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## Shame, shaming and restorative justice

### A critical appraisal

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The concepts of shame and shaming occupy a central, if controversial, position within the theoretical understanding of restorative justice, largely as a result of the formulation of reintegrative shaming theory (RST) (Braithwaite 1989). Although the normative theory of restorative justice should in no way be understood as being synonymous with the theory of reintegrative shaming (Walgrave and Aertsen 1996), the links between the two perspectives are undeniable. Braithwaite's RST has been widely used to explain the procedures used in restorative justice conferences and has been used in the development of conferencing techniques (see, e.g., Hyndman *et al.* 1996; McDonald *et al.* 1994; Moore and Forsythe 1995; O'Connell and Thorsbourne 1995; Retzinger and Scheff 1996; Van Ness and Strong 1997).

In this chapter, we will critically analyze the role of shame within restorative justice. We begin by reviewing the basics of RST. Surprisingly the original formulation of the theory (Braithwaite 1989) includes only a cursory discussion of what the emotion of shame even is. We turn next to the issue of defining shame, drawing on the psychological, sociological, and philosophical writing on the nature of shame, and attempting to

distinguish it from related emotions such as guilt, humiliation, and embarrassment. Next, we look at the criticisms of RST, in particular those arguing that shame and shaming do not belong in restorative justice work. Finally, we conclude by seeking to salvage the notion of shaming within restorative justice, in particular, by drawing on the newer notion of 'shame management' (Ahmed *et al.* 2001). We argue that the concept of shame is indeed a dangerous emotion, but rather than trying to avoid it (which is probably impossible), restorative justice interventions are well suited to the task of managing and working constructively with the shame that all parties experience in situations of crime and conflict.

#### **The reintegrative shaming thesis**

The theory of reintegrative shaming argues that the importance of social disapproval has generally been underestimated by institutions of criminal justice as well as criminological theory. It argues that to understand crime rates we need to look at the degree to which offending is shamed and whether that shaming is reintegrative or stigmatic.

Braithwaite (1989) defines reintegrative shaming as disapproval that is respectful of the person, is terminated by forgiveness, does not label the person as evil, nor allows condemnation to result in a master status trait. The theory predicts that the practice of reintegrative shaming will result in less offending. Conversely, stigmatizing shaming is not respectful of the person, is not terminated by forgiveness, labels the person as evil and allows them to attain a master status trait. RST predicts that this latter type of shaming results in greater levels of offending (Braithwaite 1989; Makkai and Braithwaite 1994).

Although an important feature of the theory is that it integrates the predictions of several theoretical perspectives into a single framework, its focus upon shaming is probably its most distinctive contribution. The theory defines shaming as:

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

This conception of shaming is distinctively broad, such that shaming is not necessarily public, humiliating or even defined as a special type of behavior. It might, for example, involve a discussion between parents and a child of how an act impacted upon others. Equally, a fine handed down by a court might be evaluated on the extent to which it is shaming: the extent to which it is an expression of disapproval towards the offender's behavior.

Use of the term 'shaming,' rather than simply 'disapproval,' implies the expectation that the process will result in a shame-related emotion and that this emotion is an important quality of the interaction. In arguing for the positive effects of reintegrative shaming, Braithwaite (1989: 69–75) highlights two mechanisms at work here.

One of these is that reintegrative shaming is an effective deterrent, particularly when it comes from those who the individual is close to, because it poses a threat to relationships that are valued. Yet, reintegrative shaming is meant to transcend the rational actor model of deterrence. The second mechanism, which Braithwaite suggests is more important, is that reintegrative shaming communicates that certain behaviors are morally wrong and thus builds internalized controls or conscience. Braithwaite (1989: 72) argues:

Shaming is more pregnant with symbolic content than punishment. Punishment is a denial of confidence in the morality of the offender by reducing norm compliance to a crude cost–benefit calculation; shaming can be a reaffirmation of the morality of the offender by expressing personal disappointment that the offender should do something so out of character.

Although the specific emotion is not clearly identified, both of these mechanisms, fear of disapproval and bad conscience, allude to shame-related emotions. The implication, which has not yet been empirically tested, is that the effect of disapproval on behavior is mediated by the emotions that disapproval causes or what Braithwaite labels 'shame.' Still, despite the central role assigned to shame in his theory, Braithwaite (1989) provided almost no analysis of what the concept is and how it works.

