Sexual Violence, Victim Advocacy, and Republican Criminology: Washington State's Community Protection Act

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This article focuses on the Community Protection Act (CPA), the State of Washington's legislative effort to control sexual violence, and on the victim advocacy groups that played a prominent role in this effort. It is argued by some, most recently by republican criminologists, that victim advocates serve democratic ideals and introduce into criminal process important values and interests that are neglected by professionals. Others argue that victim advocacy tends to promote punitive policies that empower the state, jeopardize constitutional rights, and divert attention from causes to symptoms. The evidence gathered in this research lends credence to the critics of republican criminology. Victim advocates were not reliable carriers of republican values in their strenuous support of the CPA, the central provisions of which reduce civil liberties and promote exclusion rather than reintegration.

In 1989 the State of Washington passed a complex and controversial piece of legislation directed against sexually violent offenders. Three elements of the Community Protection Act (CPA) stirred up controversy, but most of the heat was generated by its "sexual predator" provisions:

The second and third authors contributed equally to work on this article and are listed in alphabetical order.

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1. Sentencing: Penalties for crimes of sexual violence are increased by the legislation, which also extends its reach to include acts that are not in themselves sex crimes but are linked to such crimes.
2. Registration and Notification: Sexual offenders who are released from custody after serving their terms are required to register with the police, and the communities in which these offenders choose to reside may be notified of their presence if it is concluded that the individuals are dangerous and likely to reoffend.
3. Sexual Predators: Offenders who have been "convicted of a sexually violent offense" and *have served their terms* may be subjected to a civil action in which a "court or jury" determines whether they are "sexually violent predator(s)." If so, they are to be incarcerated until such time as it is concluded, in a subsequent civil action, that they are no longer dangerous.[1]

Critics complained that this act went beyond simply taking a tough stand against sexual violence. They charged that the act introduced preventive detention for "sexual predators" and was likely to foment vigilante justice by notifying the community of the presence of convicted sex offenders.

Victim advocacy groups played a prominent role in the formulation and the passage of the CPA. Accordingly, the CPA provides an opportunity for an empirical contribution to a lively, and largely speculative, debate on the impact of victim advocacy on crime control politics and policy. On one side of this debate are republican and some feminist criminologists. They are sympathetic to victim advocacy, because they see victims as natural spokespersons for republican/feminist values and policies. On the other side are a diverse array of civil libertarians, just desert theorists, and others who see victim advocacy and/or republican criminology as a threat to the integrity of the criminal process.

We first examine the debate over victim advocacy and then reconsider the Community Protection Act in terms framed by that debate. This preliminary analysis reveals that the CPA *on its face* lends credence to the opponents of victim advocacy and, in particular, to their claims that victim advocacy is associated with

[1] This provision applies to any person who has committed "a sexually violent offense," who appears to be "a sexually violent predator," and whose sentence is about to expire. Under these circumstances, a petition may be filed by the prosecuting attorney in the county where she or he was convicted (or by the attorney general of the state). If a judge decides that there is probable cause, the judge may order that the person be confined and examined by someone "professionally qualified to conduct such an examination." The next step is a trial (with jury if demanded by any of the parties) in which the determination that the person is a sexually violent predator must be established beyond a reasonable doubt. At all stages the person is entitled to counsel. A sexually violent predator is someone who has committed one of a specified number of sexually violent offenses, suffers from a "mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence, and is unknown to the victim or who cultivated a relationship with the victim primarily for purposes of victimization." Community Protection Act 1990, 1990 Wash. Laws 1002.

just those punitive and statist values that republicans and their feminist supporters reject.

We then go on to ask how well this apparent association between victim advocacy and punitive and statist values stands up to careful scrutiny. The inquiry entails an examination of the values and the policy preferences of Washington State's victim advocates (part II); a determination of just how much influence victim advocate had on the final formulation of the Community Protection Act (part III); and a look at the implementation of CPA in order to move the analysis from the law on the books to the law in action (part IV).

By and large our research is supportive of the views of the opponents of victim advocacy. At the heart of our findings are the incident-driven concerns and punitive priorities of the victim advocacy groups. To some extent, this generalization may misrepresent the intentions and overstate the influence of victim advocates. Victim advocacy groups were not *exclusively and uncompromisingly* punitive. Nor were their concerns only short term. The picture we paint reveals, for example, a commitment to prevention as well as to punishment. It was, however, more expedient for politicians to respond to the victims' punitive than to their preventive impulses. This is, in part, because victim advocates and legislators were to some extent trapped in a punitive ethos of their own making. While victim advocates thus emerge as both players and pawns, the net effect of victim advocacy is, we conclude, substantially problematic for republican/feminist values and for sound crime control policy as well.

These findings are based primarily on interviews with many of the major figures in the process leading to passage of the Community Protection Act. We conducted 15 one- to two-hour semistructured interviews during the spring and summer of 1992. Our respondents included 5 leaders of victim advocacy organizations, 7 members of the state legislature, a mental health professional, the legislative representative of the American Civil Liberties Union, and a law professor who, as a key member of Governor Booth Gardner's Task Force on Community Protection, took the lead in drafting the legislation. Among the 24 members of the bipartisan task force were victim advocates, legislators, criminal justice and mental health professionals, as well as judges and lawyers; we interviewed 8 of the 24 task force members. Taken together, these interviews provide access to both the aspirations of victim advocates and to their influence within the task force and in the legislative process. We also consulted newspaper and documentary sources as well as the criminological literature on sexual violence. Our analysis of the criminological research is important, because the task force claimed that the final formulation of the CPA was derived from the best available

research rather than from pressures exerted by the victim advocates. We test that claim and find it suspect.

I. The Debate over Victim Advocacy

Republican Criminology and the Case for Victim Advocacy

The rudimentary case for victim participation in the criminal process is simple and straightforward. In the first place, only victims can fully appreciate the social and personal costs of crime. Second, victims introduce into criminal process values and interests that are regularly neglected by the policy professionals. A more theoretically sophisticated case for victim participation can be derived from what has been called "republican criminology."

Republican criminology has been recently formulated by John Braithwaite and Philip Pettit (Braithwaite & Pettit 1990; Braithwaite 1989, 1991a, 1992). At the heart of republican criminology is the search for dominion. Republicans believe that dominion can be enhanced by honoring the concerns and encouraging the participation of victims while minimizing the role of the state in criminal sanctions.

Dominion for republicans is anchored in the distinction between subjective freedom and objective freedom.

> [B]eing objectively free from interference (as in the liberal conception) is not enough; we must also subjectively be free of fear from interference. Dominion is the condition where we enjoy such subjective freedom because it is a condition of living in a world where we enjoy the assurances of full citizenship. (Braithwaite 1992:12)[2]

To be truly free in the republican sense, one must *feel* free. Consider, for example, the general situation of minorities or the special circumstances of women threatened by domestic violence. Insofar as they have reason to believe that they will be subjected to police harassment or neglect, they cannot be free in the republican sense. Dominion entails credible assurance that victimization will be taken seriously by fellow citizens and/or the state—that, in short, victimizers cannot act with impunity.

For two distinct but related reasons, the state is not, according to republican criminology, a reliable agent of dominion. In the first place, dominion is driven by "an intersubjective set of assurances of liberty." It follows, therefore, that the authentic interpreter of dominion cannot be the state but must be the aggrieved citizens themselves. Second, for republican criminology the state looms as a major threat to dominion. Braithwaite points

[2] We think it would better capture the spirit of the enterprise to distinguish between the formal (or negative) guarantees of liberalism and the substantive (or affirmative) guarantees of republicanism. Substantive (or affirmative) guarantees of basic benefits are, in the republican view, the hallmark of full citizenship.

out, for example, that it would be inconsistent with the principles of republican criminology to act against a soldier who refuses to fight in an unjust war—presumably because this act of civil disobedience is itself an assertion of dominion (Braithwaite 1991a).

Braithwaite and Pettit's search for a more reliable agent of dominion than the state leads them to grassroots social movements in general and to victim advocacy groups in particular. The appropriate role of these social movements is not so much to alter state policy as to reduce the role of the state. "[C]onduct should never be criminalized unless we can be confident that its criminalization will increase dominion (the republican conception of liberty) in the community" (Braithwaite 1991b:8). Braithwaite asserts without equivocation that republican criminology aims at reducing the number of behaviors that are criminalized.

On a more positive note, grassroots social movements are supposed to articulate grievances that imperil dominion. That process entails the "organization of community disapproval" and the focusing of disapproval on those who are doing harm (p. 16). In part, this preference for grassroots action is normatively derived from republican value preferences for genuine empowerment. But Braithwaite also presents some evidence indicating that grassroots activism does actually work as an agent of republican values in the criminal process. He is impressed by the counterhegemonic power mobilized by social movements. "Crimes of domestic violence were not counted very seriously by patriarchal police forces prior to the social movement against domestic violence that gained momentum in the mid-1970s" (p. 18). The movement against drunk driving provides another example.

What emerges is a sense of, and a preference for, grassroots action by victim advocates and others as an alternative to formal sanctions invoked by the state. Braithwaite argues that authentic community disapproval provides more effective crime control while at the same time enhancing dominion for both the victim and the offender:

> [T]he republican is more concerned with symbolic victories than with tangible changes to state policies. The republican analysis is that crime rates are more responsive to patterns of community disapproval of crime than to state enforcement patterns. So it is the symbolic victory for the hearts and minds of citizens that is more important than securing tangible changes to state criminal justice practices. (P. 26)

Working through individual conscience, community disapproval can promote crime prevention. Where crime prevention efforts fall short, the shame engendered by community disapproval can promote true repentance and thus reintegration of the offender into society (p. 35). Whereas the state can only administer pun-

ishments—negative acts of rejection that stigmatize and exclude—the community can take positive steps to encourage offenders to rejoin society as contributing members and as law-abiding citizens.

The foregoing suggests why republican criminology is finding support among feminist criminologists (Braithwaite & Daly 1994). Braithwaite and Pettit have been consistently attentive to violence against women in developing their theory of republican criminology. Moreover, insofar as empirical evidence has been deployed, it has been drawn from what are primarily the efforts of women's groups to turn the tide against spousal abuse and drunk driving. Finally, their preference for shaming and reintegration rather than incarceration is consistent with the "ethic of care," which, as Daly (1989:6) points out, is associated with values affirmed by some feminists. As we indicate below, however, there is also some tension between feminists and republicans.

