environment of pilgrimage presupposes a distanced perspective on the his deviant past, which is at least self-reflective, if not self-expressive.

Further, I interviewed them early in the journey, and the experience was viewed as a dynamic developing process. The guide explained that he hoped—though he did not know—that the youth was gaining a sense of self-worth through the experience: “I am proud of him,” he



said. “I just hope he is proud of himself.” Shame for his delinquency, then, is integral to the full experience of the new Camino community. A youth of that age and life experience would conceivably be deeply affected by the contrast between his home lifestyle and the lifestyle of the Camino—perhaps it would be the first time that youth realized that there were viable alternative outlets for his youthful energy than delinquent behavior.

Another program operating out of Belgium has required pilgrims to blog about their experience during and after completion. These blogs are recorded in a recently published book that reflects on the past 30 years of penal pilgrimage to Santiago. The youths’ self-expressions indicate a critical distance from previous tendencies of criminality and convey a degree of shame and redemption. Each pilgrim’s commentary reveals details about their experience of penal pilgrimage and reflects the extent to which they are able to express remorse.

In a similar vein, Alana—from Bruges, Belgium—walked the Camino through the Oikoten program when she was 17. (See blog in original Dutch at [http://www.alba.be/30jaaroikoten\\_boek.php](http://www.alba.be/30jaaroikoten_boek.php)). Alana’s reflections touch on several important themes: the importance of family and kin, awareness of one’s past personality maladjustments, and the novelty of the Camino environment. Alana emphasizes the impact she realized he was having on her family by her crimes, and was able to identify that her grandparents wanted the best for her, and yet she had been dishonoring their affection for her. She shows what appears to be genuine remorse for the way she acted in relation to their support, and reflected on how the Camino experience was definitive in that it was something that her family had invested in as a possible solution to Alana’s criminality. Walking, then, was a non-verbal self-expression of compliance and contrition with her family’s and her community’s best wishes for her redemption.

Another pilgrim named Michael traveled in 2007 to Santiago. Michael's self-reflective capacity is substantially evident. He reflects on small tendencies of delinquency as well as the beliefs on which he acted—that in the absence of freedom, he had the tendency to abide by his own rules. He recognizes now, however, that there were consequences to those actions, and that his behavior was “not proper.” If Michael had remained in conditions of educational or punitive confinement, it is likely that he would have found it more difficult to gain this measured perspective on his behavior. The experience of freedom and agency that the Camino provided was a point of reference that aided in his progress away from delinquent behavior. Indeed, it seemed to at once shame him for his actions and reveal that he needed to find conditions in life in which he could have agency and freedom.

These expressions are archetypical of a certain therapeutic script: a troubled past, introspection by way of a challenging experience, the recognition of shame for that troubled past, and the claiming of the *newfound self*. Indeed this therapeutic script pervades throughout reintegrative justice experiences at all three of my sites, indicating that perhaps a therapeutic culture is being activated through shaming rituals. Specifically, the ritual of self-expression necessitates a push towards deeper self-awareness, which is an important element of reintegration.

*California**Juvenile RJ Program*

In the program this community representative works with, offenders admit responsibility during the shaming ritual of apology at the restorative justice session. Most offenders have received the rough equivalent of suspended sentences—they have been formally adjudicated as guilty by a district court judge, but their sentence is handed over to the restorative justice agency for another adjudication process.

This adjudication process involves negotiating shame on an individual level, and then negotiating a plan for restoring the harm done to the community. Prior to the official mediation session, however, the offender first meets with the facilitator for as many as 4-6 hours over two meetings prior to the circle conference with the victim and support persons. These meetings represent pre-shaming rituals, which may be somewhat akin to Van Gennep's "pre-liminal rites," though his suppositions of the complete suspension of existing social structures for a ritual state of *communitas* do not hold true for the shaming rituals that follow these pre-shaming rites (Van Gennep). Still, Van Gennep's theory about the preparation, execution, and aftermath of rites of passage helps us understand these shaming rituals as three-part processes.

These preparation meetings ready the offender to see the critical steps in taking responsibility for their action. They must not blame it on the community's environment. They must not be concerned with the items stolen or the monetary damage they caused, but the more abstract bonds of trust that they severed with their crime. One facilitator in California explains this in terms of preparation for the victim's and offender's shared rite of apology and acceptance of responsibility:

So he was...he wanted to have the conversation about the *thing*; about the stuff and about the value of the car. And he didn't see the conversation about trust. That it was a violation of trust. And that was the issue. So in our whatever 4, 5, 6 hours of prep it's my job to kind of pull that out and be like, "well have you thought about it this way?" And you know with different kids the issues are different. ...with these kinds of harms...a lot of it has to do with trust. ...and that's what we call prep. We're prepping the kids so that when we do bring the victim and the youth together they're already somewhat on the same page.

After these rites of preparation, the offender encounters another element of symbolic ritual shaming by simply being in the presence of their victim.

Coming face-to-face with the individual against whom one offended in an intimate setting is a rare experience in retributive justice. Initial emotional and physical tension gives way to a peak emotional moment when the offender makes a sincere apology to the victim. Preparing every party for the emotional dynamics of these meetings is a critical function of the facilitator that takes place during pre-ritual meetings with the victim and the offender. The victim-offender mediation session can often swell with emotion, and the facilitator must call a break to ease the intensity. This ritual process is a concerted effort by facilitators to serve the needs of the victims as well as the community to release sincere expressions of the impact that a crime had. One facilitator describes a serious case of sexual assault that culminated in an emotional—quite ritualistic—apology:

The sexual assault case I had; she had to face him right here. She was sitting where you are and he was sitting where I am at. And he explained to her—“I’m sorry.” And you could tell,...after she spoke, and said what she felt and ‘how you affected me’—she just, it just lifted her. So it’s very very important for her to do that. It was she was a different person...just a different person. And very emotional.

An apology at its sincerest is a complete and unequivocal, if only momentary, subjection to the shame that the offender bears in relation to their victim. At this moment in the ritual, the offender does not apologize with a written statement or a kind gesture, but a verbal and literal expression of guilt and remorse. This is perhaps where the somatic experience of shame is at its most acute—the offender is just feet away from the victim and their family or support persons, along with members of their community and the police department. The offender is looking directly at their victim as everyone else in the room looks directly at them.

In order to ensure that the circle process is dialogical, not didactic, the offender is also given a voice to tell their story of their crime as they saw it, with supporting persons at their side. This is as much a practice in shaming as any other ritual in the circle process. These self-expressions are structured such that nobody can intervene to tell the story for the offender. It is a purely independent articulation of their shame—their crimes have been publicly identified, and by articulating them and stating a sincere apology, the offender is embodying the shame those transgressions have brought them. There is no buffer zone or exoneration from the shame that they experience here as a conspicuous object of their community’s disapproving attention. This is

an experience that many of these individuals have never had. It is not a negotiation of blame, but a relation of the events as they recall them, regulated by the knowledge that any statement will be scrutinized not as a testimony, but as a measure of personal credibility, measured against the victim's word.

When offenders tell their stories, they do not seek to exonerate themselves, as their guilt has already been negotiated by the guilty plea they must enter prior to the circle court. They are, however, communicating how the community might be able to help them:

By someone telling their story...it kind of creates a safe place for you to expose yourself...we're all here and I'm gonna tell my story...I'm gonna bleed from the heart. And it doesn't always happen but the opposing side will do the same thing and open up and just. And then they'll [tell] where they've come from and how they've gotten to be into drugs or into the gang. [...] And then it all turns around, like "well what can we do as a community to support you being that you've come from foster care and you've bounced around."

