

A more humane approach to addressing the harm of criminal behaviour starts with victims

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Abstract

This paper argues that the critical problems in relation to crime are not the people who commit crimes but the harms that have resulted from the crime, the harms that have caused the crime and the harms that result from inhumane and ineffective ways of addressing crime.

Most crime is inhumane because it violates the dignity of human beings, because it can weaken social relations and because victims generally experience it as unjust.

The commission and consequences of crime can dehumanise both the victim and the perpetrator.

More humane approaches to addressing the harm of criminal behaviour are based upon the dignity of the individual, upon the solidarity of people supporting each other and upon social justice. More humane approaches

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activate in practical and effective ways people's agency, victims' ability to act to recover from harm and perpetrators' ability to act to redeem themselves. More humane approaches build pro-social relationships that support recovery and desistance from offending. More humane approaches bear witness to and strive to reform abuses of human rights, discrimination and stigmatisation.

1. Introduction

The globalised economy has harnessed scientific and technological advances to produce goods and services, which have added greatly to many people's standard of living, material comfort and convenience. However, there have also been major negative consequences; a widening gap between those with power and money and those who struggle to live on a restricted income and are excluded from political influence. This in turn has a negative impact on social stability and cohesion.

The *harm of criminal behaviour* is also being globalised through cyber crime, the drug trade, organised human trafficking, terrorism and hate crime. Ethnic minorities and migrants are stigmatised and subject to greater control by the state authorities especially the agencies of the criminal justice system leading to a disproportionate number of foreign prisoners in European prisons.

The modern world, while it offers many material comforts, also creates an underlying sense of insecurity (Bauman 2000). Social theorists refer now to 'risk society' (Beck 1992) and to the 'precarity' many people experience (Butler 2004). Citizens lose the experience of solidarity with others that community and religion

offered in the past. They feel threatened by other ethnic groups often blaming them for their lack of resources, thus, offering opportunities for populist and identity politics.

There is a real danger that the value of the common good is being eroded in modern society. Yet there remains a yearning among many people for social relationships of a more human scale and for a more humane culture.

The focus on the *harm caused by criminal behaviour* signifies that crime is not simply rule-breaking activity, which is addressed strategically by a large expensive professional bureaucracy. It draws attention to how people suffer from its impact. This viewpoint prioritises the lived reality of individual and communal experiences, perspectives, feelings, needs and desires.

Human beings can act both inhumanely and humanely. A more humane approach must not only encourage, develop and support the capacity within people to contribute to the common good but also allow for the expression of society's condemnation of serious harm and the control of people's capacity to act unjustly and to inflict suffering on others.

A fuller expression of humanity would take into account a more complex view in which cultural and social background, personal narratives and identity and relationships interact to influence how individuals make sense of their circumstances and choices. This reality brings into focus not only human agency and relationships but also structural inequality and discrimination requiring a commitment to social justice and human rights. This is essentially about taking the harm people experience in relation to criminal behaviour seriously and about pressing for reform within criminal justice to ensure that more humane approaches to harm are implemented and sustained.

I will suggest that to transform the way we address the harm of criminal behaviour, we should start with victims' experiences of crime rather than the risks that perpetrators pose. The EU's Directive on the rights, support and protection of victims of crime and Criminal Justice (Victims of Crime) Act 2017 offer an opportunity to radically engage once again with the way a society addresses crime.

2. The harm of criminal behaviour

Harm has been defined by Feinberg (1984:33) as “the thwarting, setting back or defeating of an interest.” The interests to which Feinberg refers are “all those things in which one has a stake” (1984:34). By that he means those things that the person needs to flourish. Some (Hillyard et al 2004) have argued that the harm caused by crime is a social and political construct and in reality most harm caused by criminal behaviour is no different and usually less severe than other harms caused by the policies of state or the actions of private corporations.

Generally, people accept that there are rules or norms that regulate behaviour and that, if a person violates these rules, a social reaction in the form of a sanction is appropriate. We cannot ignore that deviance from the norm is performed before a moral audience. What is distinctive is the meaning of the harm. Crime is experienced as an injustice and those affected expect justice.

What is the human impact of criminal behaviour?

When harm occurs the criminal justice system focuses on the perpetrator - detecting, building a case, prosecuting, sentencing and implementing the sentence. Making addressing the harm of criminal behaviour the focus of

policy and practice fundamentally alters the orientation of approaches to crime.

Following White's maxim (2007): the person is not the problem: the problem is the problem. And the problem is harm.

Three parties can be affected as a consequence of criminal behaviour:

1. The person who has been harmed and their family members, friends etc.
2. The person responsible for harm and their family members, friends etc.
3. Society (both communities on a micro level and the society at large).

