



Observations of reintegrative shaming in a mental health court

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ABSTRACT

This study compares the use of stigmatizing and reintegrative shame – as specified in Braithwaite's *Crime, shame and reintegration* (1989) – across traditional criminal court and mental health court settings. Items from the Global Observational Ratings Instrument were used to gather data on 87 traditional court cases and 91 mental health court cases, presided over by five different judges. The observational items capture three constructs: *respect*, *disapproval*, and *forgiveness*, as they apply to Braithwaite's theory. We present means tests to examine differences in shaming between court types and judges. Findings show that the mental health court is more likely to use reintegrative shaming and show respect and forgiveness for offenders, and less likely to show disapproval. Similarly, judges who preside in both court types are significantly more likely to practice reintegrative shaming in the mental health court context. We further explore these findings using field notes and illustrate those components of a mental health court that are conducive to reintegrative shaming.

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1. Introduction

Since the late nineties, the number of mental health courts (hereafter MHC) in the U.S. has grown tremendously. While only three such courts were in operation in 1997, the most recent estimate suggests that there are over 200 working MHCs (Consensus Project, 2009). The goal of these courts is to utilize therapeutic jurisprudence principles (Wexler & Winick, 2003) to reduce criminal recidivism and improve the quality of life of defendants with a mental illness by linking them with treatment and services. Empirical studies offer support for the MHC model, suggesting that defendants obtain more treatment while in a MHC (Boothroyd, Poythress, McGaha & Petrila, 2003; Cosden, Ellens, Schnell & Yamini-Diouf, 2005; Cosden, Ellens, Schnell, Yamini-Diouf & Wolfe, 2003; Herinckx, Swart, Ama, Dolezal & King, 2005; McNiel & Binder, 2007; Ridgely, Engberg, Greenberg, Turner, DeMartini & Jacob, 2007) and that they are less likely to offend than before entering the court (Herinckx et al., 2005; Hiday & Ray, 2010; McNiel & Binder, 2007; Moore & Hiday, 2006). Research on the MHC model has focused primarily on describing the organizational elements of the court structure and process, such as the use of criminal sanctions (Griffin, Steadman & Petrila, 2002) or level of judicial supervision (Redlich, Steadman, Monahan, Robbins & Petrila, 2006). While these organizational elements are important, it is equally important to understand the theoretical mechanisms at play that underlie potential reductions in criminal recidivism. Criminological theories offer an excellent starting point for such an endeavor,

particularly those theories that focus on how social reactions to crime affect subsequent criminal behaviors.

The present analysis examines the presence of theoretical mechanisms that reduce offending outlined in Braithwaite's reintegrative shaming theory (hereafter RST; Braithwaite, 1989). RST suggests that criminal behaviors are deterred when the shame associated with disapproval is reintegrative rather than stigmatizing. Reintegrative shame is a type of disapproval that is communicated in a respectful manner in which there is an effort to avert stigmatization by offering words or gestures of forgiveness to the offender (Braithwaite, 1989). The theory posits that stigmatizing shame, commonly found in criminal processing, increases subsequent criminal behavior; reintegrative shame, in contrast, reduces subsequent criminal behavior. Using data from systematic observation instruments designed to capture key concepts from RST, we compare the presence of stigmatizing and reintegrative shaming that occurs in a traditional criminal court (hereafter TCC) and a MHC. We hypothesize that a MHC is more likely to practice reintegrative shaming, while a TCC is more likely to practice stigmatizing shame. We also examine use of types of shaming across five judges, suggesting that reintegrative shaming may be indicative of judicial style as well as court context. Quantitative results are expanded with field notes to illustrate the various ways in which reintegrative shaming takes place in the MHC setting.

2. Reintegrative shaming theory

RST (Ahmed, 2001; Braithwaite, 1989) merges several criminological traditions through the concept of shaming and, in doing so, attempts to explain criminal recidivism. The theory suggests that

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shame can be either stigmatizing (disintegrative) or reintegrative and predicts that stigmatizing shame increases the likelihood of crime, while reintegrative shame reduces criminal behavior. According to the theory, stigmatizing shame involves labeling offenders as deviant and casting them out of the community. When this occurs, the deviant label becomes a master status; legitimate opportunities are blocked; and offenders seek out similarly labeled individuals and continue their deviant behaviors. Reintegrative shaming focuses on condemning the deviant behavior without condemning the individual. Thus, the behavior is punished but the individual is reaccepted to the community after completing the punishment. What differentiates reintegrative shaming from stigmatization is that reintegrative shaming is finite, ends with words or gestures of forgiveness, and, throughout the shaming process, there is an effort to maintain respect for the shamed individual. RST suggests that when shaming is reintegrative, offenders are unlikely to recidivate because they are accepted back into the community and their morality is strengthened.