The Case against Victim Advocacy

The opponents of victim advocacy are not drawn together under a theoretical umbrella comparable to republican criminology. They are a diverse group including civil libertarians, just desert theorists, and others not readily identifiable with any general theory. They do, however, agree on at least two things:

1. Victims and their advocates tend to mobilize around incidents that are both horrifying and aberrational.
2. The climate of opinion generated by such events, as well as the attitudes of the victims and their advocates, is likely to be conducive to punitive policy responses.[3]

From this starting point two different kinds of concerns emerge.

One line of thinking emphasizes the overall tendency of these circumstances to add dangerously to the power of the state. Civil libertarians worry about the temptation to take short cuts through constitutional rights (Boruchowitz 1992:831–32). Robert Elias (1990) thinks of this tendency in terms of manipulation rather than temptation. He argues that victim advocacy groups are, in effect, coopted by conservatives on behalf of punitive policies (pp. 242–47). The result, according to Elias (1986:229–45), is to divert victims from their true interest in preventing crime and thereby reducing victimization to the seductive but largely ineffectual celebration of punishment.

The other set of objections focuses on the atypical circumstances that give rise to victim advocacy. Albert Reiss (1981:225)

[3] These concerns were foreshadowed by Edwin Sutherland's pioneering work in "The Diffusion of Sexual Psychopath Laws" (1950). His claim that sexual psychopath laws are largely brought about by public opinion and media coverage is supported by the evidence presented here on the Washington State Community Protection Act. Sutherland stated (at 143) that "these laws are customarily enacted after a state of fear has been aroused in a community by a few serious sex crimes committed in quick succession."

worries about a serious mismatch between problem and policy insofar as policy decisions are driven by the misconceptions and exaggerations derived from aberrant, inflammatory events. Just desert theorists have a related concern stemming from their commitment to proportionate and uniform punishment measured by the criminal act. Thus, Andrew Ashworth and Andrew von Hirsch (1993:88) worry that victims may well push for and achieve disproportionate sentences.[4]

The Community Protection Act of 1989 and Republican Values

The results of victim advocacy in Washington lend more credence to the fears of its opponents than to the hopes of its republican and feminist supporters. Certainly, the CPA is at odds with republican values in two discrete and readily apparent ways. Recall that the CPA increases both the reach of the state and the force brought to bear on offenders. Not only are penalties increased for sexual offenses (parts VII and IX), the CPA also includes in the category of sexual offenses crimes such as residential burglary and arson that are deemed to be "sexually motivated" (part VI).

In the second place, the police registration, community notification, and sexual predator provisions of the CPA reduce the likelihood of reintegration. Police registration and community notification single out released sexual offenders and subject them to official and unofficial surveillance, which is more likely to lead to exclusion than to reintegration. The same thing can be said of the sexual predator scheme, which locks away sexual offenders who have already served their sentences. It is true that treatment is to be made available to sexual predators (as well as to other sexual offenders), thus providing some reintegrative potential. There is, however, little optimism that treatment will work for sexually violent offenders and certainly not for the hard cases targeted by the sexual predator provisions. As we shall soon see, these measures were, for the most part, embraced by victim advocates because of, not in spite of, their exclusionary consequences.[5]

[4] Only the just desert theorists directly join issue with republican criminology, but victims are incidental to that debate. The essential objection of advocates of just deserts to republican criminology is to reintegrative sentencing itself, which is seen as necessarily disproportionate to the crime and thus by definition unfair.

[5] Not only does the CPA work at cross-purposes to republican criminology, it also amounts to the kind of retreat from just desert theory that Ashworth and von Hirsch (1993) predicted. In 1981 the Washington State Legislature adopted the Sentencing Reform Act (SRA), which mandated presumptive sentences for each offense calibrated by the seriousness of the crime and the criminal history of the offender. The SRA also created a Sentencing Guideline Commission (SGC) and charged it with responsibility for specifying these presumptive sentences. The moderate guidelines the SGC initially adopted were in keeping with its mandate but soon became the target of victim advocates and others, including influential political leaders. Wash. Rev. Code 9.94A.430–460. Sentences are "presumptive" in that judges may depart from the specified range when

II. Victim Advocacy: From Dominion to Exclusion

The victim advocates interviewed for this project, the leaders of two groups that spearheaded the political struggle resulting in the Community Protection Act, were a diverse collection of women with victimization as their only common bond. For the most part, this victimization was indirect, often stemming from what had befallen a close relative. The one exception is Trish Tobis, who is now a paraplegic as the result of being shot by a babysitter's boyfriend.[6] Ms. Tobis is also an exception in that her victimization was not sexual. Among the others were the mother of a small boy whose penis was severed, the mother of a social worker who was murdered and raped, and the close relatives of others who suffered from serious crimes of sexual violence, such as the rape and assault of a 14-year-old sister.

Whether direct or indirect, the victimization of these women did lead them toward a key republican value. Although the word *dominion* never came up in these interviews, it is difficult not to interpret what they had to say as a search for dominion in the form of a more responsive criminal justice system. When, however, the discussion turned from ends to means, it was equally clear that these victim advocates unequivocally rejected the reintegrative policies of the republicans.

The Search for Dominion

While the initial victimization was a necessary step toward victim advocacy, it was not perceived to be the real reason for becoming active. What seemed to count was the realization that the criminal justice system was unfair to victims. As Trish Tobis put it:

> It was like a wakeup call. Prior to being a victim when I talked about the criminal justice system I thought of it as that you're innocent until proven guilty and there are various due processes that you follow. And some guilty people go to jail . . . and this is the best system that we've come up with so far. But when I became part of that process, I realized that it was a *criminal* [her emphasis] justice process and there was no room, according to the court's interpretation, any place, for the victims to assert their rights. . . . It was not Charles Harris versus Trish Tobis. It was Charles Harris versus the state.

All those interviewed were sympathetic to the often-heard criticism of the criminal justice system as being too sensitive to the rights of criminals and not sensitive enough to the rights of vic-

they find "substantial and compelling reasons" for an exceptional sentence. For three crimes—murder in the first degree, assault in the first degree with intent to kill, and rape in the first degree—no exceptions are permitted to the specified minimums.

[6] The respondents we identify consented to our use of their real names. Trish Tobis was interviewed on 1 May 1992, and the excerpts quoted here are taken from that interview.

tims. The exact grievances against the criminal justice system, however, varied rather widely among our respondents. One set of grievances concerned the prosecution and sentencing of the offender. Here the main complaints were that the offender had gotten off too lightly and/or that the victim had been treated callously. But even when there were no concrete complaints about the process or any dissatisfaction with the outcome, there was a sense that victims were somehow out of the loop.

Trish Tobis felt that she had been well treated: her assailant had been caught and tried expeditiously and his sentence had been appropriate. Still, there was an elusive and subtle sense of alienation.

> I felt [*long pause*] I'm trying to search for the right word. There's no connection between the crime and me. The crime happened to me but it was the state prosecuting this man. And in a sense I was their star witness and I really helped the case. But I didn't feel a part of it. And it was not because the victim advocate that worked with me or the prosecutors did not communicate with me. I can't say that at all. From the word go everything worked together. But I still didn't feel like— . . . I was just a piece of evidence. And I wasn't treated that way. I just felt that way.

For both Ida Ballasiotes and Helen Harlow the grievance was clearer,[7] and it did not relate to the prosecution of their children's assailants but was due to the failure of the system to protect their children in the first place. Thus, Ms. Ballasiotes tried to figure out why the manifestly dangerous man who had attacked her daughter was allowed to participate in a work-release program.

> The letters I got back from elected officials and those in charge of certain programs within the correctional system were all pointing to other people—"it really wasn't our fault, it was this, this and this." The Governor's letter said, "Well, had this person been sentenced today under our new sentencing scheme, he would only have served 8½ years with the first previous crimes and, since he had already served 12, we felt we had to let him out." When you think of that in context of what he did before, his record in jail and the crimes he has committed since, it was just not an acceptable answer. And that's where all this started, I suppose.

Not only was something obviously wrong, it was apparent that nobody would acknowledge the problem or take responsibility for looking into it or for taking corrective action. Here was a flawed, nonresponsive, and irresponsible system that had deprived her of her daughter by allowing a known, dangerous felon

[7] Helen Harlow was interviewed on 15 May 1992; Ida Ballasiotes was interviewed on 24 April 1992; Trish Tobis was interviewed on 1 May 1992.

to circulate freely and then had denied that it would have been possible to do otherwise.

Taken together, these stories provide us with an implicit sense of what the crusade for victim rights is all about while at the same time making it clear that victim advocacy has become a principal way of coping. Victim advocacy gives meaning to the tragedies that have changed the victims' lives. The victims and their advocates have organized to provide solace and support to other victims, and they have organized politically to force society to take corrective action. Thus, the theme of *dominion* appears in two distinct ways.

First, there is the search for personal dominion in these women's determination to regain control of their shattered lives. They wanted to be heard and thus resented the condescending way political leaders initially responded to their efforts. According to Ida Ballasiotes,

> There was an attitude that I found very patronizing. "Oh, aren't you courageous." And I thought, courageous has nothing to do with it. That was so far from my mind and it irritated me that was their perception. It was like being patted on the head and sent on your way.

Consequently, these victim advocates took particular satisfaction in the prominent role they ultimately played on the task force that formulated the CPA and in bringing pressure to bear on legislators to ensure its passage. Ida Ballasiotes and other activists attended the House voting sessions and, according to the *Los Angeles Times* (10 May 1990, p. A-31), threatened to publicize names of those voting against the bill. And from conversations with Helen Harlow and Ida Ballasiotes, it was clear that they have gotten great satisfaction out of their continued pressure on legislators who had believed that they could satisfy victim advocacy groups once and for all with the CPA.

There is a second and broader set of concerns driving the victim advocates, concerns that resonate particularly well with republican values. Certainly, all three of the victim representatives on the Governor's Task Force, Helen Harlow, Ida Ballasiotes, and Trish Tobis, were impressed by the extent to which their experiences and their grievances were typical of the suffering of others throughout the state. In promoting policy change, therefore, they clearly believed that they were striking a blow for public safety and especially for the most vulnerable members of society (i.e., women and children) whose lives were haunted by the threats and/or memories of victimization. Thus, by organizing a grassroots social movement, they have in one sense followed the path prescribed by republican criminology.