People who have been harmed

People who have been victims of crime may report material, physical, emotional, psychological and relational harms. From a more humane point of view we need to distinguish between the reality of harm and the experience of suffering. The suffering caused by the harm of criminal behaviour will be specific to each individual.

The meaning of the harm caused by criminal behaviour is also mediated by its wrongfulness in that it has no

justification in law and as such is an injustice. For Shklar (1990) injustice is experienced in a very human way distinct from how the system administers justice. It stimulates powerful, often distressing, emotions particular to the individual. Consequently victims' experiences are personal and specific to the context in which the injustice occurs. Their lives are interrupted and disrupted by an unwelcome experience of harm over which they had no choice and little control (Pemberton et al, 2016, Crossley, 2000). This interruption to a life narrative can cause 'shattered assumptions' (Janoff-Bulman 1992) about living in the world. This can have a seriously detrimental effect on the capacity to participate in society. This complex combination of distressing emotions and moral judgements that arise from an injustice will often continue to dominate the victim's thoughts and behaviour long after physical wounds have healed, punishment has been inflicted or compensation received.

The criminal justice system as a bureaucratic, professional system operating as far as possible under universal principles strives to address the criminal offence in an impersonal and rational manner. Victims' wish to undo the injustice that they have suffered personally is usually very much at odds with their

experience of the criminal justice process, which is rule bound and procedural.

In some countries there have been improvements such as the option of victim impact statements and police victim liaison officers. The EU Directive on Victims has required member states to improve services for victims. Nevertheless, many victims continue to experience *secondary victimisation* by the criminal justice system (Dignan 2005; Laxminarayan et al, 2013; Kunst et al, 2015).

Families of victims may experience a 'ripple' effect from the harm and suffer from distressing emotions arising from their concern for the victim's suffering. Important relationships may be weakened or ended due to the changes in the victim's personality, moods and behaviour caused by trauma. A family's standard of living may be adversely affected by the victim's ill health having an impact on employability.

People responsible for harm

From a humane point of view the risk factors (Farrington 2007) found to be associated with offending can also be experienced as harmful. Indeed, many offenders have experienced trauma in the past (Ardino 2011, Foy et al

2011, Weeks and Widom 1998). These experiences may interact to reinforce what Maruna (2000) has called 'a condemnation script', inhibiting desistance from harmful behaviour.

A humane approach would recognise the reactions of society and the media (Cohen 1973) and the criminal justice system to the individual as a significant part of this cycle (Becker 1963). Social reaction theory states that these reactions often cause stigmatisation leading to *secondary deviance* (Lemert 1951).

If, as research into desistance has found, the process of desisting from harming others is facilitated by improving social circumstances, attachment to pro-social relationships, maturation, and generating a more positive identity or life narrative, it is clear that social and criminal justice reactions to the perpetrator can have the effect of excluding offenders from the resources that they require, weakening personal relationships, reducing personal responsibility, and reinforcing a commitment to anti-social values and peers.

There is also a ripple effect of harm in relation to perpetrators. Their families may suffer also from stigma and consequent isolation and lack of support. If the main

earner is in prison or unable to gain employment, the family's income will be reduced. The absence of a parent can lead to children not thriving and in many cases engaging in harmful behaviour themselves.

The impact on society

The *harm of criminal behaviour* can also be experienced by society. Fear of crime (Hale 1996) is an example of such harm. This fear can be a very concrete emotion at certain times of the day or in specific places or in the vicinity of types of people or it can be a more general, a prevailing feeling of anxiety or unease over the problem of crime. Some groups perceive the risk of becoming a victim more than others. They tend to be people who feel less able to cope with the consequences of crime. Often this fear is exaggerated when related to the actual risk. This fear of crime can have concrete effects on people's choices and behaviour. They avoid certain areas, purchase equipment to improve their security and take other preventive measures.

On a community level fear of crime can be detrimental to social cohesion and the social capital available to members of the community. Intergroup conflict may develop, for example between gangs or between groups

of young people and other residents or between different ethnic groups.

Some communities can be stigmatised as 'hot spots' for crime and this can have an impact on how the rest of society see and act towards residents. Local people can then perceive the police as a force of control rather than protection. More generally people can lose a common belief in a just, stable and moral society (Wenzel et al 2008, Vidmar 2000).

What is the impact of these harms on personal and social life?

The harm of criminal behaviour diminishes people's sense of control over their lives and has a negative impact on their self-efficacy (Simantov-Nachlieli et al., 2013). It was the limitation to people's agency or capacity to take action that Arendt (1958) understood through the concept of the irreversibility of a harmful act, the impossibility of undoing past actions once they have been taken. Further due the interdependence of society the consequences of harm are unpredictable. Negative or harmful reactions can stimulate a chain of reactions, for example, of revenge and retaliation.