## What is shame?

Shame is a mysterious emotion. As illustrated by James Gilligan (1996: 64) and others, the etymological origins of the word 'shame' can help to provide some insight into the word's intended meaning. The word 'shame' derives from Old Germanic roots meaning to clothe or cover oneself, and in Greek the same word (*pudenda*) is

used to refer to both shame and human genitalia. Shame, then, refers to an experience of exposure – as in the proverb ‘shame dwells in the eyes’ (Gilligan 1996: 71).

Save, perhaps, for a few brief moments in the Garden of Eden, these shame-related emotions appear to be universally experienced among humans. Yet, they are not well understood in academic work. Frankly, if one wants to understand shame and related emotions, one would learn more by turning to poetry, literature, and art than, for example, neuropsychology. This is not, however, from a lack of trying. Shame has been a central focus of clinicians (e.g. Lindsay-Hartz 1984), psychologists (Tomkins 1987; Nathanson 1992), anthropologists (Mead 1937; Benedict 1946), moral philosophers (Williams 1993; Taylor 1985), sociologists (Goffman 1959; Scheff and Retzinger 1991), legal scholars (Kahan 1996) and criminologists (Grasmick and Bursik 1990), to name just a few. The problem is that as this theoretical work on shame has occurred across so many disciplines and in rather a haphazard manner, well-defined schools of thought have been systematically reviewed on the subject and there is no one obvious way to build a coherent typology to guide research. The three conceptions of shame described below (see also Harris 2001) are intended to provide an organizing framework rather than a neat typology.

### Shame as a social threat

The first conception that can be identified characterizes shame as a result of the individual’s perception of social rejection or disapproval. We will call it the social threat conception. Scheff and Retzinger (1991) and Leary (2000) both describe this as the perception that one’s relationships or social bonds with others have been damaged or destroyed. Gilbert (1997) hypothesizes that shame is related to the perception of being

unattractive to others, while Gibbons (1990) discusses it as the result of not receiving approval. The anthropological perspectives of Benedict (1946) and Mead (1937) describe the emotion as a product of perceived disapproval. While these theories vary in their explanations of why people are sensitive to social evaluation, they all emphasize the need to be accepted by others. Leary (2000) argues that the need to have strong personal ties is a basic human motive, while Gilbert (1997) suggests that there is an evolutionary need to maintain status. Scheff (1996a) argues that shame is related to the person’s perception of his or her own self-worth. An important characteristic of this conception is that it describes shame, in the words of Scheff, as exterior and constraining. The individual feels shame as a result of others’ decisions to reject. As a result shame, or the fear of shame, is described as a powerful motivation for individuals to continually monitor and work on personal relationships and to comply with social expectations at a broader level. This perspective can be summarized as the *social threat conception*.

### Shame as personal failure

The second conception that can be identified – the personal failure conception – is based upon the proposition that shame occurs when an individual perceives that they have failed to live up to their standards and this leads to the perception that the whole self is a failure. For H. B. Lewis (1971) and Wurmser (1994) failure is defined by the perception that the ego is not as good as the ego-ideal. M. Lewis (1992) defines shame as the attribution that the whole self has failed, while Lindsay-Hartz (1984) focuses not on failure to live up to an ideal but on failure to meet a minimum standard. Finally, affect theorists, Kaufman (1996) and Nathanson (1997) describe the feelings associated with shame as perceived

inferiority and failure. The feature common to the second conception of shame is a feeling of failure attributed to the whole self. Unlike other emotions, such as guilt, the focus of attention is the self rather than, for example, a transgression or rule that might have been broken. Significantly, this conception does not suggest that the perception of failure results necessarily from social interaction but rather that it can occur in any context. This perspective can be summarized as the *personal failure conception*.