Moreover, again in keeping with the concerns of republican criminology, they blamed a callous and unresponsive state. They believed that much of the suffering was gratuitous, the result of

the state placing its own bureaucratic concerns ahead of public safety. As Ida Ballasiotes put it:

> Corrections' main concerns are population management. OK? That's their focus. And how that's maintained is pretty casual. They move people here to here, they know when they come what day they're going to be released; so many will have to go to work release; so many will have to go into community supervision, etc., etc. . . . We've looked at the goals of the Sentencing Reform Act, and to protect the public was number 4 out of 5, I believe. I had one phrase that I had particularly put into the Community Protection Act and it was that when parole decisions are made, public safety is one of the major criteria. I didn't think one even had to say that. And I was talking to the head of the Parole Board. She said, "You changed the way we do business." I said, "What do you mean?" "Well, now we have to take public safety into account." I said, "You mean, you hadn't been?" I mean, that just astounds me. We get used to expecting a certain level of security and safety, to think that people out there are doing the right thing. And it's just not that true. I'm sorry.

So the overriding objective of victim advocacy is to make the state more attentive to the public safety of its most vulnerable citizens—again a classic example of what Braithwaite calls for from republican social movements. But from this point on, the consonance between victim advocacy and republican criminology begins to weaken.

The Rejection of Reintegrative Policies

Simply put, victim advocates oppose reintegrative measures. They believe that sexual criminals, especially the worst of them ("sexual predators"), are driven by their compulsions and thus bound to reoffend. Accordingly, victims and potential victims cannot feel safe if such people are released into the community. Exclusion thus promotes dominion. Ida Ballasiotes puts it this way:

> Well, you know, people keep saying that you cannot predict future dangerousness. But if you look back on some of these histories, you can probably do that. I think you can with a fair amount of certainty. I mean, again, if some guy turns himself around, fine, but I don't like the odds myself.

The other victim advocates voiced similar sentiments. What they liked about civil commitment was not that it provided treatment but that, because treatment would not work, most if not all predators would remain incarcerated for the rest of their lives.

The same kind of tension between republican values and the policies favored by victim advocates emerges with respect to community notification. Community notification can, on the one

hand, be seen as promoting dominion. Trish Tobis was a particularly forceful supporter of community notification:

> The one part that I feel the best about is the community protection notification regarding sex offenders. Now I know that some of the offenders that are labeled sex offenders will never go on to commit another offense again and they will still have to register. But there is a greater sense, a perception of the community having a greater sense, of knowledge about there's an individual in their community. . . . I can't make the world a better place, but I can at least provide information so that people can decide for themselves what they want to do.

Ida Ballasiotes is more ambivalent about offender registration and community notification because of what she refers to as the "vigilante quality" of those provisions:

> There's the provision for community notification when someone is released, and I can see that at some level. It disturbs me when I see people, citizens, going around and plastering pictures up of this guy and going from door to door and saying, "Hey, you know there's a sex offender in your neighborhood." At that point, I don't know and they don't know that someone hasn't gotten their life together. OK? Chances are, it would be rare that they did, and didn't reoffend, but I don't like the vigilante quality that sometimes comes up. The first time that they notified one in Tacoma, and again back to the press—I could break their necks sometimes. TV cameras, right over there in that house, and you think. . . . You know, if nothing else, we wanted to be very responsible about what we did and, to me, that's not responsible and I don't like that, I don't like it at all.

Helen Harlow who, like Trish Tobis, sees community notification as essential, believes its main value and likely effect will be to keep dangerous offenders at a distance from the community.

There was a strong determination among all the victim advocates to increase the penalties for crimes of sexual violence. The specific target of victim advocates was Washington's Sentencing Reform Act (SRA). Victim advocates rejected the moderate sentences of the SRA and lent their support to what has been a successful effort to increase penalties. Despite substantial increases, including those mandated by the CPA, there is a continuing interest in going further. Indeed, Ida Ballasiotes has gotten herself appointed to the Sentencing Guidelines Commission with that goal in mind:

> It would probably work better if in the standard sentencing that those crimes were probably at a higher level and not plea-bargained down and all that stuff. That was one reason for wanting to be appointed to the Sentencing Guidelines Commission. And I always wondered, I said, "How did you arrive at these sentence ranges . . . ?" And I always thought there was something magical about this, that a great deal of thought went into the mathematical calculations and they said, "Well, we went

> around and we asked everyone who was working on this if that sounded reasonable." And they said, "Yeah, sounds all right to me."[8]

Another concern was the Special Sex Offender Sentencing Alternative (SSOSA), which provides suspended sentences with special conditions attached for some first-time sex offenders. Although SSOSA can reasonably be seen as an effort toward reintegration, the victim advocates have been very suspicious of the SSOSA program.

The picture of victim advocacy that emerges from our interviews is more diverse, nuanced, and thoughtful than some critics have suggested. This was not a homogeneous group of conservatives with a purely punitive approach to the problem of sexual violence. On the one hand, there was an uncanny consonance between the way these victim advocates and republican criminologists Braithwaite and Pettit diagnosed the problems of the criminal justice system. Once the focus shifted from diagnosis to treatment, however, victim advocates supported, albeit not exclusively, just the kind of intrusive state and exclusionary policies feared by the opponents of victim advocacy and rejected by republicans and their feminist allies.

It remains to be seen just what impact victim advocates, with their complex mix of value and policy preferences, had on the political process. More speculatively, we ask what is to be learned from this one legislative event about the long-term influence of victim advocacy. Briefly put, we shall see that victim advocates in this instance were clearly players, not mere pawns, in the legislative game. The legislators did, however, respond selectively to the victim advocates, and it was easier to find punitive than republican common ground. As to the long-term influence of victim advocacy, our findings suggest that victims are more likely to be an episodic than a continuing political presence.

III. Victim Advocacy in the Political Process

Victim advocates, legislators, and the report of the Governor's Task Force all claim that the Community Protection Act is anchored in solid criminological research. This is, however, at best contested terrain. As Norval Morris (1992) argued, the kind of civil commitment procedures that are embodied in the sexual predator provisions have proven ineffective and repressive—indeed, more likely to cause harm than to do good. Even the Washington State Psychiatric Association (WSPA) has pointed out sev-

[8] There is a connection between Ida Ballasiotes's ambivalence about community notification and her interest in tougher sentencing. The community, perhaps prodded by the media, is not to be trusted because of a tendency to indulge in vigilantism. Accordingly, the more attractive, but decidedly nonrepublican, choice is to rely on a reformed state to impose tougher sentences.

eral deficiencies in the CPA. For example, one major deficiency is that the "Task Force created and defined a new mental disorder, 'sexually violent predator', declaring it to be either a form of mental abnormality or a new type of personality disorder" (Reardon 1992:849). Our analysis of the relevant literature, presented below, indicates that the criminological case for the CPA is weak across the board.

The passage of the CPA does, however, attest to the way victim advocacy groups can transform public indignation into powerful, indeed irresistible, political pressure. Most insiders would probably agree with Gary Nelson, chair of the Senate Law and Justice Committee, who was quoted by the *Seattle Times* (25 Jan. 1990, p. C-6) as saying that the bill was "for the victims of the crimes" and that it was a "tribute" to them. There is virtually complete agreement that the victim advocates made their case convincingly and played their cards skillfully at every stage of the process. Their interventions were influential in shaping the proposal that emerged from the Governor's Task Force and that was adopted largely intact by the legislature.

The experience also suggests some limitations in the political capabilities of victim advocacy groups. If the victim advocacy groups are, in effect, the voice of victimization, there would seem to be some built-in limits to what can be expected from them. While there will always be victims, only rarely does victimization provide the fertile political soil in which victim advocacy can flourish. Thus, the influence of victim advocacy may be inextricably linked to, and limited by, sporadic outbursts of public anger. If so, can victim advocates really establish the kind of continuing presence that would make them major and reliable players in formulating and implementing crime control policy?[9]

Victim advocates are not oblivious to the problems of making their voices heard on a continuing basis. They are, however, inclined to interpret the situation differently. On the one hand, they believe that this is all part of a learning experience and that they are becoming ever more effective politically. On the other hand, they see many of their problems as matters of politics as usual, such as the difficulties that all interests face in getting the legislature to fund programs adequately, especially in times of tight budgets.

[9] A Superior Court judge in Seattle recently berated prosecutors for bending to public pressure in a sentencing proceeding for two young men who had tortured and killed a pet donkey. In declining to give the exceptionally heavy sentence requested by the prosecutor, the judge reported that he had received hundreds of calls and letters asking for harsh punishment. In contrast, he noted that neither the public nor the prosecutor had shown such concern in the case of a young man to whom the judge had given an exceptionally harsh sentence earlier in the day. That man had been convicted of abducting a 16-year-old girl, "beating her, ripping her clothes off, slitting her throat from ear-to-ear and throwing her into a . . . dumpster where he and his friends thought [mistakenly] that she would die" (Stevens 1992).

Criminological Research and Sexual Violence

Victim advocates and legislative leaders who played prominent roles in formulating the CPA mentioned several criminological assumptions to justify their support of extraordinary procedures to deal with sexually violent offenders. At the heart of the matter is the assumption that sexually violent offenders are more likely to reoffend and are, because of their uncontrollably deviant sexual compulsion, uniquely beyond rehabilitation. Representative Marlin Applewick, a member of the task force and one of a small coterie of legislators who took responsibility for shepherding the CPA through the legislature, voiced a widely shared view:

> What gave us the confidence here is the research is very clear, I think, that pedophilia becomes a life-long predisposition compared with other criminology where you would tend to have an age cohort . . . and that you generally grow out of it. . . . But with pedophilia, we're basically saying that, when identified, this person will reoffend until they're 80 if given the opportunity. . . . [It] doesn't matter whether you use castration, depoprovera, ongoing counseling. The safest thing seems to be lock them up.[10]

Implicit in this formulation, which is confined (unlike the CPA) to pedophiles, is the belief that those who engage in repeat acts of sexual violence constitute a reliably and readily identifiable class. Other points made by CPA supporters are that sexual violence is a growing problem, that it has been swept under the rug for too long, and that it is high time that something be done. There is, however, substantial research that casts doubt on these assumptions.[11]

To begin with, sex offenders as a class are no more likely to recidivate than are other types of offenders. Bureau of Justice statistics, cited by the Governor's Task Force, indicate that about 42% of all released murderers in 1989 were rearrested; 51.5% of all released rapists; 48% of all other released sex offenders; and 66% of all released robbers. Within these violent crime categories, rearrest rates are higher for robbery than for any other category (Governor's Task Force on Community Protection 1989:IV-4). If rearrest rates are used as the gauge of recidivism and, therefore, as the justification for extreme measures to reduce criminal violence, robbers would seem to pose a more serious problem than sexual offenders.