The irreversibility of an action can lead both victim and perpetrators of harm to be stuck in the consequences of what they have done, as Arendt (1958:237) writes: “our capacity to act would, as it were, be confined to one single deed from which we could never recover; we would remain the victims of its consequences forever.”

The shattered assumptions (Janoff-Bulman 1992) that harm causes in the victim leads to a sense of unpredictability about future events, which disrupts the individual’s preferred life narrative. Just like the perpetrator the victim can be trapped in a narrative of harm, which inhibits each party from moving on and fully engaging in activities that are important to them.

On a practical level the harm and suffering caused by criminal behaviour results in a huge waste of human potential and on a moral level this harm represents a social injustice that has a very detrimental effect upon society.

What is the injustice that more humane approaches should address?

According to Fraser (2003) injustice in relation both to the distribution of resources and to the recognition of the

value of people violates the principle of parity of participation in society. In conclusion the harm of criminal behaviour may be defined as the loss or damage of resources and the violation of values that enable both victims and perpetrators and those in relation to them to participate actively in society.

Crime dehumanises people by treating them as means towards satisfying the perpetrators' needs and desires. Punishment alone will not come close to addressing the diverse needs of victims arising from harm. Perpetrators may be committing acts of harm due to being dehumanised by past experiences, by their treatment by the criminal justice system and, of course, by the self-brutalising effects of treating others as objects rather than people. Crime can also corrode and dehumanise community life as neighbours and citizens neglect their obligations to each other.

3. What is distinctive about more humane approaches to harm?

What should be the aim of more humane approaches?

The concept of the *common good* can be traced from ancient Greek philosophy through Catholic social

teaching to modern liberal philosophy. It stands in opposition to a life lived purely in the pursuit of personal interest. A just society is one in which people have the opportunities and capacities to participate in society for the common good as they choose.

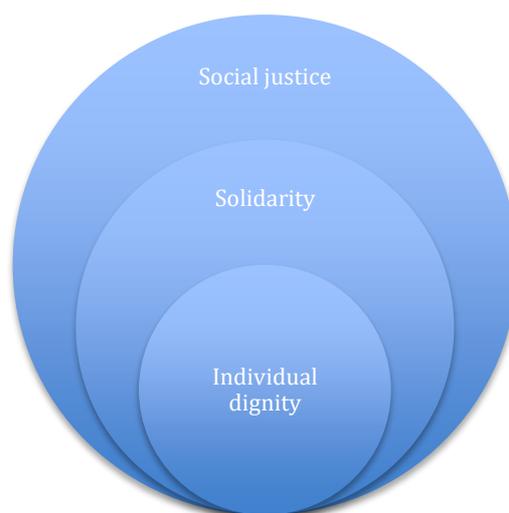
The aim of more humane approaches to addressing the harm of criminal behaviour is to enable people responsible for harm, people who have been harmed and others who have been affected to participate fully in society and to contribute to the common good.

A more humane approach to addressing the harm of criminal behaviour includes all actions designed and delivered with the purpose of preventing or undoing injustices and repairing the individual, relational and social harms that have caused and been caused by criminal behaviour.

What values do more humane approaches represent?

We have seen that crime harms individuals, relationships and society in general. These values relate to three key areas: the value we place on the individual, the value we place on how individuals relate to each other and the quality of the society we aspire to create.

Thus we define humane as that which respects, restores and sustains these values and inhumane as that which disregards, damages or violates these values.



What does it mean to value the dignity of human beings?

The dignity of human beings is derived from the value of human life and the potential of people's agency, their ability to choose their actions and be responsible.

To be a victim of a crime is to be treated as a means to another's end or to be objectified. This is dehumanising and humiliating.

There is research evidence that disrespect can provoke aggression and violence (Gilligan 1996, Butler and

Maruna 2009). The more humane approach is based upon respecting people and their emotional intelligence (Sherman 2003). This would require a refusal to stereotype, stigmatise, objectify or idealise individuals and a belief that in spite of previous behaviour people can change.

Davies (2013) in his critique of psychiatry's over-reliance on clinical diagnosis and medication argued for a shift towards "an approach that prioritises healing relationships with people, helping people find meaning in their lives, and using therapies and other social/humanistic interventions as the first line of treatment." The emphasis on relationship and meaning are consistent with more humane approaches. Such approaches will not reduce people to the sum of their deficits. They will not ask what is the matter with people who are affected by crime and who are responsible for crime. They will ask what matters to people affected by crime.

What does it mean to value solidarity?