### Shame as ethical threat

The third conception cuts across these two literatures and offers a conception that incorporates the notion of wrongdoing that is recognized by the individual and society. For Harré (1990) shame is connected with serious transgression as well as the idea of fault. The individual feels shame for having intentionally committed a wrong. This is implicit in Williams' (1993) description of shame as resulting from the perception that an abstract respected other, defined in ethical terms, would think badly of us. Taylor (1985) also emphasizes the ethical nature of shame. Shame is tied to the loss of self-respect, which defines what the individual feels is tolerable and what is not. These theories take on board the personal failure conception through recognizing the violation of internalized standards as a cause of shame. At the same time, they recognize the standards as incorporating wrongdoing and the transgression of social norms. As such, this *ethical conception* of shame recognizes the significance of social context. In summary, the ethical conception of shame acknowledges the importance that others play in feelings of shame, recognizes a shared moral code across individuals, and suggests that it is moral influence rather than rejection that is significant.

Central to all three of these accounts of shame are assumptions about how shame is

distinct from related emotions (such as guilt, embarrassment, envy, low self-esteem, etc.), and it has been by testing these proposed distinctions that researchers have sought to empirically explore the emotion. This has been done primarily by asking participants to recall incidents in which they have felt shame, guilt, and/or embarrassment, and to describe their experiences of these emotions. Such studies confirm that people recall shame as involving concern at others' disapproval, negative evaluation of the self, and feelings of having done wrong (Lindsay-Hartz 1984). They also find that people report differences among experiences of shame, guilt, and embarrassment. For example, Wicker *et al.* (1983) found that when describing experiences of shame, participants reported feeling more helpless, self-conscious, and alienated from others (among other things) than they did when describing experiences of guilt. Similar results were found by Tangney, Miller *et al.* (1996), who also reported that embarrassment was perceived as less negative and as having fewer moral implications than either shame or guilt.

Although participants distinguish between the shame-related emotions, differences between their reported characteristics tend to be small in comparison to the similarities found (Wicker *et al.* 1983: 38). These studies have also provided only equivocal support for differentiating shame and guilt on the theoretical dimensions discussed above. Research has not found strong support for the proposition that shame is associated with greater evaluation by others than guilt (Tangney, Miller *et al.* 1996; Wicker *et al.* 1983) and evidence as to whether shame involves greater evaluation of the self than guilt is also equivocal (Tangney, Miller *et al.* 1996; Wicker *et al.* 1983; but see Niedenthal *et al.* 1994). A growing body of research (Harder 1995; Tangney 1991; Tangney, Wagner *et al.* 1992) has found these distinctions useful in measuring the disposition to feel either emotion (shame- and

guilt-proneness). However, these studies impose a distinction between the emotions rather than testing for differences. As a result, it can be concluded that there is still uncertainty about whether there is a distinction between shame and guilt and, if so, the basis of that distinction (Harris 2003; Sabini and Silver 1997). Studies into the nature of these emotions have also examined them in very general contexts. These emotions may occur differently within criminal justice, where someone's actions are clearly sanctioned as being against the law.

### Can shame be restorative?

Notions of shaming, along with the implication that offenders should feel shame, are not uncontroversial within the restorative justice community and there are several reasons for legitimate suspicion of utilizing this concept as an organizing framework. First and most obviously, the emotion of shame has been linked to numerous explanations for violent behavior. The eminent prison psychologist James Gilligan (1996: 110) argues that the emotion of shame is 'the primary or ultimate cause of all violence' and claims 'I have yet to see a serious act of violence that was not provoked by the experience of feeling shamed and humiliated, disrespected and ridiculed.' Likewise, Thomas Scheff (1996b) argues that the 'purpose' of violence is to diminish the intensity of personal shame by discharging it in the form of violence toward others. Both Gilligan and Scheff account for the appeal of leaders such as Hitler by their ability to transform the shame of a humiliated people into righteous indignation against a scapegoat 'other.' To promote shame and shaming, then, in the name of peace-making and violence reduction appears on the surface to be an absurdity.

In response to the growing use of shaming punishments in American criminal courts Massaro (1997) urged greater caution in

applying notions of shame and shaming to criminal justice because the emotion is a complex, context-dependent response that is potentially harmful to offenders and criminogenic. So-called 'shaming punishments' that became popular as alternative sanctions with some US judges in the 1990s included orders for offenders to carry signs or attach stickers to their cars that indicated their offence, or else engage in unpaid work during which they were publicly identified as offenders being punished. Massaro argues that this 'modern' kind of shaming is one that outcasts certain segments of society in a way that does not protect the individuals' dignity and ultimately undermines the dignity of the whole community. In addition to arguing against the decency of following this stigmatizing approach she argues that the complexity of shame emotions is such that courts are ill-equipped to handle the emotion and that the effect of shaming on offenders will be difficult to predict.