In addition, the available data do not suggest that priority should be assigned to crimes of sexual violence because they are

[10] Applewick was interviewed on 31 Aug. 1992.

[11] Many of the respondents also believed that these crimes were especially objectionable—unspeakable acts of violence against defenseless women and children. Whether there is something uniquely offensive is a matter of dispute even among victim advocates and, in any case, not amenable to empirical research.

increasing at a faster rate than other types of crime. A 1990 study that examined delinquency rates among 1945 and 1958 birth cohorts and compared changes in incidence and recidivism rates over time found that incidence rates were significantly different for the second cohort: 1.6 times higher for overall crime and 3 times higher for violent index rates (Tracy, Wolfgang, & Filio 1990). However, when violent crimes are analyzed by offense type, the cohort II to cohort I rate ratios are as follows: "3:1 for homicide, 1.7:1 for rape, 5:1 for robbery, and almost 2:1 for aggravated assault and burglary" (ibid., p. 276). Thus, although all violent crime categories have increased over time, rape rates have not increased as much as homicide, robbery, and burglary. Similarly, Gelles and Straus (1987:217) report that the level of violence against children has actually remained relatively constant and that very severe types of violence have decreased significantly.[12] If, then, the concern is with increasing rates of violence, perhaps attention should be focused on murder and robbery—especially the latter given that recidivism rates are so high.

Another problem with making an exception of sex offenders is that they are a diverse group not readily distinguishable from other criminals. Sex offenders are often involved in other types of crimes, both violent and/or nonviolent, nonsex crimes. Washington State data for 1992 indicate that 28% of adults convicted of felony sex offenses had prior criminal histories. But 41% of these offenses were nonviolent, nonsex offenses; 17% were violent, nonsex offenses; and 42% were felony sex offenses (Washington State Institute for Public Policy 1992:Chart 7). Data for juvenile sex felons in Washington are somewhat different but present the same mixed picture (ibid., Chart 12). Similarly, a national self-report longitudinal study of violent offending reveals that most juvenile offenders are not pure sex offenders (Elliott, Huizinga, & Morse 1986).

Even if there is a core group of compulsively predatory sexual offenders, the research findings provide reasons for wondering how often it will be possible to pick out these predators in the making before they do harm. It is, therefore, difficult to accept the task force claim that "clinical predictions about the likelihood of future dangerousness can be reliable when based on empirical evidence and developed according to rigorous standards" (Governor's Task Force on Community Protection 1989:IV-4).[13]

[12] Violence against children only *seems* to be higher because of a large increase in official reports—up 10% per year beginning in the mid-1970s (Gelles & Straus 1987:212). This increase in reports is, however, seen by Gelles and Straus as a function of the enhanced capacity of "community's social control apparatus" (p. 214). Most criminologists would probably agree that the national victimization surveys on which they draw provide a more accurate measure of actual abuse.

[13] The available research also raises questions about the effectiveness of the treatment programs that will be made available to sexual offenders in prison and to sexual predators who are civilly incarcerated. According to a review by Furby, Weinrott, & Black-

Given indignation generated by crimes of sexual violence, the authorities may well be tempted to play it safe. If so, they are likely to lock up people who are not "sexual predators." In short, the problems of false positives and false negatives seem endemic to the CPA's sexual predator provisions.

Finally, insofar as the criminological literature does provide some guidance for dealing with sexual violence, the CPA seems to ignore that guidance. In particular, as some of the victim advocates complained, there seems to be no criminological justification for the way in which the CPA confines predatory crime to "acts directed towards strangers or individuals with whom a relationship has been established or promoted for the primary purpose of victimization" (Community Protection Act 1990:§ 1002). Assaults by such strangers are reportedly rare. Conversely, family members or "other known persons and fathers emerge as the principal alleged offenders in sexual assault related incidents" against children in Washington (Governor's Juvenile Justice Advisory Committee 1989:5). The *Seattle Times* recently reported that 4% of felony sexual assaults against children during the past four years were perpetrated by strangers, while 43% were by acquaintances, 22% by natural parents, 15% by other relatives, and 9% by stepparents (Keene 1993:14). Clearly, excluding these prior relationship crimes runs contrary to the available data.[14]

The criminological case for the CPA is deeply flawed. The data suggest neither a compelling need for the steps taken nor for the price in civil liberties that the CPA extracts. To make matters worse, the most serious threats posed by sexual violence are explicitly excluded from the especially controversial provisions requiring civil commitment of "sexual predators." The insufficiency of criminological explanations leads us back to politics and, of course, to victim advocacy.

Victim Influence

There is no denying the pivotal role played by victims advocacy groups in the passage of the CPA. Members of the groups "Friends of Diane" and "The Tennis Shoe Brigade" were active from the start in lobbying for change in the state's criminal jus-

shaw (1989), of 42 treatment studies, clinical treatment has not been demonstrated to reduce recidivism rates for sexual offenders. Indications to the contrary are discounted because they were derived from programs that admitted only the best risks. The task force takes issue with the Furby et al. review, citing an earlier article by Marshall and Barbaree (1988). That article is, however, confined to child molesters. A recent study in California, the Sex Offender Treatment and Evaluation Project (SOTEP) concluded that recidivism rates for treated and untreated sex offenders did not differ significantly (California Dept. of Mental Health & Division of State Hospitals 1989). These data reinforce the strong impression that the sexual predator provisions should be seen primarily as exclusionary measures—as incapacitation rather than rehabilitation.

[14] This same point is made in another article the task force cited. Gelles and Straus (1987) underscore the threat posed by parental abuse of children.

tice system. Ida Ballasiotes and Helen Harlow became symbols of, and spokespersons for, the victims' grievances and, along with Trish Tobis, were influential members of the Governor's Task Force.

By all accounts, the 3 victim representatives on the 24-member task force, together with the testimony of other victims during hearings the task force conducted throughout the state, made a deep impression and influenced in a definitive way the recommendations to the governor. The victim advocacy groups also established a formidable presence during the legislative process itself. As liberal State Senator Phillip Talmadge put it: "This was one of those rare circumstances where it isn't a question of whether policy is going to be adopted but the nature of the policy that's adopted that is probably the real debate."[15] Other legislators interviewed said much the same thing.

The best indicator of the victim advocates' influence was that their capacity to impose a sense of urgency on the legislators. This sense of urgency led to direct conflicts with the ex post facto limitations that ordinarily govern criminal law as well as with the principles of determinant sentencing that had been unequivocally embraced by the legislature with the adoption of the Sentencing Reform Act in 1981. As the victim advocates saw things and as the task force and the legislature came to see them, these obstacles were not to be permitted to prevent closing gaps in the law. It was through these gaps that the murderer of Ida Ballasiotes's daughter and the man who sexually mutilated the Tacoma boy had slipped with such appalling consequences—to recall just two incidents that sparked the victim advocacy movement in Washington.

Closing such gaps meant that no other comparably dangerous sex offenders would be released into the community. To do so prospectively within the terms of the SRA would have meant adopting life sentences for all dangerous sex offenders. But unless applied retroactively, and thus unconstitutionally, mandatory life sentences would not have closed the gap for sex offenders who were already in prison and sentenced under the SRA, which assigned fixed release dates to all inmates.

The response to this dilemma was civil commitment of sexual predators. Since the commitment is civil rather than criminal, it avoids in form, if not in substance, the constraints of ex post facto principles and determinate sentencing. The willingness to use this kind of stratagem to overcome the obstacles posed by existing rules and principles is one clear indication of the extent to which well-schooled legal professionalism was put at the service of the exclusionary preferences of the victim advocates.

[15] Talmadge was interviewed on 28 July 1992.

The Limits of Victim Influence

It would be wrong to conclude that the victim advocates simply had their way with the politicians. Consider first the mixed message of Governor Booth Gardner's appointment of the Task Force on Community Protection. The Tennis Shoe Brigade came to the state capital seeking a special session of the legislature that would promote immediate action. Instead, they got a task force that served the governor and the legislature as something of "a windbreak to protect them from the raw force of public passion," according to David Boerner (1992:47), who played a key role in drafting its recommendations. Thus, while the protest activities launched by Helen Harlow's Tennis Shoe Brigade clearly kept the heat on the governor so that something would be done, the task force inquiry provided a cooling-off period and promoted a more deliberative policy process.

The task force also entangled the victims in the political process. While maintaining a powerful sense of urgency, they inevitably made concessions to what they perceived to be the allowable limits of what could be done politically. The Community Protection Act is, for example, confined to sexual violence, but as Trish Tobis put it: "If it were under my control, I would have made the task force look at broader issues other than sexual assault issues. But that was the charge and I couldn't complain with it." Helen Harlow made the same point with respect to nonsexual criminal violence and also in connection with exclusion from the sexual predator provisions of crimes committed by family members, clergy, teachers, and others acquainted with the victim; this excludes those responsible for most sexual violence.

> It was definitely the beginning because, see, the governor gave us an executive order to discuss repeat predatory sex offenders. Period. Incest is a real difficult subject. Family matters just seem to have a different flavor, so if you do it at home, then you're under a different set of guidelines and laws. And I'm not sure that we can really look at issues in that regard anymore because we're telling children of family members that they have a lot less value than if they're hurt by strangers. I don't think that that's our point, I don't think that's true.

It is also revealing that the victim advocates were most successful when it came to lobbying for punishment—for longer sentences and exclusionary measures. This latter point suggests that victim advocacy may be as much a reflection of the punitive political climate as it is a policy force in its own right.