One of the challenges in testing RST has been operationalizing reintegrative and stigmatizing shame. Relatively few studies have directly asked respondents about their perceived shaming experiences (Botchkovar & Tittle, 2005; Hay, 2001; Tittle, Bratton & Gertz, 2003; Tyler, Sherman, Strang, Barnes & Woods, 2007). Instead, most studies have indirectly inferred shaming types based on the theory's original statement (Ahmed, 2001; Losoncz & Tyson, 2007; Lu, Zhang & Miethe, 2002; Makkai & Braithwaite, 1994; Miethe, Lu & Reese, 2000; L. N. Zhang & Zhang, 2004; S. X. Zhang, 1995). For example, in the first test of the theory on nursing home managers' compliance with regulatory standards, Makkai and Braithwaite (1994) interviewed inspectors about strategies used when sanctioning non-compliant nursing home managers; then researchers categorized their strategies as either reintegrative or stigmatizing. Similarly, Zhang (1995) measured shaming types of parental controls by interviewing parents of male delinquents who went to court for the first time and asked them to describe their control strategies.

Rather than rely on reported use of sanctions, Ahmed et al. (2001) call for observational research to improve measurements of reintegration and shaming, stating that the theory focuses on how shame is directed at an individual. A study of a Las Vegas drug court by Miethe et al. (2000) demonstrates the need for observational research. The authors argued that because the drug court's goals were consistent with reintegrative shaming, drug court defendants should be less likely to recidivate than those from a control group of traditional court defendants who would receive more stigmatizing shame. Their analysis found just the opposite, as drug court defendants had higher rates of recidivism than those in traditional court. The authors maintain that their findings are not the result of selection effects because the sample was matched on severity and type of drug used, nor are they the result of increased supervision because traditional court participants with probation officers were under similar levels of monitoring. Instead, they explain their unexpected findings by referring to their field observations in a drug court, which found "a clear preponderance of stigmatizing rather than reintegrative comments directed at most offenders" and that "the individual defendant, not the act itself, was clearly the focal point of the judge's common 'tongue lashings'" (Miethe et al., 2000: 537). Thus, the stated intentions of the court were consistent with reintegrative shaming, but its actual practices were not.

3. Methods

The present research takes a step back from the starting point of Miethe et al. (2000) study by first examining whether reintegrative shaming is practiced in the MHC setting and, if so, whether it is more likely to occur in a MHC than in a comparable TCC. To do this, we use items from the Global Observational Ratings Instrument, which was designed specifically to measure concepts relevant to

reintegrative and stigmatizing shaming (Ahmed, 2001; Harris & Burton, 1998). To date, we are only the second study to utilize this instrument.

3.1. Observational settings

The MHC we observed is located in a county in the southeastern United States. Earlier evaluations of this court have found that it effectively reduced criminal recidivism both during court participation and after exit (Hiday & Ray, 2010; Moore & Hiday, 2006). MHC offenders are referred by court personnel and must have a diagnosis of mental illness, a "dual diagnosis" of mental illness with substance abuse, or a history of treatment for mental illness. Participants are enrolled in the court voluntarily after being screened for suitability. Once an individual is accepted, s/he signs an agreement to comply with the court's mandates. While participating in a MHC, the defendant's charges or sentence are placed in abeyance, pending fulfilling the court requirements. In lieu of traditional criminal processing and punishment, defendants are required to return to open court sessions each month for compliance audits. If a defendant remains in compliance with court orders for six consecutive months, s/he graduates from the court, and charges are disposed of positively. Compliance is determined at monthly team meetings that occur before each court session. The team consists of the judge, prosecutor, defense counsel, criminal justice personnel, mental health liaisons, and treatment providers.

Like most MHCs, the court team utilizes court proceedings to achieve defendants' compliance with treatment and court mandates. The judge speaks directly to defendants and any family, friends, or treatment team members who may accompany them, asking questions about their behavior, well-being, compliance, and progress. Defendants are given the opportunity – and are often encouraged by the judge – to address the court. The judge gives encouragement and praise for efforts and improvements. If a defendant is non-compliant, the judge may express disappointment, ask about reasons for non-compliance, place the defendant in jail or order the defendant be returned to TCC. If non-compliance continues or the defendant obtains additional charges, the team may determine that the defendant is unsuitable for mental health court and reassign him or her to TCC.

Traditional court observations took place in the same county as the MHC in misdemeanor criminal courts from which MHC participants are typically referred. As such, the types of charges in each court were similar, including charges of drug possession, public order offenses, violent crime, property crime and traffic violations.

The sample consists of 178 observations, 87 in TCC and 91 in MHC, over a 6-month observation period (October 2009 to March 2010). Only TCC cases involving formal dispositions are analyzed in the present analysis. Five judges presided over all observed cases. Two of these judges were observed in both the TCC and MHC settings, while the remaining three were only seen in TCC. In an effort to maximize reliability of data gathered during these sessions, three researchers took part in court observations, with at least two of the three observers attending each court session. Observer 1 attended all court sessions, observer 2 attended ten court sessions, and observer 3 attended three court sessions.

3.2. Measurement

To measure reintegrative and stigmatizing shaming in TCC and MHC proceedings, each researcher took detailed field notes during court observations. Immediately following every court session, each researcher independently completed a modified Global Observational Ratings Instrument. This instrument was developed to test the role of shaming in the Australian Reintegrative Shaming Experiments (RISE), in which offenders were randomly assigned to traditional court or

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