Following these stories, the offender can transform into an object of support from the community. It behooves the community to invest in the youth offender as a valued member of society to prevent future crime. Under the most ideal of circumstances, the offender undergoes the shaming ritual that internalizes responsibility for the crime, and then turns to rituals of reintegration, whereby they must articulate the positive contributions they can make to the community.

Just as they identify, articulate, and embody the shame, they must identify, articulate, and embody their worth to the community through writing their plan of restoration. This plan includes goals conceived by the offender that situate them as a productive member of society based on their unique interests, such as playing basketball for the school team, achieving better grades, or earning an honest wage. One of the facilitators explains these plans:

They have to come up with a plan and they meet 4 goals—doing right by themselves, doing right by their family—because they affect family as well—and doing right by victim. . . .sometimes victims just want an apology, and they're there in the room giving the apology and that's one thing off their plan.

Plans are designed for achievability and efficiency so long as the offender is willing to comply fully and invest in the project. Facilitators bear the right to send the case back to the district attorney at any point if the offender does not show contrition.

### *Jail Program*

In the jail program in California, offenders are similarly prepared for shaming rituals that ultimately involve self-expression, but the ritual functions slightly differently. Offenders do not plead guilty, but rather acknowledge their violent tendencies prior to any other activity in the program. This is a pre-ritual activity that prepares the offender for shaming rather than for negotiating their blame—i.e. attributing their crime to community conditions or to others'

violations. It introduces them to the therapeutic culture of the ritual process which they may have never truly experienced: participants speak honestly and listen with respect.

Inmates' self-expression—the narrating the sequence of events, decisions, feelings, and beliefs that led to the offender's crime—is the most important ritual in the circle rehabilitation process. The offender must do this activity without representation from a lawyer, a partner, a friend, or even the facilitator. The offender sits facing the circle with his back to a chalkboard and a fellow inmate records every relevant piece of the offender's story, so that both the offender and the rest of the circle can reflect on what led to the crime. The richness of detail that the offender presents effectively subdivides his crime into a progressive series of smaller transgressions of belief and decision-making. By enumerating each consecutive misjudgment or deviant action, the offender is subjected to public scrutiny for more accounts than he will be legally tried for. Instead of a legally argued guilty plea on a unifying criminal account, the offender takes responsibility for the incremental decisions he made during a crime, which facilitates self-critique rather than self-defense, especially without the potential of incrimination. By accepting responsibility for each violent decision and understanding ways in which alternatives to each action could forestall future violent crimes, the offender is given the tools to make incremental behavioral edits rather than a mandatory minimum of inactive incapacitation.

Self-expression in this setting is a potent shaming ritual. The offender is the object of the entire group's attention, and is compelled to remember events from a time when their resolve was weakest and their vices were at their strongest. The group's silence or respectful interjections are regulated additions to the ritual, forcing the offender to piece together a complete narrative of the event and the agency that they had in choosing to commit it. Self-expression can lead to what



one of the facilitators calls the “two foot drop” from intellectual to somatic—the experience of internalizing and embodying the shame one feels for a crime they committed with their own agency:

...there’s an exercise that men do in [Program] where they have to speak on their own truths about what they did to somebody. ...before that happens, they can know the curriculum backward and forward intellectually, but it hasn’t dropped. They haven’t taken that drop into their heart yet...They know the definition of it but they don’t know how to apply it in their life and what it means. And so once they do an exercise, and they can do an exercise at 4 weeks, they can do an exercise at 16 weeks, they can do an exercise at 25 weeks...it all depends on if they’re doing the work for themselves.

The facilitator’s comment about “doing the work” is that of self-expression, which in turn can lead to self-awareness. The facilitator continues:

Once they do the work for themselves, they have an understanding of how it’s built in, and how all those things that they learn on the board from other people, actually it starts to affect them. And they have a better understanding of ‘oh shit man those are all my beliefs?’ ...and they actually get to see them; their beliefs on the board...So they’re talking about their own personal truths, about how they violated somebody, that’s when they have an understanding of why their belief system...is a set-up to get them to violate other people.

The “belief system” of the men—and perhaps in a Rieffian (1987) sense, the culture they originally occupy—is often counter-therapeutic prior to beginning the program. Indeed their violence was at once impulsive and shaped by a culture that permits it (Rieff 1987). So they must learn to follow rules of *therapeutic* process and interactions during the course of the jail program.

### *Australia*

The circle sentencing process in New South Wales also emphasizes self-expression in their shaming rituals. One magistrate claims that relative to conventional Australian courts they’ve served on, “there’s a greater emphasis [in circle courts] in terms of potentially shaming the defendant for his actions and making him accountable.” Offenders are prepared to speak on their own behalf in the circle after entering a guilty plea and agreeing to the facts of the case as presented by the Project Officer and approved by the Magistrate. Their legal representation is only allotted a short statement in defense of their client. Offenders are not invited to defend their innocence, but rather to dialogue with their community and the victim frankly about their crime.

The victim’s statement and the Elders’ responses can dialogue with what the offender says. The offender speaks to a panel of Elders present, to the Magistrate and Project Officer, and to the victim if they choose to appear, along with their support person. The offender’s story is measured alongside the victim’s story if they choose to appear. Indeed, my interviewees noted that the circle is more powerful if the victim appears. The extemporaneity of the sentencing deliberations—that is, a singular discussion by the Elders inside the circle, or during a short

recess period of no more than 20 to 30 minutes—makes it vital that the offender presents what at least appears to be sincere regret and shame at face value. Good verbal skills are advantageous.

How do Elders, and we as inquirers into this ritual, assess the honesty and integrity of offenders' verbal and physical addresses of shame in circle court? Offenders' self-expression of shame is a subjective exercise—that is, sharing one's personal memories and thoughts about a crime, and being subjected to the scrutiny of one's community. Indeed nobody but the offender could know those details. The ritual of exposing those subjective truths is a powerful ritual of shaming and self-analysis, and yet one that is only regulated by the personal connections embedded in the circle court structure. There are several factors that can indicate the credibility of an offender's or Elder's orations.

Elders are vetted by Aboriginal Project Officers for their personality dispositions, and if they break character without an intended shaming effect, the Project Officer will address them for not being honest. In contrast to the California jail setting where no official legal authorities were present in the circle, in Australia there *are* legally-empowered auditors in the room: the Elders and Magistrate have the power to apply sentences according to what the offender says in the circle. In fact, without the traditional buffers of a lawyer, the offender is seriously vulnerable to incriminating himself if he fails to win over the Elder panel.

Goffman's offerings on "Face-work" help us understand how we might interpret genuine shame expression. In his volume, *Interaction Ritual*—a collection of his theory on the rituals of social interactions—he explains "face" as,

...the positive social value a person effectively claims for himself... an image of self delineated in terms of approved social attributes...A person tends to experience an immediate emotional response to the face which is a contact with others allows him (1967: 6).

It behooves the offender to present a “face” that befits the shame they are supposed to feel during the shaming ritual. All participants must present themselves in ways that are socially approved by the therapeutic culture that is institutionalized in reintegrative justice programs. The programs are therapeutic “systems of order” and community representatives are representatives of that therapeutic culture (Rieff 1987). Specifically, offenders must use the shaming ritual of self-expression to indicate that they’ve achieved some self-awareness, such that they please the powerful community representatives who will sentence them, which is a symbolic step towards ingratiation with the community once again. If an offender presents themselves without contrition and remorse, they are deemed unprepared to reenter the community without serious intervention sentences, such as time in a men’s reform camp or lengthened jail time.