The limits of the influence of victim advocates can be seen in their failure to acquire a significant amount of money from the legislature for early detection and treatment of sexually violent juveniles. When asked whether the funding was adequate, Helen Harlow replied:

> It's "iffy." So far, it's not a permanently funded thing, for one thing, and so what happens is if the court orders that treatment plan, the most they can order for is for the period of time it has been funded for which is usually at most a biennium. So, if you come in during the second half of the biennium, you're talking for only one year. What follows that? So then you have parents of these children who are so desperate for ongoing treatment and yet they don't want to turn their kid over to a detention facility where all they're going to get is food, water and mistreatment, what are the prospects there?

Ida Ballasiotes concurred: "There was some provision in there but then you get a year like this year with the budget deficit, and where does it start being cut?" But this may not just be a budgetary issue. Perhaps preventive programs, like those that target at-risk juveniles in an attempt to break the cycle of violence, simply cannot draw political sustenance from the forces that nurture victim advocacy.

In short, there is reason to believe that the influence of victim advocacy groups was rooted in the horror of a particularly appalling crime. Not even the murder and rape of Ms. Ballasiotes's daughter really got the political ball rolling. What seemed decisive was the severing of the Tacoma boy's penis. Given the extent to which women and girls have suffered so long from sexual abuse, it was from a feminist perspective discomforting, although no surprise, that the legislative success of victim advocacy was closely associated with the male organ.

To return to the broader point, Michael Patrick, one of the staunchest legislative supporters of the victim advocates, put it this way:

> [O]ver the years, I've sponsored legislation to deal with sex criminals and other criminal offenders. I also, being a politician, recognize that timing is everything in politics. And when you have a situation like the little boy in Tacoma having his penis cut off or the rape in Maple Valley and other sex crimes, it creates a groundswell of support that allows the policymaker to . . . take advantage of that to make the proper decisions. So, in a sense, I was thrilled that the timing was perfect in order to make positive changes in reference to sex criminals.[16]

What happens, however, once the wave of public outrage subsides? To what extent can victim advocates build on their initial successes? We will return to these questions in our conclusion. First, let us turn from the law on the books to the law in action in order to assess the concrete policy consequences of victim advocacy.

[16] Patrick was interviewed on 4 Aug. 1992.

IV. Community Protection Legislation in Action

The Washington State Community Protection Act emerged out of a clash of discordant voices (Rideout 1992). Victim advocacy groups burdened by the raw pain of their losses demanded decisive action. Criminologists and mental health professionals, while not unmindful of the agony of the victims, saw things differently. The Governor's Task Force had to reconcile this conflicting counsel.

In narrowing the focus to sexual predators, the task force sought to curtail the threat to civil liberties and the retreat from the principles of determinate sentencing. Only a discrete minority, the worst offenders, would be subjected to what looks suspiciously like preventive detention. Adjudicated sexual predators are, after all, incarcerated perhaps for the rest of their lives because of what they *might* do and *after* paying the prescribed penalty for what they have already done. Thus, in making an exception of a rather loosely defined group of offenders, the statute raised important constitutional questions.[17] It also introduced disturbing criminological inconsistencies that call into question both the fairness of the sexual predator provisions and their contribution to public safety. Moreover, based on what has happened since the passage of the act, we are inclined to see the CPA police registration and community notification provisions as being at least as problematic as the sexual predator provisions.

Recall that the CPA's sexual predator provisions were introduced at least in part to avoid or contain the worst incursions on civil liberties. Rather than generalizing from a few extreme examples of sexual violence to sexual and/or criminal violence, the sexual predator provisions are narrowly focused on a small group of offenders who typified the worst fears of victim advocates and the general public.

Evaluated in these terms, the sexual predator provisions seem to be working as intended. Twenty-eight individuals have been referred for evaluation to the Special Commitment Center in Monroe, Washington. Table 1 provides summary information on the 24 current residents. Given the plethora of sexual offenders, it is clear that only a small number of those who complete their

[17] The constitutional questions were resolved by the Washington State Supreme Court in favor of the statute. By a 6-3 vote the Court held that because the commitment is civil not criminal, the protections against ex post facto laws and double jeopardy do not apply. Based on similar reasoning, the Court rejected due process claims: the sexual predator provisions legitimately confine persons found to be both mentally ill and dangerous. Moreover, this confinement is to last only so long as these persons remain mentally ill and dangerous, with treatment made available to them. The majority did find some irregularities in the particular cases and ordered the release of one of the two petitioners and a reconsideration of the conditions of confinement for the other. The dissenters complained that the statutory definition of a sexual predator does not require proof of a medically accepted mental illness and is simply a way to keep dangerous people off the streets indefinitely—in other words, preventive detention. *In re Young* 1993.

Table 1. Summary of Residents in Washington State Sexual Predator Commitment Program

Offender No.	Age (as of 1993), Sex, & Race	Admission Date	Commitment Status
1	33-year-old male (race unavailable)	09/25/90	Committed on 01/24/91; is not participating in treatment
2	52-year-old male, African American	10/24/90	Committed on 03/08/91; is not participating in treatment
3 released Aug. 1993	29-year-old male, Caucasian	12/21/90	Committed on 06/06/91; is not participating in treatment
4	22-year-old male, Caucasian	12/28/90	Committed on 02/05/91; is participating in treatment
5	26-year-old male, Caucasian	03/01/91	Committed on 12/11/91; is participating in treatment
6	42-year-old male, Native American	03/25/91	Committed on 12/03/91; is not participating in treatment
7	43-year-old male, Caucasian	05/17/91	Committed on 09/20/91; is not participating in treatment
8	24-year-old male, Caucasian	07/01/91	Committed on 12/16/92; is not participating in treatment
9	40-year-old male, Native American	07/03/91	Committed on 11/14/91; is participating in treatment
10	34-year-old male, Caucasian	09/06/91	Committed on 11/25/91; is participating in treatment
11	67-year-old male, Caucasian	08/04/92	Trial date not scheduled
12	39-year-old male, Hispanic American	08/07/92	Committed on 03/24/93; is not participating in treatment
13	41-year-old male, Asian American	10/08/92	Committed on 11/01/93; is participating in treatment
14	22-year-old male, Caucasian	10/14/92	Trial date not scheduled
15	43-year-old male, Caucasian	12/16/92	Committed on 10/29/93; is not participating in treatment
16	29-year-old male, African American	12/23/92	Committed on 02/01/94; is not participating in treatment
17	44-year-old male, Caucasian	01/28/93	Committed on 04/22/93; is participating in treatment
18	42-year-old male, Native American	02/19/93	Committed on 02/07/94; is not participating in treatment
19	62-year-old male, Caucasian	03/29/93	Trial date not scheduled
20	34-year-old male, Caucasian	04/26/93	Trial date not scheduled
21	27-year-old male, Caucasian	06/23/93	Trial date scheduled for April 1994
22	42-year-old male, Caucasian	09/10/93	Trial date not scheduled
23	43-year-old male, Caucasian	10/14/93	Trial date not scheduled
24	53-year-old male, Caucasian	11/23/93	Committed on 12/14/93; is not participating in treatment

SOURCE: Summary of statistics available as of 22 Feb. 1994 on the 24 individuals who were being detained by or had been committed to the Washington State Sexual Predator Program. Information provided by the Special Commitment Center in Monroe, WA.

sentences are formally considered for indefinite incarceration as sexual predators.[18] Of the 28 who have been referred for evaluation, only 17 have so far been committed.[19] Four were released because they did not meet the legal definition of violent sexual predator; 7 others were still being evaluated at the time of this writing. Thus only a small proportion of sexual offenders are referred to the program, and that subsample is further weeded out in the evaluation process conducted by mental health professionals in Monroe.

Accordingly, there appears to have been no *wholesale* encroachment on civil liberties. It is also true that, as the data in Table 2 strongly suggest, those who have been committed pose an arguably serious threat to public safety, especially to women or children. While none of these "predators" have killed or sexually mutilated their victims, all those committed, with the exception of Offender No. 17, have been convicted of multiple sexual offenses—involving either forcible rape (and/or attempted rape) or involving children.[20] In sum, the sexual predator provisions have so far led to the commitment of a relatively small number of dangerous offenders.

A closer look at the sexual predator data is, however, more disquieting. Table 2 suggests that sexual predators do not, as the task force claimed, constitute a reliably and readily identifiable class. Consider the point made by one of the task force legislators about "pedophilia" being a major cause of sexually predatory behavior, noted earlier. The clinical evaluations, as reported in Table 2, indicate that only 3 of the 12 individuals for whom we have information were actually diagnosed with pedophilia.[21] Only 3 other individuals were diagnosed with any type of mental illness (sexual sadism and antisocial personality; a personality disorder; and a personality disorder, mental abnormality, and paraphilia, respectively).

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[18] According to data provided to us by the Washington State Patrol, convictions for sex offenses in Washington State averaged 1,347 for the nine years between 1982 and 1990. "Washington State Patrol, Sex Offender Conviction/Prior Conviction by Year" (printout, 16 April 1992).

[19] Table 1 reveals the following demographic data on the 17 individuals who have actually been committed as sexual predators: (1) all 17 individuals are male; (2) the age range of this group is 22 to 53 years with an average age of 37; (3) the racial composition of this group is as follows: 9 Caucasians, 2 Africans American, 3 Native Americans, 1 Hispanic American, 1 Asian American, and 1 unknown. One of these 17 individuals, Vance Cunningham, was released by order of the Washington State Supreme Court in its decision upholding the constitutionality of the sexual predator provisions. *In re Young* 1993:59–60.

[20] On the basis of the data made available to us, Offender No. 17 is a troubling exception in that his record reveals a single conviction in 1973 for indecent liberties. The decisive item in his record seems to be the determination by a single clinical psychologist that he suffers from pedophilia as well as borderline and antisocial personality disorders.

[21] We are without information on Offender Nos. 13, 15, and 16 and have only partial information on Offender Nos. 9 and 10.