While Massaro's critique is not directed at restorative justice, which most commentators think is inherently more capable than courts of handling the complex emotions provoked by an offence (Harris *et al.* 2004), a number of scholars have also expressed concern at the use of shaming within restorative practices. Maxwell and Morris (2002; Morris 2002) disagree with the idea that shaming (disapproval) within family group conferences is the mechanism that results in remorse. They argue that 'There is certainly nothing in the processes or practices of family group conferences of family group conferences in New Zealand that is explicitly geared towards expressing disapproval in order to invoke shame or remorse in the offender' (Maxwell and Morris 2002: 279). Morris (2002) argues that shaming is a dangerous proposition in restorative conferences because even with the best of intentions shaming might be interpreted by offenders as stigmatizing. This concern is shared by Van Stokkom (2002), who argues that planned shaming

efforts may block communication with offenders and consequently risk generating counter disapproval rather than restoration.

### **Divided by a common language**

In part, these concerns and criticisms of shaming reflect different understandings of what is meant by the word 'shame.' Unlike Braithwaite, Gilligan (1996: 71) explicitly equates shaming with 'mocking,' 'despising' and 'scorning' and uses the term 'shame' to refer to a deep-rooted sense of personal worthlessness. Likewise, the concerns raised by Massaro (1997) and Maxwell and Morris (2002) are directed towards types of shaming (e.g. those advocated by Kahan 1996, and others) that Braithwaite's (1989) theory would classify as highly stigmatizing and non-reintegrative. This is most clearly evident in Massaro's concern regarding the use of shaming punishments in American criminal court cases. Forcing offenders to publicly humiliate themselves by means such as holding placards which announce their crimes is directly opposite to what RST advocates. While completely rejecting the use of this type of shaming, RST suggests that disapproval which is reintegrative is constructive in reducing re-offending.

While it is easy to see the difference between these overtly stigmatizing forms of shaming and what Braithwaite proposes, Maxwell and Morris also express concern at shaming within restorative justice conferences. They argue that direct expressions of disapproval are not a common feature of family group conferences, which focus more clearly on emphasizing the consequences that an offence had on its victims (Maxwell and Morris 2002: 278). Morris (2002), furthermore, worries that even if direct disapproval is intended to reintegrate it may not be interpreted as such by the offender. The degree to which disapproval can be expressed directly and yet also be perceived as reintegrative (or non-stigmatizing) is an

empirical question that is yet to be fully explored. However, this also highlights an important difference in how the term is understood. Whereas Maxwell and Morris understand shaming as the verbal expression of disapproval, Braithwaite argues that shaming includes all social processes which express disapproval. Simply convening a family group conference expresses the community's concern or disapproval of an offence, as does discussion of the consequences of an offence. Indeed Braithwaite and Braithwaite (2001: 33) argue that it is these indirect forms of shaming that are most likely to be reintegrative:

Finally, we hypothesize that the genius of well-constructed restorative justice processes is that they only confront wrongdoing indirectly, implicitly inviting the wrongdoer themselves to be the one who directly confronts it, apologizes and seeks to right the wrong. This indirectness is mostly accomplished by proceeding simply to invite the stakeholders affected by the crime, especially the victim, victim supporters and loved ones of the offender, to describe how the crime has affected them.

As Maxwell and Morris (2002) argue, these differences in how shaming is interpreted are not simply a semantic quibble as they are critical to how the theory is understood and may represent a significant obstacle to its translation into restorative practices. The implication of this critique is that where restorative practice seeks to apply the implications of reintegrative shaming theory it needs to be done in such a way that it is sensitive to the cultural sensitivities as to how disapproval can be indicated without it also being perceived as stigmatizing. In a recent revision of reintegrative shaming theory Braithwaite and Braithwaite (2001) acknowledge that additional shaming in contexts that are already highly shaming is unnecessary and may even be interpreted as stigmatizing.