The emotional dynamics of these expressions are clearly complex, and deserve more careful analysis. But suffice it to say that for their part, offenders are obliged to express themselves in far more active and emotionally vulnerable ways than in conventional Australian courts. This is a learning process wrapped up in ideas of therapeutic culture—offenders must learn how to speak and listen sincerely in order to be accepted into the therapeutic culture surrounding these Embedding Justice rituals.

*Dominant Themes Across Cases**Gender*

The facilitators in the California jail program discuss how cultural norms of patriarchy often put men in a position where they feel impelled to defend their belief system as a man. Men—especially those who commit violent crimes—can become consumed in a *gendered culture* in which defending one's dignity and *machismo* pride can be a violent affair. The circle seeks to reflect on that detrimental culture and suppose a new one—one that familiarizes each participant with alternatives to blame, rage, and domination. The justice ritual becomes a microcosmic experience of this new culture, complete with a vocabulary and structures that I will discuss later that may help offenders supplant a culture of conflict and violence with a therapeutic culture of expressing and listening. This culture must be learned by these men, and thus must be taught, which evinces the interplay between inherent cultural understandings and learned cultural understandings in shaming rituals. This program uses a peer education model, which in itself *symbolizes* the non-hierarchy content it espouses.

In the absence of a victim, self-expression also becomes a therapeutic exercise in intellectually and emotionally engaging with the perspective of the victim. Taking accountability means feeling shame for what the offender's crime did to the victim: "So they're talking about their own personal truths, about how they violated somebody, that's when they have an understanding of why their belief system...their belief system is a set-up to get them to violate other people."

The men identify the belief system they hold as individuals, and as men, which might cause them to subordinate others to compensate for their own insecurity in moments of "fatal

peril.” Self-expression is critical to recognizing that this masculine-dominant belief system—which comes from a *culture* of violence—is pernicious and can be substituted for a therapeutic belief system from a constructed therapeutic culture in the jail program. Self-expression is a ritual of helping the men internalize this new cultural belief system as a new mode of action—a belief system that is portable for the remainder of the inmates’ lives.

In addition to reinforcing therapeutic behavioral orientations toward others, inmate self-expression is a critical step to recognizing the converse—how an inmate’s behavior enables others to treat that inmate with violence and coercion. One of the facilitators in the program remarked:

[Offenders learn] how he set himself up to be violated by somebody else... Because from that platform, I can blame all kinds of people, but once I...put myself in that [victim’s] role, it gives them the opportunity to take a look at this like “wow, man, I really didn’t realize that I was doing that. And once I realize that there are tools in that moment, then they can teach that to other people because they’ve experienced it.

Men in the program become peer-educators to one another, and can even graduate to be facilitators themselves. So the program is perhaps a rite of passage—a clear path to recognizing the skills through which these offenders can be positively reintegrated into society. Just as they once learned how to act upon cultures and impulses of violence, they are educated in a new therapeutic culture that espouses non-violence.

In ways very similar to the circle in the California jail, where male offenders verbally articulated the details of their crime in an effort to become self-aware of their flawed violent belief systems, so too did Aboriginal male offenders identify their shame concerning criminal behavior. The offender cannot complacently allow a lawyer to claim their shame—the offender must claim it himself. A community representative I interviewed in Australia explained that self-expression especially potent for Aboriginal males—or “fellows”:

The shaming thing about circle is a big thing for aboriginal fellows. They hate it—you know, having everything directed at them. Because I think we spoke earlier—the fact that in the local court, they sit behind their legal representative and look at his backside while he’s talking to a white man up there in black dress. And they walk out of court thinking “What just happened in there?” [When] they go down to the circle court, it’s really important for everything to be correct about it.

Notice the specific references to the race and dress of the Magistrate: “white man up there in black dress.” Surely, there are perceptions of status and identity attached to race, gender, and dress. But can we assume that there exists a distinctly male complex—a belief system—within Aboriginal culture that predisposes men to be more unwilling to admit shame?

One assumption would be that a subculture of violence exists among Aboriginal men, especially. Subcultural explanations from criminality have largely been proven inadequate in American contexts, but Audrey Bolger (1991) and others explain that indeed, Aboriginal men seem to suffer from complexes of cultural subjugation from colonial history in Australia which

might dispose them towards violent crime. Bolger remarks that the social stress among Aboriginals of both genders stems from “dispossession and exploitation [lead] to cultural breakdown, dislocation, alienation, and poverty. (44). Men, Bolger says, suffered more because of the eradication of their gendered social roles: “[the] annexation of land and cultural breakdown led to loss of economic, social, and ritual roles and resulted in destruction of their self-esteem” (44). “Women,” she says, “were better off...[the] mothering role was left intact leaving them with a source of pride” (44). This socio-cultural explanation posits that indeed, a gendered *cultural* disposition may contribute to male violent action: “The explanation lies in men’s belief that they have the right to control women” (Bolger 1991: 43).

This belief system seems to be comparable to the California inmates’ violent male belief system that the therapeutic culture of the jail program sought to subvert. One facilitator remarks:

...the old patriarchal way of relating to people has to do with how we assert sort of our superiority over folks, right? Like our intellectual superiority, our physical superiority, our gender superiority, whatever it is. It’s always a very competitive relationship it’s very competitive how we’re brought up as men.

Perhaps the same belief system that contributes to male violence makes male offenders less willing to admit shame for that crime, because admitting shame would mean admitting what the offender deemed a culturally-permissible criminal activity. But this seems to be a flawed conclusion. Again, subcultural explanations for crime probe dangerous territory, and what is more evident in my interviewees remarks is not that Aboriginal men are inherently more



disposed to violent crime, but more disposed to resist expressing shame for that crime. By using the ritual of self-expression, cultural Elders are able to reinforce that Aboriginal culture did not cause the individual's crime—the individual is solely responsible.

Here, self-expression rituals reinforce self-awareness of the *personal* belief systems that may cause crime, and simultaneously reinforce awareness of Aboriginal cultural values which denounce violence and crime. In addition, the *process* of expressing shame in one's own words supplants a *cultural* disposition of blame and reactivity with the therapeutic culture of the circle, that of open and sincere *communication*. The Aboriginal male who expresses shame recites a cultural script reinforced by symbolic Aboriginal male kin actors like fathers and grandfathers, as I discussed in previous sections. That script would dictate to a young male offender, in the words of an Elder I interviewed, that "His father never bashed his mother up. His father always treated his mother with respect, same as his daughter."

When considering distinctly male expressions of shame, it is important to consider where shame may push the boundaries of productivity, and venture into the dangerous territory of shame rage spirals. The following section addresses these concerns for self-expression rituals at all my sites.

### *Response to Self-Expression: Dangers and Opportunities*

Once the offender has expressed shame during the ritual, the circle's response during that same ritual event is critical. If the offender's expression of guilt prompts a response from the circle amounting to a humiliation ritual, the offender faces immediate danger of entering what Braithwaite (2000) calls the "shame-rage spiral," citing earlier work from Sheff and Retzinger.

He writes: “Rage both recalls and transforms the experience of humiliation. Righteous indignation is the stepping stone from humiliation to rage. What I seek...is the alternative—the repentance ritual as the stepping stone from shame to restoration of peace, dignity, and damaged social bonds” (116). The question then becomes: where does repentance end and humiliation begin (116)?