Table 2. Criminal Record and History of Committed Residents in Washington State Sexual Predator Commitment Program

Offender No.	Criminal Record	History	Prior Evaluations
1	1978, Theft, 2 1980, Attempted Rape, 2; Simple Assault 1986, Rape, 2; Assault, 2 1989, Rape, 3d degree	All rapes, assaults, and attempted rape were against young women, generally total strangers. At least one was with a weapon (knife). Has spent much of his incarceration time in the Intensive Management Unit because of sexual acting out and multiple incidents of threatening behavior.	Evaluation at ESH in 1980 found him to be a sexual psychopath but not amenable to treatment. Assaulted another patient while at ESH. Reportedly told a psychologist that he was not safe, needed treatment, and was likely to reoffend. DOC psychological evaluation diagnosis: sexual sadism and antisocial personality.
2	1965, Rape, 4 counts 1977, Rape, 3d degree 1986, Rape, 1st degree	All rapes were against total strangers and usually involved a weapon (knife). Denies all the rapes and refuses treatment.	Recent DOC psychological evaluation suggests that he does meet the criteria of violent sexual predator.
3	1980, Assault, 2d degree 1985, Rape, 2d degree 1987, Rape, 2d degree, 2 counts	In 1980, assaulted a woman with a knife, intending to rape her. In 1985, raped a female hitchhiker using threats and physical assault. In 1987, raped 2 women within 2 months of each other, and within 5 months after his release from prison. All assaults were against total strangers using force. Denies all rapes.	Recent DOC psychological evaluation and independent psychological evaluation suggest that he does meet criteria of violent sexual predator.
4	1989, Indecent Liberties No date available, Indecent exposure	Convicted of sexually molesting a 5-year-old neighborhood girl. Confinement included time at the Division of Juvenile Rehabilitation facility, Maple Lane, and in neurobehavioral placement facilities in Louisiana and Minnesota. Other criminal history includes arrests for obscene telephone calls. Has reported 2 other incidents of sexual molestation, and many incidents of indecent exposure and obscene phone calls. Three facilities note either a history of "sexually inappropriate behavior" or "violent and sexually aggressive behavior."	In 1989 and 1990, evaluations by independent clinical psychologists indicate that this individual is extremely dangerous and is at a significant danger to reoffend.
5	1985, Indecent Liberties 1987, Attempted Indecent Liberties, 1 count No date available, Statutory Rape, 1st degree, 1 count	His sexual offenses began at the age of 16 when he molested a 3½-year-old girl. Has admitted to molesting 4 other children between ages of 3 and 8 during the summer of 1985.	A psychological evaluation in 1985 indicates "high risk to reoffend." Has shown minimal remorse and empathy for his victims. In 1990, DOC psychologist suggested that he meets the criteria for violent sexual predator.

Table 2 (continued)

Offender No.	Criminal Record	History	Prior Evaluations
6	1970, Assault, 2d degree with intent to Rape 1974, Assault, 2d degree 1982, TMVWOP 1985, Attempted Rape, 1st degree, Assault, 2d degree	All assaults were against females who were strangers. All (except TMVWOP) included use of excessive force, with injury, and attempted sexual assault. The 1970 and 1974 assaults were against 70- and 75-year-old women, respectively. In 1969, complaint was filed in juvenile court alleging attempted rape of a 70-year-old woman.	In 1970 and 1974, was evaluated by WSH. Both times was found to be not amenable to treatment because of denial and lack of motivation. All evaluations during incarcerations indicate a personality disorder and the potential for reoffending.
7	1977, Rape, 2d degree 1979, Rape, 2d degree 1985, Rape, 2d degree 1990, Assault, 4th degree	In 1977, 1979, and 1985, physically assaulted and raped female acquaintances. In 1990, forced entry into woman's hotel room and physically assaulted her; victim was able to terminate assault.	Based on the evaluation of a clinical psychologist at WSP, he poses a threat to the community as a sexual predator.
8	1989, Assault, 2d degree, 1 count 1990, Child Molestation, 3d degree, 1 count 1991, Assault, 3d degree, 2 counts	N/A	N/A
9	1978, Assault, 2d degree, 1 count 1988, Attempted Rape, 2d degree, 1 count	N/A	N/A
10	1976, 1977, Communicating with a Minor for Immoral Purposes, 2 incidents 1979, Communicating with a Minor for Immoral Purposes 1985, Indecent Liberties	In 1976, attempted to sexually assault 2 young girls; placed on juvenile probation. In 1977, forced a little girl to undress and masturbated on her; again placed on juvenile probation. In 1979, sexually and physically assaulted a 10-year-old girl. In 1985, sexually assaulted a 7-year-old boy with a knife.	In 1961, was assessed as functioning at a mildly retarded level. After 1979, was assessed at WSH and diagnosed as a sexual psychopath. This was reaffirmed with a diagnosis of paraphilia-pedophilia by WSH after 1985. DOC diagnosis included pedophilia, organic mental disorder, and personality disorder NOS, with schizo and avoidant features.

Table 2 (continued)

Offender No.	Criminal Record	History	Prior Evaluations
12	1977, Rape, 2d degree; Kidnapping, 2d degree 1980, Indecent Liberties, 1 count 1988, Parole violations	Sexual offenses are known to have began in 1977 when he was 23 years old. He kidnapped and continually raped a 19-year-old woman. His offense in 1980 involved a 13-year-old girl, and his parole violations in 1988 involved an attempted attack on an 8-year-old girl as well as other violations. Has reoffended in less than 2 years after each release into the community. Has a history of alcohol abuse associated with his sexual offenses.	In 1977, was evaluated as having a "history of impulsive and sexually manipulative behavior with women." In 1980, was evaluated by a clinical psychologist, participated in treatment group for about 4 months, and was found not amenable to treatment. An evaluation in 1986 found him to remain at risk to reoffend. In a records review in 1992, was diagnosed as suffering from a personality disorder, a mental abnormality, and paraphilia, which makes him likely to engage in acts of sexual violence.
17	1973, Indecent Liberties, 1 count	Admits to having sexual relations as a teenager with young boys and girls. Has a long history of being in institutions beginning with his stay at Rainier School 1968–72. A year later, was convicted of Indecent Liberties and given a 20-year sentence. However, sentence was suspended on the condition he participate in the sexual psychopathy program at WSH. That stay was short, and he was terminated from WSH in 1973 and spent a short time at Fircrest School before he was sent to prison. Has a history of sexually acting out while in all the previously mentioned institutions. Has displayed threatening behavior, assaultive behavior, and sexual deviant behavior during his years of incarceration. Has admitted to having many fantasies about molesting young children and then killing them to avoid apprehension.	In 1993, a clinical psychologist diagnosed him as suffering from pedophilia, as well as from 2 personality disorders (borderline personality disorder and antisocial personality disorder), and that he is likely to engage in predatory acts of sexual violence.

Table 2 (continued)

Offender No.	Criminal Record	History	Prior Evaluations
18	1967, Forcible Rape 1969, Rape 1972, Attempted Rape 1977, Forcible Rape 1985, Rape, 2d degree, 1 count 1986, Rape, 3d degree, 1 count 1987, Rape, 2d degree, 1 count	Assaults against women who were both strangers and acquaintances. Used verbal manipulation, verbal threats, and physical force, including threatening with a knife to subdue the women so that oral and vaginal rape could be performed. Also arrested but not convicted on 4 rapes and several harassment charges in the early and mid-1980s. Was not convicted mainly because victims did not want to file charges. History of alcohol dependency.	Evaluated in 1993 by a clinical psychologist and diagnosed as suffering from paraphilia and a personality disorder NOS. Evaluation concluded that he was likely to engage in predatory acts of sexual violence if released from prison.
24	1961, Contribution to Delinquency of a Minor 1966, Lewd and Lascivious Acts toward a Minor, 3 counts 1972, Indecent Liberties, 2 counts 1984, Indecent Liberties	Victims have been young girls, ages 6–13. On 1 occasion the victim was a neighbor but other incidents against total strangers. Has displayed a range of sexually inappropriate behaviors with victims, including taking nude pictures of the victim, exposing himself, fondling their genitals, and rubbing his penis on them. Has difficulty controlling his deviant sexual arousal toward children.	In 1972 sent to WSH for evaluation and treatment but found to be unamenable to treatment. In 1993 evaluation at McNeil Island Correction Center concluded that he had been convicted of a sexually violent offense, that he suffered from pedophilia, and that repeated incarcerations had not proved a deterrent. In 1993 an evaluation at Helmut Riedel of WSR concluded that he was a sexually violent offender and likely to commit predatory acts of sexual violence.

SOURCE: Summary statistics available as of 22 Feb. 1994 on 14 of the 17 individuals who had been committed to the Washington State Sexual Predator Program. Information was not made available for either criminal record, history, or prior evaluations for offenders 13, 15, or 16. This information was provided by the Special Commitment Center in Monroe, WA, 22 Feb. 1994.

NOTE: Abbreviations: DOC = Department of Corrections; ESH = Eastern State Hospital; NOS = not otherwise specified; TMVWOP = Taking Motor Vehicle without Owner's Permission; WSH = Washington State Hospital; WSP = Washington State Penitentiary; WSR = Washington State Reformatory.

These data raise not only the troubling issue of false positives but also cast doubt on the constitutionality of the sexual predator provisions. As the Washington Supreme Court majority made clear, civil commitment is constitutional only in cases in which the individual is both mentally ill and dangerous (*In re Young* 1993:37). But according to Table 2, of the 12 adjudicated sexual predators for whom we have information, only 6 have been diagnosed as being mentally ill. The other 8 individuals were simply determined to have met "the criteria of violent sexual predator." Justice Johnson, speaking for the dissenters, said: "Despite some psychiatric incantations, therefore, the sexual predator statute deals with potentially dangerous people, but not mentally ill people" (ibid., p. 65).

This sense of constitutionally impermissible preventive detention is further reinforced by the modest amount of treatment being administered at the Special Commitment Center. Only 6 of the 17 are currently participating in treatment, and 3 others were evaluated as "not amenable to treatment." The remaining 8 "sexual predators" may be refusing treatment that is offered them. But insofar as they do not suffer from a mental illness, in what sense can they be cured by treatment? In effect, the statute is incapacitation masquerading as rehabilitation. This outcome would, of course, be entirely consistent with the exclusionary objectives of the victim advocates, who were clearly more interested in identifying and detaining violent sexual offenders than in rehabilitating them.

Even as a public safety measure, the sexual predator provisions are at best a mixed bag. While virtually all those confined seem to be genuinely dangerous, the decision to restrict civil commitment to predators defined as strangers makes little sense. Given the amount of sexual violence and pedophilia perpetrated by family members, friends, clergy, teachers, and others who are well known to the victims, this legislation contributes to public safety only at the margins.