A more humane approach reinforces solidarity derived from mutual responsibility and reciprocal support. Human beings can only live in relation to others (Levinas 1969). As a consequence both actions for the common

good and harmful behaviour have a 'ripple effect' beyond those directly responsible and those directly affected by it. Families, friends, neighbours and communities all have a stake in the harm being dealt with. The criminal justice system's almost exclusive focus on the person responsible for the harm means that these other parties are mainly ignored and neglected.

For Donati (2009) relationship is at the core of being human. Responsibility originates from the demands of living with others (Levinas 1969). The primacy of relationships explains why human beings consider that norms and their ethical basis are so important. Other people are not only an essential part of our well being and our capacity to survive and to thrive but also an imminent threat to our safety and well being. This reality requires individuals to be socialised in the norms and values of society and to eventually learn to take personal responsibility for acting according to a duty to others.

Inequality in society tends to separate people physically and relationally according to wealth, status, ethnicity, and faith. This disconnectedness can lead to moral indifference or the neutralisation of moral responsibility for others (Bauman 1989). This enables the system to consider the problem of harm as a technical problem that

can be solved effectively by technical methods often involving excluding or separating people. A more humane approach would create opportunities for people to re-connect.

What does it mean to value social justice?

A Jesuit priest named Luigi Taparelli is usually credited with introducing the term, social justice, in the 19th century. It now forms the basis of international conventions of human rights and many international statements on crime and criminal justice. In the Christian world Catholic social teaching has promoted respect of human life and concern for the poorest and most vulnerable members of society.

Research has demonstrated how discrimination and stigmatisation not only causes people to harm others but also results in secondary harm by the state system. Thus it is necessary to work towards criminal justice reform and social reform so that humane approaches are supported and sustained.

Social justice refers to the fair and just relations between the individual and society. It involves the redistribution of resources in conditions of inequality and the removal of obstacles to equality of opportunity and full

participation in society. Social justice has in recent times focused on the recognition of the value of diversity. Similar approaches can be adopted in relation to the neglect of victims and discrimination against and labelling of offenders.

Criminal justice in the modern era has focused upon the value of safety, emphasising public protection, operating on the basis of risk management and measuring its effect through the reduction of reoffending. A shift towards more humane approaches would not abandon these concerns but would place the value of justice at the core of criminal justice.

What principles underpin the practice of more humane approaches?

Recognising people's agency

Rather than seeing individuals as simply products of their genes, their upbringing or their environment, more humane approaches would recognise their capacity to make meaning out of situations and events, to choose their actions, to reflect upon the results of these actions and to learn and to generate new understandings. The ability to choose one's actions, not necessarily in the circumstances of one's choosing, and to be responsible

for the consequences of one's actions is to be human. The harm of criminal behaviour can disrupt and inhibit this ability. Unfortunately the response to crime by the system often reinforces this disruption in the lives of both victim and perpetrator of the harm.

More humane approaches should offer opportunities for all parties to take active responsibility for the process of addressing the harm so that they may get on with their lives.

Believing that every human being is redeemable

If individuals choose to commit harm, it follows that they have the capacity to choose to act in a different way. When one acts in such a way as to harm a person unjustly, one has broken a social contract that enables people to go about their lives and societies to function. This breach creates an obligation to make things right with the individual who has been harmed and with society. By fulfilling these obligations (or repaying the debt) one should be reintegrated with respect into society with all its benefits and responsibilities. In this way the offender is redeemed and forgiven. This is what Bazemore (1998) refers to as 'earned redemption'. Not all perpetrators of harm will be ready or willing to redeem themselves when held accountable. This does not mean

that they will never be ready or willing to in the future.
(Maruna 2009, 2010)

More humane approaches should offer all parties the opportunity and support to “signal” that they have transformed themselves or are in the process of transforming themselves. (Bushway and Apel 2012).

Building strong pro-social relationships

The harm of criminal behaviour not only affects personal life, it also weakens and destroys relationships without which individuals cannot fully express their humanity. We live in families, friendships and communities and we need to learn to live at peace and in cooperation with others. Access to the various forms of social capital have been found to be essential for both the reintegration of the offender and the recovery of the victim.

The process of desistance from crime (Weaver 2015) and recovery from trauma (Courtois and Ford 2015) are relational processes. Both processes involve finding one’s place in the world again and moving on in one’s life. To do so requires the individual to actively participate in the process with support and with the recognition of others that change is taking place.

More humane approaches should offer the opportunity and support to repair broken relationships, maintain and strengthen important relationships or to build new relationships.

Bearing witness to abuses of human rights, discrimination and stigmatisation

A more humane approach is based upon human rights on a very human scale summarised by Eleanour Roosevelt with these words:

“Where, after all, do universal human rights begin? In small places, close to home - so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. Such are the places where every man, woman, and child seeks equal justice, equal opportunity, equal dignity without discrimination. Unless these rights have meaning there, they have little meaning anywhere. Without concerted citizen action to uphold them close to home, we shall look in vain for progress in the larger world.” To this we should add, not only close to home but within homes so as to include the huge (and often hidden) incidence of domestic abuse and violence.