Braithwaite (2000) explains that the offender must treat the ritual as an exercise in personal self-worth:

How do human beings spin out of these [shame-rage] spirals? According to Scheff and Retzinger, they do this by acknowledging shame to themselves (thereby taking a crucial step toward self-respect) and to others (thereby engendering interpersonal respect and restoring damaged social bonds). Deeper descent into shame-rage spirals is likely unless we can bring repentance rituals into play which will transform unacknowledged shame into restorative acknowledged shame (117).

What is critical here is Braithwaite’s identification of the offender’s acknowledgement, or self-expression, of responsibility. Verbal articulation of shame is both an exercise in and a litmus test of self-awareness. The verbal expression of shame also disarms any attempts to further humiliate or guilt the offender that might subvert the offender’s agency in taking ownership for their actions themselves.

Instead of incurring negative responses of blame and vitriol by expressing defense of their actions, offenders in circle courts can use ritual expressions of shame to present a positive

“face,” such that the circle responds positively and reinforces the offender’s self-reflective behavior. Braithwaite (2000) explains that these shaming rituals must be “reintegrative” to have a positive impact (119). For instance, in Maori traditions, “the shame of letting the family down can be terminated through expressions of forgiveness by the family, reciprocated by gestures of repentance by the offender” (119). What takes place here is a reintegrative transaction that restores the offender’s place within the family or community.

The ritual of self-expression of one’s shame is accompanied by the expression of one’s value to society. These are not two separate processes; rather, to express shame for violating against one’s community is to express and acknowledge that one *is a valued part* of that community. Thus the *shaming* ritual is at once a *reintegrative* ritual—a rite of passage back into the community. Offenders in the California juvenile restorative justice program had to identify their value to society in a *plan* to restore the harm they caused. In Australia, one Elder mentioned that despite being shameful, the offender must not bring further shame on themselves by disrespecting their Elders and thus disrespecting their Aboriginal heritage:

I said [to the offender], “you can be ashamed but don’t you ever look at my feet. Look at my face. Hold your head up.” I said “by you looking at my feet you’re showing me disrespect.” I said... “I can never be ashamed of you. I still love you. I can be sorry for what you did. And angry with you. I could [want to] screw your neck. But don’t ever think that I don’t love you.”

Perhaps the emphasis through these shaming rituals on cultural and familial *belonging* combats what Durkheim (1912) would call “anomie”—the loss of moral guidance and meaningful social bonds of belonging, which can contribute to suicide or crime. If an offender could be shamed for being “deviating” against cultural norms, but at once reintegrated into that cultural fold, then their feelings of *anomie* could be forestalled and future crime prevented.

Shaming rituals are structured activities. They are rehearsed and calibrated to facilitate the most effective outcomes of ritual shaming—that is, reintegration into a cultural community. Further, these structures are embedded in—derived from—existing cultural models. However, other structures are *learned* from the ritual process, such that participants can reproduce those structures in their everyday lives. They can *embed* them in their everyday rituals of, for example, honest self-expression or child discipline. So all of my sites employed *structures* of shaming and reintegration rituals in order to facilitate a successful shaming ritual.

### RITUAL MECHANISM III: STRUCTURES OF JUSTICE RITUAL

All of the justice sites I studied share a set of structures that enable shaming rituals to occur. Some structures are culturally embedded—that is, specific to that culture and commonly understood by its members. Other structures are learned throughout the rituals of shaming, thus embedding therapeutic cultural processes like open dialogue and non-hierarchy in each participants' experiential memory so that they can use them in everyday life.

Needless to say, each cultural context is different; yet the sites share two important categories of structure: (1) circular/non-hierarchical structures of (a) dialogue, (b) space, and (c) itinerary as well as (2) structured vocabularies.

#### *Structure 1: Circularity and Non-Hierarchy*

The circle, which is a critical feature in the shaming rituals at all three of my justice sites, is perhaps what Community Justice (CJ) scholars would call a “micro-community”: it is structured with the orientations of a therapeutic culture and created to *train* offenders and victims in the interactions of a healthy, cohesive community (Karp and Clear 2003: 13). Circle justice structures *create* the physical space that reproduces the community's cultural values, vocabularies, dialogical processes, and desired reintegration outcomes in a small, controlled environment. Further, circles equalize space relations such that hierarchies are upended and dialogue can take place on equal footing—or equal seating. The following are elements of these circular structures—space, discourse, and itinerary.

*Physical Circularity: Combatting Hierarchy and Fostering “Intimacy”*

The circle is a morphological structure that is evident at all three of my sites, involving dynamic movement, orientation of chairs, positioning of bodies, and shared space. These elements facilitate vital components of ritual shaming and reintegration. It allows each participant to be seen and heard at all times. It establishes a symbolic feeling of continuity and connection among all members of the circle, inculcating each participant with the elementary symbology of sharing and communality.

In the California jail program this *structure is learned*—discussion of space is part of the curriculum, because it is a mode of action that does not come naturally to these inmates. Discussion of space is part of the *discourse*, and part of the *vocabulary* of the group, which by no coincidence are other types of structure that contribute to the inmates’ ritual experience.

In the California jail project, the circle is structured such that every member is seated at the same level, but ordered clockwise from least experienced to most experienced. One facilitator in the California jail program explains that they operate on this “peer education model” in order to reject the “hierarchy of information” model in which an offender might receive rehabilitative instruction from an experienced professional:

...[In] the old systems of learning you had a teacher in the front of the classroom and kids sitting in rows...the smartest kids in the front, the dumbest kids so to speak in the back, right?...the way to undo that we believe is just to...you somaticize it...you actually physicalize it, you sit in a circle rather than in rows. The facilitator sometimes is

outside the group right? And the men are basically sharing the information with one another and they're drawing from the wisdom of the group and sometimes you know people learn at different paces and sometimes somebody that's been in the group for 6 weeks might actually have more of a knack for articulating concepts than somebody that's been in the group for 32 weeks, right? So that sort of circle, that sort of circular way that information is disseminated sort of takes care of that.

Ritual space is critical to fostering immediate intimacy between participants in the circle, such that each can intimate with those sitting next to him, and experience coinciding progress towards shared shame and reintegration. In their previous states of criminality, many violent offenders in the California jail pod likely interacted with others in physically dis-equalizing ways: their violence responded to physical weakness of another, or conversely, they acted violently upon feelings of inferiority and fear. The leveling effect of the circle—the arrangement of chairs on a level surface such that every man is looking and speaking on the same level to one another—is a physical experience of non-hierarchical structure that each individual can internalize and communicate to their daily lives. One facilitator explains this process:

So even when that guy goes home and he might forget the words on the board about the curriculum, but he hasn't forgotten what intimacy feels like in his body. So it's a real experience about treating his kids in a way that's nurturing and loving. And we'll still be standing up, and when I say standing up, we'll be towering over my kid, you know I'm aware of space; if I wanna convey a message, man, I get on my knees and I equalize

myself first in space, and I notice my tone, and I give him that experience. This respondent goes on to describe how an offender might now interact with his son—by kneeling down and minimizing the hierarchical nature of their interaction, just as they do in circle. The intimate negative impact of crime on a community can be turned around to become a vehicle for behavioral change.

The non-hierarchical circular seating structure is a significant point of departure from conventional tiered courtrooms with an elevated Judge, a witness stand and lower tiers of litigants. Indeed the physical layout of the circle was a teaching module in itself—showing what non-hierarchy *looks* and *feels* like. More experienced members of the circle sit on one end and help lead the discussion for less experienced members, who are often younger and less willing to offer insights. A program facilitator comments that speaking and being “in community” in the circle entails that participants understand this structure physically—participants are seated in order of their time of participation in the circle:

The guys know what the agenda is because we sit in [accordance with] the number of weeks [spent in the circle]. So the senior men are asking questions to the guys in the middle. The middle guys are answering them and giving it to the new guys. So it's a... it's a cohesiveness that happens in the class.