### ***Shame, guilt or remorse?***

Although some scholars (Maxwell and Morris 2002, Van Stokkom 2002) have questioned whether the word 'shaming' is appropriate to describe the reintegrative forms of disapproval envisaged by RST, Braithwaite is clear in his use of the word to signify actions that result in a shame-related emotion (Braithwaite and Braithwaite 2001). A more substantial criticism of shaming is the challenge to whether shame is a good emotion for an offender to feel at all. Indeed, Morris (2002) argues that the reintegrative shaming perspective is mistaken in placing an emphasis on the emotion of shame. She argues that the more important mechanisms in restorative justice are the eliciting of remorse in offenders as a result of empathy. Empathy, she argues, results from discussing the consequences that an offence has for the victims.

Taylor (2002) also views shame as a dangerous emotion to invoke in offenders because it is a threat to the offender's sense of self-worth and is hence potentially destructive. Such concerns are provided some support by research which suggests that the propensity to feel shame, rather than guilt, as a result of transgressions is associated with less constructive responses, such as feeling of anger and hostility (Tangney 1991). Remorse is described by Taylor as a better central concept than shame, or guilt, because it is directed towards the behavior, as opposed to the self, and does not involve any negative self-directed feelings. Maxwell and Morris (2000) have found some support for the importance of remorse in a study that examined recidivism among a sample of offenders who had attended a restorative conference ten years previously. This research found that, among other variables, not being made to feel bad about oneself during the conference (which can be interpreted as a measure of not being stigmatized) and feelings of remorse, as measured through offender self-reports, predicted lower recidivism.

While accepting the importance of remorse, Harris *et al.* (2004) have since argued that it may not be possible to quarantine offenders from feelings of shame. This is because feelings of shame or guilt will often occur following apprehension for an offence due to the inevitable social strains caused by that event regardless of what criminal justice interventions do. Perceptions of having done the wrong thing, of having disappointed others, and fear that one will be rejected are likely in the aftermath of being caught. Furthermore, it is argued that any kind of social censure for the offence, such as a restorative conference, which causes offenders to feel remorse is likely to spill over into feelings of shame. It does not seem likely that the moral emotion that offenders feel can be chosen in the way implied by Taylor (2002), particularly in those contexts where a community wants to show that it does not support a particular type of behavior.

Some empirical evidence supports this proposition. In a study which examines the shame-related emotions experienced by offenders in family group conferences and court cases in Australia, Harris (2003) found that feelings of shame and guilt were not differentiated by participants. This suggests that those individuals who reported feeling bad because others had been hurt – feelings which are associated with guilt (Baumeister *et al.* 1995) or remorse (Taylor 2002) – also reported feelings of anger and shame at the self. Analyses also show that this emotion of shame-guilt was not a response to stigmatization but actually predicted by reintegration (having been treated with respect and forgiveness) which seems to confirm that it is difficult for justice interventions to avoid provoking shame-related emotions no matter how careful they attempt to be. (Indeed, if the justice system really wants offenders to avoid feeling ashamed, the best thing it could do might be to treat them so harshly and unjustly that offenders feel as if they are the victims themselves and hence have



nothing to feel guilty about.) It is equally significant that self-reported feelings of shame in this sample seemed to be constructive rather than dysfunctional. That is, the emotion was found to be associated with observed expressions of remorse during conference cases (Harris 2001) as well as being positively correlated with self-reported empathy for those hurt and negatively correlated with feelings of anger and hostility.

### **From shaming to shame management**

While the research just discussed suggests that shame appears to be a fairly constructive emotion, research also suggests that shame can have strongly negative consequences in some circumstances (Ahmed 2001; Lewis 1971; Nathanson 1992; Scheff and Retzinger 1991; Tangney 1991). Indeed, this was evident in the research project discussed above. Harris (2001) found evidence of an 'unresolved' form of shame, which was associated with having been stigmatized and with feelings of anger and hostility towards other people present at the case conference. While the self-reported experience of shame-guilt involved feeling bad during the conference, unresolved shame involved ongoing feelings that one might have been unfairly treated and that issues from the case were unresolved.