4. Which theories support more humane approaches?

Reintegrative shaming

John Braithwaite's (1989) theory of reintegrative shame has had a significant influence on restorative justice. Its emphasis on the importance of emotion, responsibility, relationship and reintegration means that it is compatible with more humane approaches. Its key idea is that the shame should arise naturally from the examination of the harm in the presence of the person who has been harmed and other people significant to the perpetrator. In this way the shame is attached to the act not to the person and can lead to genuine remorse and motivation to repair the harm and to desist from further conduct causing harm. The acceptance of the perpetrator and the offer of support by the community on the basis of his/her making good the wrong are critical to this process.

Desistance from crime

Desistance research (Maruna 2000, Farrall 2004, McNeill 2006, Weaver 2015) is the study of how offenders stop harming people. It is an uneven process of progress and relapse. Three key and overlapping concepts have been identified and each of these resonates with more humane approaches:

1. Maturation: people eventually grow out of criminal

behaviour;

2. Social bonds: significant relationships cause the individual to decide that the risks of crime are no longer worth it. The relationship may be intimate, a partner or a child, or a new set of pro-social friends, or a job or a recreational activity.
3. Identity transformation: the individual develops a new non-criminal narrative. Maruna (2000) distinguishes the 'condemnation script' of the persistent offender from the 'redemption script' of desistance.

Recovery

"Recovery-oriented systems of care" refer to a holistic framework of services and relationships that can support the long-term recovery of people who have suffered harm or trauma. This is clearly relevant to victims. But it is also true that many offenders have suffered trauma in their lives and this may be driving their harmful behaviours, such as addictions.

This means mobilising social support and activating the individual's personal resilience and other psychological resources. It also requires positive living conditions, a safe home, sufficient income, meaningful activities etc. Support (Courtois and Ford 2015) may include self-help

groups, mutual aid and other peer based care. It also involves understanding the impact of the harm on families and communities.

The Good Lives Model

The Good Lives Model (GLM) developed by Ward and colleagues (see Ward and Maruna, S. 2007) is an approach to offender rehabilitation, which is responsive to offenders' particular interests, abilities, and aspirations. The practice involves making plans with the offender to achieve the 'goods' that are important to the individual. This is based on the premise that people harm others because they lack the internal and external resources necessary to satisfy their values, needs and goals.

Restorative justice

“Restorative justice is an inclusive approach to addressing harm or the risk of harm through engaging all those affected in coming to a common understanding and agreement on how the harm or wrongdoing can be repaired, relationships strengthened and justice achieved.”

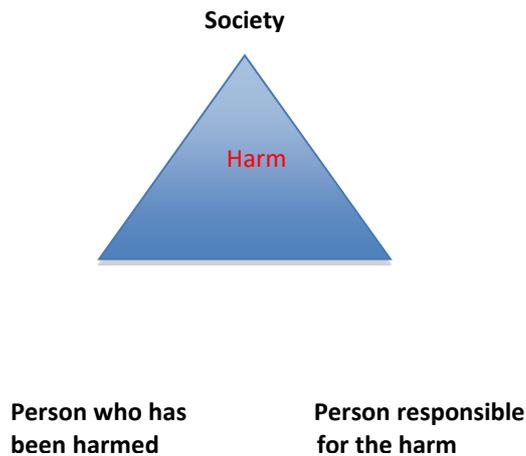
European Forum for Restorative Justice

Restorative processes are designed to undo injustice and repair harm. Clearly restorative justice is a humane approach. But not all humane approaches can be defined as within restorative justice.

Restorative justice is distinguished by its focus, its participants and its process of making decisions. Restorative justice entails an encounter or at least communication between those affected by a specific act of harm. Crucially it involves a process of coming to a common understanding of the harmful act and its consequences and an agreement on what should be done about it.

Generally when we address the harm of criminal behaviour either with the offender or the victim, the other party is not present but represented (Arendt 1958) through the imagination or empathy of the individual. Restorative justice processes enable all parties to be present and to engage actively in dialogue.

Restorative justice places harm at the centre and identifies all those with a relationship to the harm, the persons harmed and those close to them, the person responsible for the harm and those close to them, and those affected in society or the community.



The harm creates a real stake in the process of undoing the injustice, repairing the harm, and strengthening relationships. The counter intuitive aspect of the restorative process is that even though they may hate or fear each other, each party needs the other to have what they have lost or violated restored. The harm may have resulted in material loss. But in many cases this is not so important. Existential losses such as safety, respect, justice and control over one's life are often what motivate both parties to engage in this difficult process.