The sexual predator provisions are not the only aspects of the CPA that have proven problematic. The police registration and community notification provisions have resulted in just the kind of vigilante activities that concerned both victim advocate Ida Ballasiotes and civil libertarians. The ostensible intent of these provisions was to alert communities to the presence of sexual offenders, thus permitting police monitoring and ready apprehension while at the same time allowing individual members of the community to take precautionary steps.

Not surprisingly, however, a common result of community notification has been violent exclusion rather than wary inclusion. Sex offenders subjected to the most thorough form of community notification (which includes the notification of neighbors) tend to experience harsh harassment and are unable to

reintegrate successfully into their communities. As spokesperson Mark Sigfrinius of the Everett Police Department put it, "Every time you release one of these things, the neighbors go nuts" (Morlin & Rosenwald 1991). Similarly, Mark Amundsen of the Seattle Police Department equated community notification with "vigilantism" (ibid.).[22] In one instance a released offender's house was burned down, and he was driven out of Washington and subsequently out of New Mexico (Alexander 1993; *Seattle Times*, 19 July 1993, p. B-1). When communities in Snohomish County were notified about a convicted child molester's release, he was evicted twice, lost two new jobs, spent time living in his car, and then was arrested for failing to register after his third move. Sheriff's Department spokesperson Elliott Woodall reported: "He said he was trying to comply, but as soon as his whereabouts became known there was pressure to move. He said he . . . 'was essentially homeless and unemployed' " (Steinberg 1991). The first juvenile sex offender released and subjected to community notification had to leave his high school because of harassment following door-to-door, citywide flier distribution and TV and newspaper coverage of his release. The 16-year-old and his family were trapped in their home for fear of neighborhood reprisal. Upon community notification of their release, other sex offenders and their families experienced death threats, harassment, vandalism, and assault (Muhlstein 1991).

The jury is still out on whether community notification gives us peace of mind and more competent police work or whether it simply leads to vigilante overreaction. What is evident is that the more thorough forms of community notification are not conducive to the reintegration of released sex offenders. This is especially true for the Level III offenders, who are most likely to be subjected to neighborhood notification and as a result to isolating ostracism.[23]

[22] The state recognizes three levels of sex offenders, ranging from Level I offenders who may have been convicted of one count of molestation of a family member and who are considered a low risk to reoffend, to Level III offenders who have been convicted of several sex crimes and are thought to be high-risk predators who are extremely dangerous and likely to reoffend (*Seattle Times*, 30 Nov. 1992, p. B-3). The law allows each county to determine its guidelines for public notification. While the release of Level I or Level II offenders (the majority of offenders) does not usually entail notification of neighbors, local community groups, and schools, community notification for Level III offenders is very comprehensive. The resulting vigilantism may be more a consequence of the public notification procedures than of the type of offender being released. When fliers are distributed widely throughout the community for the release of Level I and Level II offenders, the result may be the same public uproar as when a Level III offender is released. This is what recently occurred in the small town of Mukilteo, WA (*ibid.*).

[23] We found one example of a community working toward reintegration. In suburban Kent, WA, 22 block watch groups got together to work out an alternative to exclusion for a released sexual offender. As block watch captain Lori Herrboldt put it: "If he's chased out of the area, he's just going to go somewhere else. . . . If we can turn him around, that will make him an asset to us rather than a threat" (Suttle 1991). Accordingly, an agreement was made to help this offender get a job in return for his seeking counsel-

After examining the results of the enforcement of the CPA, it does not seem that the legislation has struck a persuasive balance between public safety and civil liberties. Although a handful of serious sexual predators have been committed, it remains true that future behavior is unpredictable and that sexual predators are not a readily identifiable group. There is, in other words, no way to be certain that the right people are being detained. In any case, the act excludes those responsible for most sexual violence—persons with a prior relationship with the victim. Moreover, the inadequate funding for at-risk youth, when compared with the funding available for commitment, suggests that punishment has, indeed, taken precedence over prevention. Finally, from a constitutional and civil liberties standpoint, it is hard to escape the conclusion that the state is empowered to impose preventive detention—to lock people up because they are deemed dangerous. There is also ample evidence that community notification tends to lead to public outrage and ostracism of offenders rather than to their reintegration into the community.

V. Conclusions

The goal of republican criminology is to promote a sequence of events leading from crime, to shaming, and then to reintegration of offenders—all this with minimum intervention by the state. Republicans and their feminist supporters believe that empowering victims and incorporating them into reintegrative "communities of concern" (Braithwaite & Daly 1994:3) is an important step in the right direction. They reject the notion that victims are likely to be hostile to republican values. In the exchange with just desert theorists Ashworth and von Hirsch (1993), Pettit (with Braithwaite 1993:236) argues that the distrust of victims is rooted in a misconception, which

> suggests that potential victims are incapable of conceiving of themselves as potential defendants; it supposes there is a divide between victims and offenders such that measures taken against offenders are not likely to impact in any way on the status of victims. But this is a mistake. Every one in society is a potential victim and equally *everyone in society is, if not a potential offender, at least someone who may be mistakenly convicted as an offender*; this danger is particularly salient for the members of some minority groups. (Emphasis added)

The notion that everyone in society is either a potential offender or a potential victim of criminal process mistakes is an article of faith among civil libertarians. As we argue below, however, this "there but for the grace of God go I" message about crime and criminals ordinarily faces an uphill struggle among the general

ing and promising to stay away from the neighborhood children (ibid.). To our knowledge, however, this remains the reintegrative exception to the exclusionary rule.

public. The circumstances associated with successful victim advocacy make this hill even harder to climb.

Washington's experience certainly suggests that it is, for two synergistically related reasons, unrealistic to expect victim advocacy to spearhead the movement toward reintegrative shaming. The victim advocates we interviewed were, in the first place, convinced that those who commit crimes of sexual violence in general and pedophilia in particular are indeed predators—a breed apart, destined to recidivate and almost certainly beyond redemption. Accordingly, the reintegrative polices favored by the republicans struck victim advocates as misguided and downright dangerous. Second, the success of victim advocacy in Washington State was inextricably linked to, and dependent on, high levels of public fear and anger attributed to several brutal and well-publicized crimes of sexual violence.[24] This was the kind of setting least likely to be receptive to reintegrative policies, irrespective of the preferences of victim advocates.[25]

From a republican perspective, it is no doubt tempting to dismiss these Washington State victim advocates as law and order ideologues and therefore as "get tough" aberrations, but we disagree. In the first place, they were, according to their own expressed views as well as to others close to the political process, not driven by vindictiveness but by the definitively republican goal of dominion. They were determined to promote policies that provided a sense of security to victims and potential victims. We are, therefore, inclined to see them as typical of both victim advocates and of substantial portions of the broader public as well.[26]

[24] Both of these points seem borne out by the Washington State experience with the nation's first "Three Strikes and You're Out" campaign. Subsequent to the passage of the CPA, victim advocacy groups working with a local conservative think tank attempted to build on public outrage over sexual violence by extending exclusionary principles to all offenders convicted of three serious offenses. The initial attempt to pass a "Three Strikes" initiative failed, but the forces supporting it regrouped and rode a new wave of public indignation to victory in November 1993 (*Seattle Times*, 14 Nov. 93, p. E-2; 24 July 1993, p. A-9). This sequence of events indicates the breadth of the victim advocates' punitive and exclusionary aspirations. Not only did the "Three Strikes" initiative reach beyond sexual violence, it reaches beyond violent crime per se, imposing life sentences without parole after the third conviction for all Class A and some Class B felonies, including, e.g., leading organized crime; manufacture, delivery, or possession with intent to deliver of heroin or cocaine; extortion in the first degree, and indecent liberties (*Seattle Times*, 19 Sept. 1993, p. B-7; Washington Secretary of State 1993:22). The initial failure and subsequent success of the "Three Strikes" initiative in Washington State also indicates that the public anger and fear on which victim advocacy depends has a life of its own over which the victim advocates have at best limited influence. Indeed, the wave of indignation was so intense that it carried "Three Strikes" from fringe conservatives in the Pacific Northwest to mainstream liberal political leaders like President Clinton and Governor Cuomo (Cuomo 1994; *New York Times*, 27 Jan. 1994, p. A-20).

[25] Recall that insofar as victim advocates supported prevention programs for early childhood intervention, they were largely unsuccessful.

[26] Americans, in general, do not seem ready to reintegrate violent sex offenders. Although evidence for this broader claim remains very preliminary, a *New York Times* report suggests widespread support for civil commitment, community notification, and

Moreover, even under the best of circumstances, the republican message is a very hard sell. The thinking behind this assertion, as developed elsewhere, is that punitive and exclusionary responses resonate with deeply held cultural beliefs that punishment and exclusion work and are also the right thing to do. There is, moreover, a hard-to-resist temptation to cling to the comfort afforded by these beliefs. They assure us that crime problems are readily soluble if we are resolute and that criminals deserve to be punished for the harm they have done. Of course, this myth of crime and punishment is driven by an image of the "criminal other," the "predatory stranger," who is different from, and a serious danger to, the rest of us (Scheingold 1984:59–68).

Consider also what there is to learn from the women's movement, with which republicans claim a particular affinity. According to Braithwaite (1991b:18), as we indicated above, grassroots feminist movements were largely responsible for getting the society and the legal system to take seriously the crime of domestic violence. The problem is, as Finstad's (1990:163) Scandinavian findings suggest, that the women's movement has tended to measure the success of these campaigns not by republican principles and policies but according to conventional law enforcement standards: "I see a type of historical line, where the women's movement in its efforts to protect the victim's interests have come with demands for stricter criminal law controls (even though the women's movement is not united, but rather has several viewpoints on this subject)"[27] (see also Barak 1986). Like the republicans, Finstad believes that in the long run the women's movement will see the light, but so far the evidence seems to point in the opposite direction.

We conclude that victim advocacy is rooted in, and dependent on, an overheated and fear-ridden political climate. At such times, recourse to simplistic solutions and scapegoating thrives and enlightened political leadership falters. In Washington State, the Governor's Task Force made some efforts to soften the rough edges of victim demands. While these efforts may have made the best of a bad situation, the net effect was legislation that failed to promote public safety, civil liberties, or the reintegration of offenders.[28] To welcome victim advocacy and grassroots social

other tactics such as requiring special clothing, house signs, and bumper stickers for sex offenders (as in Louisiana's legislation). The 21 other states, in addition to Washington, that require some form of sex offender registration attest to our society's punitive and exclusionary tendencies (*New York Times*, 20 Feb. 1993, p. 5).