With this morphological structure in place to catalyze circularity and peer education, facilitators note that they intend not to intervene in the flow of conversation unless it becomes necessary to



redirect the conversation back to an important theme. This “hands-off” approach can empower participants to be agents in their own self-reflection and interpersonal engagement:

Circular structures at my sites are cultural symbols that represent therapeutic processes in general—those settings of mutual care and attention found in 12 step processes like Alcoholics Anonymous, anger management circles or trauma support groups. Indeed the physical structure of the circle is at once functional and symbolic. Circular seating arrangements are conducive to seeing and being seen, of speaking and listening with equal sincerity and attention to detail. It is unacceptable, if not impossible, to pass judgment or *offer* criticism without also *receiving* it. So there is a pervasive dynamic exchange, mutuality, or perhaps transaction of care that occurs within the circle. No one person has one role, but is rather the therapist and the recipient of therapy at once. The outcome, if successful, is the facilitation of self-reflection and self-awareness, in addition to feeling like one *belongs* to some immediate community in circle. While these structures of space are *learned* in the California jail program, they come more naturally to Aboriginals in Australia, who have identified with the Indigenous symbology of the circle model by imitating Canadian Indigenous circle courts.

At my Australia site, all participants are seated at the same level in the same chairs, unlike traditional courtrooms, where the judge is seated above everyone else in a conspicuous leather-bound chair and gaudy robes. In circle courts, each person is literally surrounded by peers on an equal level, lending immediate feelings of physical support. When they speak, the physical positioning of the other members facilitates eye contact, which lends the sensation of rapt attention. Yet the individual is not placed in a physically isolating position as they speak: they are

not on a podium, but simply a *part* of the physical circle. This perhaps makes it easier to speak openly and honestly.

Recall the Yale Law study by Chase and Thong (2013) about how “august apparel” of judges and other structures of traditional justice rituals can increase perceptions of “respectfulness, attentiveness, knowledge...the understanding of the decision maker, and the dignity of the setting” (229). To Western-minded observer, it would seem heretical to upend these structures of court formality and substitute a largely pomp-less circle of chairs and a dress code of street clothes, as with circle structures at my sites. But actors dismissed the “august” court setting in favor of one that equalized the landscape of justice actors such that each participant had a role, but no one was more important than the other.

### *Dialogical Circularity*

Conversational empowerment “in community”—that is, on a non-hierarchical and dialogical order—becomes a piece of vocabulary, a therapeutic cultural tool and a structure in its own right. Circularity and peer education is a not only a physical structure, but a learned dialogical structure—a transferrable method, or structure, of interaction common to therapeutic models in general—which participants can actualize outside the circle for other purposes. The dialogical structure is, then, a therapeutic cultural tool much like ritual self-expression and symbolic actors. Participants are immediately and unavoidably visible to all participants based on the seating structure, and active participation is the norm. One does not spectate or judge from afar, but is instead vocally involved and accountable to the integrity of the circle. One does not give statements, but engages in a conversation. In fact, in California, the rules disallow the

direct dealing of advice: one facilitator notes in an interview with me that there are “guidelines around not advising, and not coming from the place of a teacher, [and that] applies more to the interpersonal work that we do with each other, right?” What occurs, he says, is “what we call a ‘discussion.’”

Another facilitator in the California jail program says that the circular dialogue structure is a curriculum in itself—a learned dialogical form. “It’s a curriculum; it’s a construct; you get people to memorize the jargon and the concepts and all that.” Offenders may have experience with ideas of what sincere dialogue means, but they have perhaps never been physically immersed in a therapeutic culture as intentional and intensive as in the jail setting. According to one California facilitator, these “concepts” are “basically a theoretical construct about our analysis of violence; where we believe it comes from; how we believe it’s perpetuated...” And once again, these concepts are taught on a peer-to-peer basis: “...information is disseminated starting with the most experienced men; we work with the more intermediate men to teach the newer guys.” It affects the flow of information, allowing the conversation to pass around the circle dynamically to each consecutive person.

As a learned process, this dialogical structure can become meaningful in how participants interact with facilitators years down the road when they encounter them in their neighborhoods; it can change the way participants interact with their partners or children. And this process is *gendered*, which factors into how justice rituals are done in dialogical circle settings, as is discussed later in other sections. One facilitator in California explains how guidelines of interaction and dialogical, respectful “feedback” accessed an archetype of relational superiority among males:

I was connecting more with personal feedback, like interpersonal work that men do with each other. And in that way we...we have these really tight guidelines around that, right? Like how you relate to people, like the old patriarchal way of relating to people has to do with how we assert sort of our superiority over folks, right?

This quote, part of which was included earlier in reference to gender roles in the program in general, explains how patriarchal and male dominance/superiority complexes are shunned by the dialogical therapeutic structure of the violent offender rehabilitation circle in California. The therapeutic modes of expression the men learn expand to and infiltrate interpersonal relationships outside the circle and in the community. And this dichotomy evidenced between offenders' formerly retributive but progressively restorative behavior in circle is part of a larger dichotomy between restorative circle settings and adversarial court settings.

Indeed multi-way discourse between victims, offenders, community members, and judges is a defining characteristic of justice processes at all three sites. A magistrate in Australia explains that the circle court gives them more of a chance to speak directly with an offender:

I don't get much dialogue in the open court with the defendant. Because between me and the defendant is the solicitors and the barristers, right? And if anything they're telling the defendants to shut up not to say things to me [...] In terms of sentencing I then talk to the defendant directly, but that's not a conversation, that's me telling them what's going to happen...in the circle court all of the defendants are equal.

Discourse at the dialogical level—that of stories, open exchanges, and honest explanations—can be effective for shaming, and perhaps more emotionally potent than exchanging conventional court submissions.

A restorative juvenile justice official I interviewed in California explains that payback, revenge, or retribution in western court arrangements is often misguided and ineffective. She explains that instead of handing down a sentence that avenges the victim, many victims prefer to tell stories—to engage in dialogue—about their experience to prevent future such crimes:

Yeah it was a bad mistake and we can't...I mean we can't go back, so there's no point in trying to, like, make you pay for it for the rest of your life, because that's not gonna bring their child back. And I've heard from a lot of women who are doing this Restorative Justice who have lost their child, and this is their way of giving back, you know, to tell their story.

Here, the respondent explains how her procedures emphasize existing affinity ties an offender has to family members and maximize the perceived emotional detriment that a crime would bring to that relationship. The dialogical structure of the circle that facilitates the invocation of mothers in court discussions, which connects with my earlier discussion of gendered rituals with family and kin actors that are embedded in justice experiences.

Again, the structures of dialogue here are part of a cultural “tool kit” of a larger therapeutic culture which participants are intended to internalize—that is, “habits, skills, and

styles” which form “strategies of action” in the daily lives of participants (Swidler 1986: 273). One of my respondents—a program official who works with families of incarcerated parents at my California site—explains that their practitioners avoid a process called “labeling.” Labeling is a common term in criminological parlance, referring to reputation-defining processes that contribute to a self-fulfilling cycle of, for instance, incarceration for multiple generations of a family. They avoid using language like the “school-to-prison pipeline” when interacting with youth, because they deem parental incarceration to carry a negative stereotype: “...some volunteers will assume, “oh the parent’s incarcerated so the child must think they’re a bad person.”” To a similar end, another California respondent who practices restorative justice with juveniles explains, “We’re not here to judge, we’re not here to place a label on you, we’re not here to say ‘that’s what you get.’” The vocabulary used here largely mirrors the explanations given by facilitators of the offender rehabilitation circles in California—that one does not seek to judge or give advice in the circle.