This balanced model is designed to reproduce in practice the values of dignity, solidarity and social justice through a process in which self-interest is transformed into the common good.

When a person harms another unjustly, the perpetrator incurs an obligation to the injured party to make some form of reparation and to society to take steps to avoid harming others. Restorative justice enables the perpetrator to express remorse for the harm and to take responsibility to fulfil these obligations and enables the victim and society to release him or her from any further obligations.

The very human activities of storytelling and dialogue drive the restorative process towards its outcomes. Arendt (1978:216) wrote of the ability of stories to “reclaim our human dignity”. Stories represent human beings as actors and sufferers rather than passive victims or objects of others’ narrative or theories. Not only does the space to tell one’s story in the words and style of one’s choosing restore dignity but it also often facilitates an emotional and relational connection which can lead to mutually satisfactory outcomes (Wenzel et al 2008, Black, 1976; Horwitz, 1990; Winkel, 2007, Rossner, 2011, 2014, Strang et al., 2006).

Dialogue is a conversation with a centre not sides (Isaacs 1999). At its best in a restorative process it connects with our humanity: “We humanise what is going on in the world and in ourselves only by speaking of it, and in the

course of speaking of it we learn to be human.” (Arendt 1968:25)

This quality of dialogue requires skilful preparation and facilitation to be empowering: “Power is actualised only where word and deed have not parted company, where words are not empty and deeds are not brutal, where words are not used to veil intentions but to disclose realities, and deeds are not used to violate and destroy but to establish relations and create new realities.” (Arendt 1958: 200)

The key to the effectiveness of the process depends to a large extent on the level of responsibility that each party assumes for the harm and its repair. Perpetrators make themselves accountable for the harm that they have caused expressing remorse and offering to make amends and taking steps to demonstrate that they wish to avoid harming again. The responsibility of the victim in a restorative process is first to bear witness to the reality of the suffering of the past harm and second to seek some sort of amends from the person responsible for the harm, which makes it possible for justice to prevail. In so doing the victim is announcing publicly that he or she is no longer a victim. As Blustein (2014: 594) points out, this “enables victims to move recognition of their moral

standing and psychological needs to a more central place in the justice process, something that often does not happen when wrongdoers are subject to criminal prosecutions.” Minow (2000:243) has observed that the telling of the story by the victim transforms the narrative from one of “shame and humiliation to a portrayal of dignity and virtue.” Through this the victim regains “lost worlds and lost selves.”

Arendt (1958) also offered ways to counter the irreversibility of a harmful act and the unpredictability of its consequences. She suggested that forgiveness by releasing the perpetrator of the harm from further obligations to the victim liberates the individual from the irreversibility of the action. He or she can, thus, make a fresh start. The process of forgiveness can be facilitated by the perpetrator demonstrating remorse and making promises concerning future action. Such commitments, if kept, restore some stability and predictability to the victim’s life. A promise or a commitment is also a way of signalling that one has re-entered the web of obligations expected of a member of a community and, thus, encourages reintegration. Vanier (1998) writes that forgiveness can only occur if we believe that we are all part of a common humanity and that human redemption is possible and that we yearn for unity and peace.

Forgiveness is described by Govier (2002:26) as ‘the setting of wrongful deeds in the past’. This is not say that the events are to be forgotten but it is an acknowledgement that they have passed and it is time to move on. What has happened will no longer control current thoughts, feelings of actions or limit the possibilities of the future. Such a realisation signals the end of a narrative dominated by the suffering that the harm caused. While more humane approaches should not contrive forgiveness, they should offer opportunities for people to commit to actions, which address the harm they have caused.

Research evidence

There has been extensive research into the effects of restorative justice. We know that RJ satisfies victims’ need for justice. Restorative process consistently achieve at least 85% satisfaction among victims (Shapland, et al 2012, Jacobson and Gibbs, 2009, Beckett, et al 2004, Strang, 2002, Strang, et al 2006 Umbreit, and Coates, 1993). Victims are less afraid that the offender would commit further crimes against them (Strang, 2002:97; Davis et al, 1981:58). Victims experience lower levels of post-traumatic stress symptoms (Angel, 2005; Strang et al 2013). They are

less likely to say that they desired physical revenge (Strang, 2002; Angel, 2005). They are far more likely to forgive their offenders after they heard their story (Sherman et al, 2005). Victims were far more likely to think any apologies they received were sincere (Strang, 2002; Angel, 2005; Strang et al 2013).