[27] Finstad's (1990) own proposals are roughly consonant with the republican approach. She does, however, lean rather heavily on the state, albeit as "the executor of collective sorrow" rather than in its punitive capacity (p. 166).

[28] This analysis puts us at odds with Elias and others who argue that the victim movement has been manipulated by conservatives into accepting get tough and largely self-defeating policies (Elias 1990:244–46). Sometimes that may well be the case, and conservative politicians have been only too happy to take advantage of cultural truths like the myth of crime and punishment. But these cultural truths also impose constraints or at

movements, as republicans are wont to do, is, therefore, to play a dangerous game that seems most likely to make a bad situation even worse.

While one case study focused on a particularly unsettling type of crime does not invalidate the premises, the principles, or the objectives of republican criminology, our case study does raise serious questions about victim advocacy as a carrier of republican principles and objectives. The shaming and reintegration sought by republicans and their feminist supporters may be workable long-term goals, although our research makes us frankly skeptical about the applicability of republican principles to violent and predatory crimes.[29] Be all that as it may, the right circumstances for effective shaming and reintegration seem unlikely to develop in concert with victim advocacy, which is more likely to flourish in, and lend impetus to, settings that nurture punitive and exclusionary policies like those incorporated in Washington's Community Protection Act.

References

Alexander, Karen (1993) "Gallardo's Victim Says She Holds No Grudges," *Seattle Times,* 18 July, sec. A, p. 1.

Ashworth, Andrew, & Andrew von Hirsch (1993) "Desert and the Three Rs," 5 *Current Issues in Criminal Justice* 9.

Barak, Gregg (1986) "Feminist Connections and the Movement against Domestic Violence: Beyond Criminal Justice Reform," 9 *J. of Crime & Justice* 139.

Boerner, David (1992) "Confronting Violence: In the Act and in the World." Delivered at 1992 Law & Society Association meetings, Philadelphia, 28–31 May.

Boruchowitz, Robert C. (1992) "Sexual Predator Law—The Nightmare in the Halls of Justice," 15 *Univ. of Puget Sound Law Rev.* 827.

Braithwaite, John (1989) *Crime, Shame and Reintegration.* Cambridge: Cambridge Univ. Press.

——— (1991a) "Diversion, Reintegrative Shaming and Republican Criminology. Presented at International Symposium: Diversion and Social Control: Impacts on Justice, Delinquents, Victims and the Public, Bielfeld, Germany, 27–29 Nov.

——— (1991b) "Inequality and Republican Criminology." Presented at American Society of Criminology meeting, San Francisco, Nov.

least make some policies more costly than others. Certainly, in Washington State, liberals and moderates felt that they were struggling against the tide. The more general point is that these cultural truths contribute to a complex and interactive process. It is, therefore, not sufficient to think about the relationship between victim advocates and politicians as simply one of manipulation (see Scheingold 1991:15–28).

[29] The work of Stanley Cohen (1979, 1985) offers a more direct challenge to republican criminology. Cohen explores the dark, statist side of community empowerment strategies like community policing, alternative dispute resolution, diversion programs, and the like. The *unintended* consequences of such reforms are, as he puts, "widening of the net and thinning the mesh" (1979:346-50; see also 1985:40-86). Behavior that was previously beyond the reach of formal criminal sanctions is subjected to these informal sanctions. Moreover, insofar as the community participates, it tends to become an agent of the state. The result is to extend and enhance state power rather than reduce it as republican criminologists wish to do.

Braithwaite, John (1992) "Good and Bad Police Services and How to Pick Them," in P. Moir & H. Eijkman, eds., *Policing in Australia.* South Melbourne: Macmillan.

John Braithwaite, & Kathleen Daly (1994) "Masculinities, Violence and Communitarian Control," in T. Newburn & B. Stanko, eds., *Just Boys Doing Business? Men, Masculinity and Crime.* London: Routledge.

Braithwaite, John, & Philip Pettit (1990) *Not Just Deserts: A Republican Theory of Criminal Justice.* Oxford: Oxford Univ. Press.

California Department of Mental Health & Division of State Hospitals (1989) *The Sex Offender Treatment and Evaluation Project: Third Report in Response to PC 1365.* Sacramento: California Dept. of Mental Health & Division of State Hospitals.

Centers for Disease Control (1986) "Premature Mortality Due to Suicide and Homicide—United States, 1983," 35 *Morbidity & Mortality Weekly Report* 357–60, 365.

Cohen, Stanley (1979) "The Punitive City: Notes on the Dispersal of Social Control," 3 *Contemporary Crises* 339.

——— (1985) *Visions of Social Control.* New York: Polity Press.

Cuomo, Mario (1994) "Harsh, Sure, but Fair," *New York Times,* 29 Jan., p. 19.

Currie, Elliot (1985) *Confronting Crime: An American Challenge.* New York: Pantheon.

Daly, Kathleen (1989) "Criminal Justice Ideologies and Practices in Different Voices: Some Feminist Questions about Justice," 17 *International J. of the Sociology of Law* 1.

Elias, Robert (1986) *The Politics of Victimization: Victims, Victimology and Human Rights.* New York: Oxford Univ. Press.

——— (1990) "Which Victim Movement? The Politics of Victim Policy," in A. J. Lurigio, W. G. Skogan, & R. C. Davis, eds., *Victims of Crime: Problems, Policies, and Programs.* Newbury Park, CA: Sage Publications.

Elliott, Delbert S., David Huizinga, & Barbara Morse (1986) "Self-reported Violent Offending," 1 *J. of Interpersonal Violence* 472.

Finstad, Liv (1990) "Sexual Offenders Out of Prison: Principles for a Realistic Utopia," 18 *International J. of the Sociology of Law* 157.

Furby, Lita, Mark R. Weinrott, & Lyn Blackshaw (1989) "Sex Offender Recidivism: A Review," 105 *Psychological Bull.* 3.

Gelles, Richard J., & Murray A. Straus (1987) "Is Violence toward Children Increasing?" 2 *J. of Interpersonal Violence* 212.

Governor's Juvenile Justice Advisory Committee (1989) *Crimes against Children: Special Child Abuse Report.* Olympia: Washington Association of Sheriffs & Police Chiefs and Office of the [State] Attorney General.

Governor's Task Force on Community Protection (1989) *Task Force on Community Protection: Final Report.* Olympia, WA: Governor's Task Force.

Greene, Jack R., & Stephen D. Mastrofski (1988) *Community Policing: Rhetoric or Reality.* New York: Praeger.

Keene, Linda (1993) "Legal Dilemma: Rapist's Rights vs. Public's Right to Know," *Seattle Times,* 13 July, sec. A, pp. 1, 14.

Marshall, W., & H. Barbaree (1988) "The Long-Term Evaluation of a Behavioral Treatment Program for Child Molesters," 26 *Behaviour Research & Therapy* 499.

Morlin, Bill, & Lonnie Rosenwald (1991) "As Felons Get out, So Does Word," *Spokesman Rev.,* 19 May, sec. A, p. 1.

Morris, Norval (1992) "Keynote Address: Predators and Politics," 15 *Univ. of Puget Sound Law Rev.* 517.

Muhlstein, Jim (1991) "Family Home Now 'Prison,' " *Everett Herald,* 9 Feb., p. 1a.

Pettit, Phillip, with John Braithwaite (1993) "Not Just Deserts, Even in Sentencing," 4 *Current Issues in Criminal Justice* 225.

Reardon, James D. (1992) "Sexual Predators: Mental Illness or Abnormality? A Psychiatrist's Perspective," 15 *Univ. of Puget Sound Law Rev.* 849.
Rideout, J. Christopher (1992) "So What's in a Name? A Rhetorical Reading of Washington's Sexually Violent Predators Act," 15 *Univ. of Puget Sound Law Rev.* 781.
Reiss, Albert J., Jr. (1981) "Public Safety: Marshaling Crime Statistics," 453 *Annals of the American Academy of Political & Social Science* 222 (Jan.).
Scheingold, Stuart A. (1984) *The Politics of Law and Order: Street Crime and Public Policy.* New York: Longman.
——— (1991) *The Politics of Street Crime: Criminal Process and Cultural Obsession.* Philadelphia: Temple Univ. Press.
Siegel, Barry (1990) "Locking up 'Sexual Predators,' " *Los Angeles Times,* 10 May, sec. A, pp. 30, 31.
Simon, Jim (1990) "Senate Sends Sex Offender Bill to House," *Seattle Times,* 25 Jan., sec. C, p. 6.
Steinberg, Lynn (1991) "Convicted Sex Offender Is Jailed after Allegedly Failing to Register," *Seattle Post Intelligencer,* 6 Feb., sec. B, p. 3.
Stevens, Richard (1992) "Judge Blasts Prosecutor in Pasadon Sentencing,' *Seattle Times,* 10 Oct., sec. A, p. 1.
Sutherland, Edwin H. (1950) "The Diffusion of Sexual Psychopath Laws," 56 *American J. of Sociology* 142.
Suttle, Gestin (1991) "Kent-Area Group Strikes a Deal with Sex Offender," *Tacoma News Tribune,* 30 June, sec. I, p. 4.
Tracy, Paul E., Marvin E. Wolfgang, & Robert M. Figlio (1990) *Delinquency Careers in Two Birth Cohorts.* New York: Plenum Press.
Washington Secretary of State (1993) *General Election Voters Pamphlet,* Edition 8 for Seattle, King County. Olympia, WA: Secretary of State.
Washington State Sentencing Guidelines Commission (1992) *A Statistical Summary of Adult Felony Sentencing 1989.* Olympia, WA: The Commission.
Washington State Institute for Public Policy (1992) *Findings from the Community Protection Research Project: A Chartbook.* Olympia, WA.

Case Cited

In re Personal Restraint of Young, 122 Wash. 2d 1, 857 P.2d 989 (1993).

Statutes Cited

Community Protection Act, 1990 Wash. Laws, ch. 3, p. 404, sec. 1002; Wash. Rev. Code secs. 71.09.020, 71.09.060 (1990).
Sentencing Reform Act, Wash. Rev. Code, secs. 9.94A.430–460 (1981).
Special Sexual Offender Sentencing Alternatives, Wash. Rev. Code sec. 9.94A.120 (1994).