This can play an important part in making the shame reintegrative, not disintegrative, according to Braithwaite’s assessments of stigmatization:

[Shame] happens through a natural process of dialogue. Attempts to orchestrate shaming are not respectful and are likely to denigrate quickly into stigmatization. Orchestrated shaming is like orchestrated punishment in that it crushes dignity through humiliation (2000: 120)

It appears here that Braithwaite warns against the orchestration of shaming rituals in general, which would undercut my argument about structure. However, by structuring the circle such hierarchy is abolished and dialogue is open, these programs are *orchestrating to avoid* stigmatization. An entirely structureless setting would allow for individuals to dominate discussion, give advice, pass open judgement without constructive purpose, and so on. These would be unstructured stigmatizing activities, which may be just as “disintegrating” as structured stigmatizing activities evident in conventional court settings.

In terms of physicalizing the experience of dialogue and justice spaces, the Camino stands out. While the trail is distinct among the three sites in that it doesn't have a stationary setting where rituals can happen each day, there are dynamic, shared spaces of mutuality embedded in the everyday experience of walking in community. Meals are shared around tables. Private spaces like showers and bedrooms are made public and hierarchies of class and seniority are equalized. Conversation circles emerge extemporaneously at water stops when weary pilgrims share a snack or fill up bottles. Days operate on simple, shared cycles from sun-up to sun-down, in which few are truly distinguished for being objectively superior pilgrims. The Camino, in some ways, maintains an unstratified social structure.

#### *Circularity in Sentencing Itinerary: Structuring a “Micro-Community”*

Circle structures make every effort to combat hierarchy and facilitate intimacy, which is derived from the items on the itinerary of each circle session or even on pilgrimage: storytelling, circuitously opening and closing remarks from Magistrates and around-the-horn Elder dialogue.

Indeed the itinerary used in these justice circles is comparable with therapeutic support

groups of all functions . First, the offender’s charges are read by conventional authorities, which gives representation to Western retributive systems of legal authority. One project official explains:

We love to have a law enforcement or a DA in the room during the conference to give them a better feel of what could have really happened if it didn’t go through restorative justice. “Your charges is 5531 and 243-5a...you know, whatever the case is. And if this didn’t go through restorative justice, you would have been in jail for three years had been on probation for about six months, [with a] monitor.

Once shaming by symbolic representatives of Western authority is complete, the itinerary moves on to the next item: storytelling by the victim. Here, open forms of story sharing are activated and shame is communicated on a very personal level. The next item is self-expression by offenders. Here offenders verbally and openly address their shame to a small community: a “micro-community,” as Karp and Clear might call it (2003: 13). By opening up to this small community, the offender is receiving somewhat of a virtual, small-scale, experience of confession and forgiveness, or *shaming* and *reintegration*. The next item on the itinerary is dialogue-based shaming statements from the community representatives in the room. This feedback mirrors more informal feedback an offender might receive at school, at home, or from a friend’s parent in the broader community.

After deliberations by the Elders (in Australia) or the facilitators managing the offender’s case (in California), the itinerary then circles back to the magistrate or District Attorney. Their



stamp of approval effectively seals the sentence with the authority of conventional law.

This ritual itinerary amounts to a warm-up of sorts—a practice round, a microcosm, a physical manifestation for what embedding justice in communities entails abstractly. The itinerary of the circle structure is staged, rehearsed and calibrated to represent all parties implicated in a crime, and simulate reintegration into the broader community.

So the circle itinerary—a sort of rehearsed sentencing screenplay—both occurs *in community* and results in a community-based sentence (much of the time). The circle sentencing itinerary is a script of “ritual practice, art form, and ceremony,” which Ann Swidler would classify as a cultural tool—one used by therapeutic justice projects at all three of my sites (1986: 273). Those who sentence offenders in the court are representatives of the community, and many of the sentences are drawn-out community service projects which slowly re-integrate the offender into the community as a productive member. The sentence often brings the offender back to the community rather than removing them from it. Sentences are served contiguously with the community rather than in exile from the community.

The Spain case presents an interesting case in this regard. Clearly the sentence prescribed is not conventional in a retributive justice context. It is alternative, and though it doesn't involve the victim, it has the potential to be restorative—to restore the harm done to the offender and the community by a crime by *therapeutically* “curing” the offender of his or her criminal tendencies (Rieff 1987). This is precisely where we see the confluence of sentence (being sent on the Camino as judicial therapy), and process (walking as therapy). We also see the confluence of restorative justice (repairing emotional harm done to the offender) and therapeutic justice (helping the offender achieve self-awareness).

But, again, what community does this sentence of walking pilgrimage involve? The community in which the offender serves their sentence is not the same one in which they committed their crime. So this reintegration process occurs at a degree of removal: the offender experiences (re)integration into a secondary community on the Camino—and a remarkably trusting one at that—in order for that offender to return home with a defining experience of re-acceptance. In ideal circumstances, this experience carries the same weight as if it had occurred in the offender’s home community.

The non-hierarchy and accessibility of circle processes, as well as the relentlessness of visual scrutiny they facilitate all contribute to the unique experience of Embedding Justice. Shaming must take place in settings that are at once isolating (to force self-expression of the offender) and communalizing (to reintegrate the offender symbolically into the community). So circle structures—while a seemingly juvenile and redundant topic of attention—are actually critical elements of the process of Embedding Justice.

### *Structured Vocabularies*

Each site has a structured vocabulary—that is, participants shared a common, but unique set of terms in which to speak to one another—which in turn structured actions and beliefs that occurred at that site. For instance, a vocabulary of non-violence informs the offender, driving towards self-awareness of one’s violence. The men learn that terms like “blame” and “denial” are associated with pernicious behavior, while “accepting responsibility” is constructive. Action vocabulary then takes form in activities that the men engage with every day. This is where the community ritual of shaming becomes an individualized experience of self-awareness. Given the

vocabulary to deeply, experientially understand concepts like intimacy or agreement or shame or coercion, participants can internalize and individualize the ritual experience.

The men are not allowed to give any opinions, pass judgments, blame each other, or deny their agency in committing a crime, all concepts derived from a—quite literal—vocabulary of non-violence, as one facilitator explains:

...They're really in tune with what an "opinion" sounds like, what a "judgment" sounds like, what "denial" sounds like, what "blame" sounds like. You know all that, all them pieces they're all put up on the board. And they start to identify them and they give that "feedback" to the guy. And there's a copy of that work that's being done to them, the guy actually sits there and he looks at him the whole time he's in the program. He can reflect on this like, 'wow, man'. I mean you can actually see the 'aha' moment.

This respondent explains that for some of the offenders, their "belief system is a set up to get them to violate other people." But after introducing a new therapeutic *vocabulary* of "intimation" rather than "violation," inmates come to understand non-judgmental, non-violent *behavior*.