RJ also satisfies perpetrators' need for justice. People responsible for harming others appreciated the opportunity to express remorse, to meet the victim, and to actively participate. They also appreciated not being made to feel that they were a bad person (Shapland, et al 2012, Morris and Maxwell 2001). young offenders tend to have more positive attitudes towards police, law and justice than those who are not (Strang et al, 1999; McGarrell et al, 2000). Young people who offend and who experience face-to-face restorative justice tend to have a clearer appreciation of how much they have harmed their victims and how much remorse they feel. (Strang et al, 1999; McGarrell et al, 2000). Offenders tend to feel they have been treated more fairly and to be more satisfied with restorative justice than with conventional justice (Strang et al, 1999).

RJ reduces further harm. There is considerable empirical work acknowledging the role that restorative justice processes play in lowering re-offending rates. Offenders in restorative programmes are more likely to complete

the programmes and less likely to reoffend compared to a control group. A meta-analysis of victim-offender mediation and family group conferencing studies (De Beus and Rodriguez, 2007) found that family group conferencing was shown to have twice the effect as traditional justice programmes, and victim-offender mediation had an even larger effect on recidivism. Another meta-analysis in 2005 (Latimer et al 2005) found that restorative processes were associated with reduced recidivism for both youth and adults. A rigorous study (Shapland et al 2012) in England found that significantly fewer offences were committed by those who participated in restorative processes over two years than those in a control group. This amounted to a 14% reduction in the frequency of offending.

RJ saves money. £9 expenditure in the criminal justice was saved for every £1 spent on restorative justice (Shapland et al 2012.).

These positive outcomes are the result of high quality practice. It is important for the credibility of more humane approaches and restorative justice that high standards are maintained. It follows from a commitment to the real lived experience of those most affected by the harm of criminal behaviour that the quality of practice should prioritise their needs and interests rather than the

priorities of the system in which the practice takes place. There is now considerable evidence that institutional needs regularly over-ride the needs of the people that the institution is designed to serve. As we have seen the operation of the criminal justice system often runs counter to the recovery of victims from harm and offenders' desistance from harming others. (Pavlich 2009, Hoyle and Rosenblatt 2016, Bolivar 2015, Choi et al 2013, Zernova 2007, Choi and Gilbert, 2010, Hoyle et al., 2002, Strang, 2002, Bolívar, Pelikan, and Lemonne 2015).

How can more humane approaches demonstrate their value?

This article refers to *approaches* rather than *projects*, *programmes*, *services*, *techniques* or *methods*. Approaches is a more inclusive term and can encompass each of these activities but is not confined by them. An approach tends to denote an orientation and a movement towards a destination or goal rather than a scientific method or highly developed professional practice. An approach requires action designed to reach a goal. Yet the approach is not described as *more effective*. It is a *more humane approach*, which as we have explained places the importance of values at the core of the approach.

This is not to say that evidence of effective achievement of outcomes is disregarded. It is important that this initiative tests the hypothesis that treating human beings in a humane manner meets real social needs and will yield socially beneficial results. This means that there should be evidence that the approach adopted will be effective in meeting the identified needs or that it is designed in such a way as to assess its effectiveness. The second option allows the opportunity to test an innovative approach.

Research and policy on approaches to the harm caused by crime in modern society are dominated by two perspectives: on the one hand empirical sciences, the observation, description and measurement of crime and its causes and the effectiveness of responses established to address these causes, and on the other hand practical philosophy, values, beliefs and norms which determine how society ought to be and how approaches ought to contribute to such a society.

Empiricism, 'the force of what is', tends to lead to the pragmatic acceptance of reality typified in the criminal justice system in the practices of risk assessment and management. However, there have always been reformers who have channelled 'the force of what ought

to be'. These people have been driven by ideas, moral principles, justice, the appeal of the common good, conscience and faith. There is and always will be a gap between these two forces, between reality and vision.

Ferrara offers a 'third term' as an alternative to facts and values as a means of understanding the world, 'the force of the example'. He defines exemplarity as "entities, material or symbolic, that are as they should be, atoms of reconciliation where *is* and *ought* merge and, in so doing, liberate an energy that sparks our imagination." (2008:ix-x). Exemplarity can take two forms; examples of best practices judged on existing criteria and examples of completely new practices, which extend the range of possibilities open to society. Ferrara argues that the exemplarity of what is as it should be accounts for much of the change in the world. Examples "illuminate new ways of transcending the limitations of what is and expanding the reach of our normative understandings." (2008:3)

Furthermore exemplarity allows the reconciliation of universal values and cultural pluralism. An example of best practice can show: "How human dignity can be protected and how diversity can be reconciled into unity without dissolving itself into homogeneity." (Ferrara

2008:14) An authentic example in a particular context can demonstrate the validity of a value that can be a source of inspiration in another context. The nature of examples is “to set the imagination in motion and to further or enhance our life” (2008:22).