These findings are consistent with the research of Scheff and Retzinger (1991; Retzinger 1991), Lewis (1971) and Ahmed (2001) who found that when feelings of shame are not acknowledged and resolved by individuals, the emotion can become maladaptive. Lewis (1971), in particular, identifies a 'by-passed' form of shame that involves 'back and forth ideation about guilt' (p. 234) which continues to 'plague' the person over a period of time. She argues that in by-passed shame the person does not acknowledge or resolve their negative feel-

ings and that this results in repetitive and obsessive thoughts about the event. Such unresolved shame is associated with feelings of anger and hostility towards others (see also Nathanson 1992; Retzinger 1991). This is also consistent with research by Tangney and her colleagues (Tangney *et al.* 1992; Tangney, Wagner *et al.* 1996) who have found that a disposition to internalize negative feeling about the self ('shame-proneness') is linked to the disposition to feel hostility towards others.

These findings suggest that there is a more complicated relationship between shaming and the emotions it produces than initially outlined by Braithwaite (1989) (see Ahmed *et al.* 2001). It has generally been expected that shaming, and specifically reintegrative shaming, results in feelings of shame and that this emotion is significant in the reduction of offending. These findings suggest that a significant function of different types of shaming (reintegrative v. stigmatic) is not whether they produce shame but the effect they have on how individuals respond to that shame. While the experience of shame can involve the acknowledgment of wrongdoing and is associated with empathy for those hurt, unresolved (or unacknowledged) forms of shame would seem to result in an inability to resolve issues arising from the event and feelings of hostility towards others.

This suggests that what may be important about the types of shaming proposed in RST is the degree to which they encourage or discourage these different forms of shame. Reintegrative shaming may produce a positive effect by assisting individuals to cope with feelings of shame in more constructive ways, whereas the risk of stigmatization (or even no shaming at all) may be that it prevents individuals from resolving important issues and results in ongoing feelings of unresolved shame. Shaming maybe important for reducing offending not because it results in shame but because it provides a mechanism that assists offenders to manage

their feeling of shame in more constructive ways (see Ahmed *et al.* 2001).

As such, in a recent revision to the RST, Braithwaite and Braithwaite (2001) argue that the focus of RST should shift from 'shaming' to 'shame management.' Braithwaite and Braithwaite's (2001) revision of reintegrative shaming theory does not alter the theory's primary prediction that reintegrative shaming reduces offending (while stigmatic shaming increases offending). Instead, it proposes that the reason for this is because individuals are more likely to manage any feelings of shame that occur more constructively if they are reintegrated rather than stigmatized. Questions about the individual's identity and their relationship to others, which are raised by the offence, are more easily managed if it is communicated to them that they are basically a good person and that they are accepted by those they care about (see Maruna 2001; Maruna and Copes 2005).

### **Conclusions: restorative justice as shame management**

One claim of restorative justice has been that it is more reintegrative than the traditional court system. This was supported by research which demonstrates that participants assigned to conferences perceived others to be more disapproving, yet more reintegrative and less stigmatizing, than did participants who attended court cases (Harris 2001). Random allocation of participants to court and conference cases suggests that we can be somewhat more confident that these differences are caused by characteristics of the interventions themselves. As discussed, these differences in the way that disapproval was perceived corresponded to differences in the emotions reported by participants, with more shame or guilt freely reported following conferences and more unresolved shame and embarrassment-exposure reported following court cases. If emerging research on the shame-related emotions

(Ahmed 2001, Harris 2003; Tangney *et al.* 1992; Tangney, Wagner *et al.* 1996) is correct, then the way in which offenders manage these feelings has an important impact on how they react to the event. Although more research is needed to verify the significance of these emotions (particularly in relation to offending), an implication of this work is that an important characteristic of criminal justice interventions is the degree to which they encourage offenders to manage feelings of shame constructively.

In short, it appears that 'shame will always be with us,' to coin a phrase. Those persons caught up in the criminal justice system are a long way from the Garden of Eden and the combination of their tasting of forbidden fruits and their exposure through criminal detection probably means that avoiding shame altogether is an impossibility. This is not altogether a bad thing. The complex emotion seems to have both very good and very bad consequences. Yet, shame is most problematic when it is unacknowledged, unresolved, and hence becomes projected on to others in a scapegoat fashion. Restorative justice interventions that allow all participants in an event to tell their stories (Zehr 1990) seem well suited to the difficult work of helping victims, offenders, and their supporters acknowledge, work through, and ultimately resolve the shame they are experiencing.

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