One facilitator in California aptly summed up the importance of vocabulary to their program::

Yeah it's important. It's the pinnacle. It's the pinnacle of our work... Because it's the basis of the language that's spoken in [Program]. A lot of people think that you go to a [Program] class; [Program] is not a place that you go, it's actually a way of life. Right? ... It's like knowing that you're you and not an image that you created. And so part of

the language is understanding, like “what’s a fatal peril?” And then the guys teach that information. “What does control mean?” “what does coerce mean?”, “what is an expectation of authority?”, what’s an “expectation of service?” you know, all of these understanding of what things are is like, if you don’t know what it is, then you won’t have an idea of what violence is. When you have an idea but you don’t really know the analysis behind it. And so once you start to take place and pinpoint exactly what this [behavior] is...and then name it, then you have an understanding of it. And when you have an understanding of it, then you can teach it. [...] [Someone said to me] “You know this is the first time you did a presentation with no foul language? And you elevated yourself to a whole different level.” [...] If I’m trying to meet somebody at their level, that’s great. But why do I want to meet them there if they can be elevated to a different state and allow them to model somewhere they can go through the language that we use...through the vernacular of [Program]?

Here, facilitators attempt to craft a new, non-vulgar vocabulary for offenders to engage with. Language takes on an embodied, almost sacred status: a newly-learned term or phrase can become a mantra which can alter an individual’s awareness of situations which might normally result in violence. Facilitators claim that inmates learn the term “coerce,” so that whenever they feel threatened by another man have impulses to lash out violently, they will recognize that coercion and will respond instead with “intimacy.” Offenders can remember small concepts committed to memory in digestible vocabulary terms, and this can transform interactions.

A facilitator in the California jail program remarks that key terms are “tools”:

...once I realize that there are tools in that moment, then they can teach that to other people because they've experienced it. And it's an experiential somatic experience instead of one that's just intellectual. And so they're actually feeling it in their body like "wow okay I get it!" And so they begin to teach it to other people.

The intellectual vocabulary of the program's curriculum—ideas and words like "intimacy" and "coercion"—become somatic experiences, as discussed earlier with the "two-foot drop." Being able to teach these ideas to others is a final step in the rite of passage through the program—perhaps the final rite of passage in the program ritual itinerary.

In Australia, there were clear dichotomies between the vocabulary of conventional court procedures and circle court procedures. One Magistrate claimed that, "Aboriginals don't make submissions." In conventional court, official statements are vetted by lawyers and stated in an argumentative way, but restorative circles tend to facilitate dialogue more naturally. Indeed there are scripts relating to shared history of oppression and racial identity among Aboriginals that cultural outsiders like Magistrates cannot use. One magistrate notes that there are certain ways of speaking for which he does not have the cultural clearance: "[One Elder said to the offender], 'I'm 60 years old; I was born as a black victim,' he said. 'I grew out of it.' Now I couldn't say that. Now that's a strong fellow. [Another Elder] said 'you just keep quiet and don't shake your chain.' I couldn't say that [as a white Magistrate]."

In California, restorative justice facilitators seemed to delineate between "stories" presented in circle versus "statements of fact":

I think...the police report says a very particular thing. And police language is very limited in what they...they don't want to get into the details because the report eventually would be admissible in court. That's my own theory. They have to really limit what they say and speak and just use statements...statements of fact, right? And what you find when you actually sit down and talk to people is that there's a lot of gray area in between these statements of fact. So for the police to present a story for a particular reason they have to justify their arrest.

Dialogue, and the corresponding vocabulary used to describe dialogical addresses, helps define the circle as a therapeutic space where both orchestrated and spontaneous expressions of compassion can occur.

## CHAPTER V: CONCLUSIONS AND FUTURE IMPLICATIONS

My three sites are examples of Embedding Justice: the symbolic activation of cultural beliefs and values through justice rituals at the community level. The shaming rituals at my sites that illustrate Embedding Justice practices are the fusion of adjudication *process* and *sentence*. That is, the “micro-community” created in the ritual shaming process symbolically represents the community in which embedded-justice-type sentences are subsequently served. I illustrate how ritual shaming operations at my three sites share common ritual mechanisms, or cultural tools, to foster offender self-awareness and a deeper connection with his or her cultural community.

While each site has its own distinct cultural context and model, my data indicates that all three sites share three ritual mechanisms that are meant to shame the offender: symbolic ritual actors, offender self-expression, and symbolic therapeutic structures. These mechanisms are the tools which perpetuate the pervasive *therapeutic culture* that each site intentionally maintains. This culture helps offenders and other participants *internalize* modes of action and behavior—especially states of self-awareness—which they can transport out of the ritual court space and into their daily lives. This is a two-way process of embedding therapeutic elements of each culture *into court settings*, as conversely embedding that therapeutic justice process *into the participants’ greater communities and cultures*. So the therapeutic culture evident at all of my sites is both learned through ritual processes, and embedded naturally in cultures.

The construction of the shaming rituals at each site gives them the potential to help reintegrate the offender back into the cultural community represented in the ritual justice setting. They are, perhaps, reintegrative rites of passage for the offender—each contains pre-ritual

procedures, ritual shaming processes, and post-ritual reintegration rites. All of these sites use the three mechanisms I considered throughout my analysis.

The first ritual mechanism I discuss is the use of symbolic ritual actors in preparation for and during shaming rituals. Prior to the ritual shaming process, ritual actors such as community representatives, family and kin members, or representatives of the Western retributive justice system assume symbolic statuses which they will activate as cultural tools within the shaming ritual itself. Within a cultural community—i.e. among members of an Aboriginal tribe—community representatives must be perceived to be legitimate, upstanding, experienced, relatable, and highly visible members of the community. They become symbols for that culture: they meet with offenders and victims *prior* to the ritual of shaming and adjudication, and during the rituals themselves, the actors' symbolic status is a cultural tool through which cultural beliefs and understandings are activated to shame the offender.

During the shaming rituals, which take place in ritual spaces—that is, circle courts, conferencing mediation spaces, pilgrimage trails—the symbolic actors take on a powerful ritual identity. They tell the offender how he or she brought shame on the community, in an effort to help the offender become more self-aware and feel personal shame for violating community values. While in many cultures, traditional statuses like Eldership among Aboriginal Australians have seen declines in traditional initiation rites, shaming rituals continue to afford Elders and other symbolic actors considerable power. Each actor is designated the authority to either sentence offenders, respond to offender's self-expressions of shame, or even physically guide the offender on walking sentences, as in the Spanish case I studied. As one interviewee in New South Wales remarked, “[the Elders] have the power as a court if they felt fit they can sentence



an offender to jail. They can deprive them of liberty.” Because of the emotional and personal weight that structures of Embedding Justice rituals communicate, many of my respondents explained that these reintegrative models are not “soft options.” Rather, they are useful therapeutic experiences that can have lasting effects on behavior and interactions.

The second ritual mechanism I discuss is offender self-expression—a vital therapeutic experience in the shaming ritual. While symbolic actors play a critical role in the central shaming rituals, offenders are also actively and vocally involved. They express their shame by articulating their crimes in their own words and acknowledging the shame they have brought on their communities. While the offender is not blamed or judged by the other participants, he or she is conspicuously responsible for what he or she did, and internalizes understandings and values among the cultural community he or she violated. Here, self-awareness achieved during expressions of shame is coupled with deepened awareness of cultural norms and values. The process of learning therapeutic culture through therapeutic experience in the justice process constitutes a rite of passage, or reintegration, into the community.

Shaming at all three of my sites is a structured ritual. The ritual relies upon several common structures found at all three of my sites: circularity, dialogue, and action vocabularies. The physical, therapeutic circle orientation of the ritual sites in Australia and California enable face-to-face dialogue, which involves specific vocabularies that not only operate in the adjudication process but beyond it into the participants’ lives. And in Spain, dynamic, therapeutic experiences in hostels and on the trail—such as washing one another’s feet or passing along unused clothes—fosters a similar experience of mutuality, or circularity. These structures—both learned and inherent—subvert hierarchical dispositions with which offenders often enter the

justice ritual. Facilitators in the California jail program, for instance, make concerted efforts at dialogic, rather than didactic hierarchical communication. Being an effective facilitator means uprooting structures of hierarchy and inequality from the physical level of the circle structure to the behavioral level. And while this might seem to undermine the facilitator's status power, it rather seems to reinforce his cultural status as a *respected* equal who has graduated through the same rite of passage in which inmates are in the middle—on the “limen” (Van Gennep 1961). Facilitators are naturally positioned as participants—recent initiates—of a shared jailing ritual, they struggle to establish an environment of non-hierarchy in order to teach the content effectively. Again, these ritual processes maintain social statuses more so than they upend and replace them, so to assume “liminal” states or “*communitas*” environments may be an overstep (Van Gennep 1961).

Regardless of whether the reintegrative shaming processes at my three sites are rites of passage, they are indeed intended to be restorative, therapeutic justice experiences, as opposed to simply retributive ones such as jailing. Facilitators for shaming rituals at my three sites expressed that successful interventions help offenders complete the process embedded with new therapeutic experiences, new therapeutic communication capabilities, and a new therapeutic vocabulary.

The intention of these therapeutic processes is to be not what Braithwaite (2000) would call “orchestrated” shaming, which can humiliate an offender and “disintegrate” his or her relationship to the community (120). Instead, both physical and dialogical circularity help make these three justice processes *reintegrative*, and *embedded* in structures like family and vocabulary such that offenders can take the progress they've made during the justice process

with them into the real world. This is what culminates in the truly Embedding Justice sentence and process: one that is embedded in life in the community beyond the courtroom, beyond the circle, beyond the trail of penal pilgrimage.

My research examines three sites where shaming rituals exemplify processes of Embedding Justice. It contributes meaningful insights about how culture is important to justice through ritual: that is, where a community's culture is activated in justice settings, and where justice settings *create* therapeutic cultures to restore the harm done by a crime. My research examines the seams between well-researched models like restorative justice, community justice, and therapeutic jurisprudence. Further, it identifies *common mechanisms and structures* shared among sites with different cultures, laws, and adjudication systems. Among the many questions I leave unanswered, however, is whether these mechanisms actually work. What constitutes success? How can we qualitatively and quantitatively measure that success?

Indeed, the questions I developed were not outcome-oriented, but rather process-oriented, as many researchers have attempted to measure success in a number of ways. One method is to pinpoint transactions of contrition and forgiveness, and quantify those as successful justice sessions. Many scholars (Hasley, Goldsmith, and Bamford 2014; Braithwaite 2000; Barnes et al. 2013) have addressed expressions of shame and contrition in restorative justice conferences. Meredith Rossner (2011) even examines the emotional dynamics of interaction rituals involved in conferences as a means of facilitating successful "solidarity between the victim and offender" (Abstract). The work of Hasley et al. (2014) helps explain that during victim-offender conferences in Australia, contrition and true remorse are not individual processes of self-expression by the offender, but more dialogical processes of victims "capturing" those

expressions of contrition and returning them with transactions of forgiveness. This is a successful restorative transaction, by these researchers' measures.

But my interview data offer some indication that other measures of success *matter* to victims, mothers, offenders, or Elders. These participants conceive of *ritual* success: moments and critical turning points during shaming rituals mark perceptible restoration of the harm done by a crime. Success for facilitators in the California jail program, for instance, is reaching the “aha moment” with their inmates. The “aha moment” is the critical apex of the circle shaming ritual. It occurs when the offender fully accepts and embodies the shame that their crime brought upon them, even before an assembly of similarly shamed men. This singular somatic experience of self-awareness through ritual self-expression is an experience that lasts well into the future; one that the inmate can then teach others, just as the facilitator has done. Circle shaming rituals are, then, self-sustaining, self-replicating rituals.

Indeed, the Magistrates and Elders I interviewed considered shaming as the determining factor in reducing future criminality. Recalling an offender who had passed through the circle court, one of the Magistrates made the claim that he would never be back: “...this young fella—makes a complete turn, nowhere near the criminal justice system again, and that’s because of the shame.” It is evident that facilitators consider shaming rituals to be critical to reintegration.

Project facilitators and symbolic ritual actors measure success in terms of constructing and maintaining effective rituals, not experiencing them as offenders and victims. My research could be strengthened by interviews with offenders and victims, which I was not able to conduct in this study. Offenders and victims might experience entirely different “aha moments,” or they

may not claim to share any common cultural understandings with facilitators in their program.

Their perspectives are valuable to fully analyzing the justice ritual.

Further, observing court settings for specific ritual dynamics involving gender would further the investigations I have begun. I offered several insights about how mothers performed roles as symbolic ritual actors. I examined how male offenders were made accountable for family traditions of non-violence and cultural expectations for more peaceful generations of males to follow. Yet I was not able to gather observations of how female victims reacted to the shaming of a male violent perpetrator, or how female offenders reacted to shaming from a male Elder, or how a female penal pilgrim might physically express contrition by continuing to walk despite pain and discomfiture.

More research could also investigate the *culture* of my sites—however vaguely defined it may be—to better understand exactly what kind of cultural understandings and values are activated in justice procedures. A more extensive cultural sociological/ethnographic approach may be useful in cultural settings in which Embedding Justice occurs, both informally in communities and through formal rituals.

In the therapeutic culture found at my justice sites, reintegration is critical. To explain how authoritative total institutions can limit the reintegrative capacity of individuals in institutionalized therapy, Rieff (1987) references a Freudian analysis of psychiatric patients (31). Freud argues that patients can be “cured” by connecting with a deeper sense of self—or “psychological manhood”—that is firm enough to “mediate between culture and instinct” and maintain an “independence of mind and conduct” (31-33). Just the same, offenders’ and other participants’ contact with a therapeutic justice culture at my sites is meant to bolster self-

awareness, enable individual agency, and teach offenders therapeutic values such that they might reproduce them in their home environments.

Both of these theorists contribute to an interesting conversation about the boundaries around the therapeutic culture and the ritual ceremonies at work in the reintegrative justice sites I studied. My respondents largely oppose total institutions like jail, and favor more integrated community justice models like those that Karp and Clear (2002) describe. The borders of the therapeutic culture in shaming rituals and the dynamic ritual spaces at my sites are blurred, and perhaps intentionally so. Status from the community is contiguous with status in the court; kinship bonds from the community are contiguous with kinship bonds activated in court. Thus, the institutional “walls” that enclose the therapeutic culture at my sites are intended to be open, such that participants will *learn* that culture, internalize it, and take it out into the community.

The reintegrative, community-centered justice settings that I studied intend to break down the barriers between formal justice spaces, such as court, jail, or institutionalization, and informal community disciplining spaces—the home, the Australian poker club, church, the family. Ritual shaming spaces, as examples of Embedding Justice, somewhere in between the formal and informal justice space. Shaming rituals are culturally embedded: they use community actors, simple community spaces, and existing community relationships. Further, they *create* therapeutic micro-communities which can continually reproduce themselves.

At my sites, justice was experienced through the ritual event as a therapeutic process, and later into the community through reintegrative sentences. As a broader concept that is relevant to other justice rituals, Embedding Justice is the symbolic activation of cultural beliefs and values through justice rituals at the community level. Embedding Justice does not result in an

expendable jail sentence. It may not be feasible for vengeful litigants. It may not be suitable for egregious or pathological offense. But it is important for people who have been harmed by a crime in more ways than conventional courts will admit. It is personal; it is owned and run by people, not legal doctrines; and it is meaningful to those who need justice in their lives and not just in the case file.

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