A value led, qualitative approach (*how things should be*) can be combined with a positivist and quantitative approach (*how things are*) based upon empirical data. Ferrara defines this as: “the force of *what is as it should be* or the force of the *example*” (author’s italics) (Ferrara 2008, 2-3) He believes that it is important for people to experience exemplary events in which ideas and values are implemented so as to achieve a satisfactory result. It is important because the experience of an event as it should be opens people’s minds to the possibility that how they have always addressed harm could be transformed or at least improved.

This is what *more humane approaches* seek to achieve – concrete examples, which people can attest to be both real and successful.

These dimensions of *humane* can be quantified through measures of efficacy and efficiency:

- reducing the number of people causing harm;
- reducing the number of people being harmed;

- reducing the number of people being prosecuted;
- reducing the number of people being incarcerated;
- increasing the number of people improving their educational attainment, gaining employment, and other personal and social circumstances;
- increasing the number of people rebuilding relationships with their family or community.

Exemplars

There is no harm that dehumanises more than violence. This include the extreme violence of terrorism, hate crime, violence against women and girls, violence against children, and gang violence.

Violent acts violate the physical, emotional and psychological integrity in a more direct and a more intimate way than any other criminal behaviour. The perpetrator demonstrates a lack of respect for the human dignity of the victim. In doing so the victim is treated as an object or means to an end and as a consequence is dehumanised. It could also be argued that committing a violent act requires the suppression of human qualities such as compassion and empathy and dehumanises the perpetrator.

Consequently any strategy to develop and deliver more humane approaches to addressing the harm of criminal behaviour should prioritise violence caused both by criminal behaviour and by oppressive structural conditions such as sexism and racism.

Prevention

1. Support schools to challenge the normalisation of violence as a means of dealing with conflict.

This can be done through establishing a strong non-violent culture within the school, through staff taking responsibility to be role models in non-violence and through restorative conferences and circles to address violence or the threat of violence when it occurs.

Victims

2. Develop victim initiated restorative processes.

The flaw in most restorative processes is that it depends upon the perpetrator being identified and being willing to participate in the process. This means that the victim has limited access to reparation and that restorative processes tend to be unbalanced in favour of the offender. Often this results in Victim Support organisations being sceptical about restorative justice.

In relation to violence the different contexts, (domestic, sexual, street, inter-group and intercultural, race hate, terrorism) in which it takes place, should be taken into consideration but a core set of theoretical premises and principles of practice should be employed based upon the assumption that the harm of violent crime is a product of oppressive relationships.

Victim support agencies could be supported to develop victim led restorative justice in relation to the harm of violence.

Diversion

3.Support communities to challenge gang violence in their neighbourhoods.

This can be modelled on the successful Operation Ceasefire in Boston. The approach combines three elements:

- I. Representatives of the local community expressing their disapproval of the gang members' violence and requesting them to desist and reintegrate within the community.
- II. The offer of support to desist and reintegrate from service providers, probation and parole officers, and

church and other community groups.

- III. A focused deterrence strategy by the police aimed at the most serious offenders to apprehend and prosecute those who carry firearms, to put them on notice that they face certain and serious punishment for carrying illegal firearms.

A simple pre/post comparison (Braga et al 2001) found a statistically significant decrease in the monthly number of youth homicides in Boston, Mass., following implementation of Operation Ceasefire. There was a 63 percent reduction in the average monthly number of youth homicide victims, going from a pretest mean of 3.5 youth homicides per month to a post test mean of 1.3 youth homicides per month.

This approach to violence has also been used to address domestic violence successfully in High Point North Carolina. It could also be used in relation to radicalized violent extremists and other forms of violence.

Desistance

4. Test a rigorous approach which combines restorative justice with a follow-up support based upon the research into desistance from offending.

Restorative justice has consistently been found to reduce reoffending and desistance research has discovered the processes through which most people eventually desist from offending. There are clear links between the two approaches. For example the key operating values in restorative processes according to Howard Zehr (2005), responsibility, relationships and respect have a clear connection to the key desistance processes, maturation, social bonding and changing one's identity and narrative. These links could be tested in practice to find out if it is possible to support and accelerate desistance in relation to violence.

Addressing the inhumane use of custody

5. Support countries to develop the 'moral community' that Christie (1993) describes in Norway through which politicians, practitioners, journalists, and prisoners meet privately on retreat annually. For Christie these meetings encouraged participants to consider what standards of treatment are valid for all human beings not just for the objectified and stigmatised prisoner.

6. Support work towards building dynamic security (UNODC 2015) approaches in prisons. Physical and procedural security arrangements are essential for any

prison. But daily interactions between staff and prisoners, the development of positive relationships, fair treatment and concern for prisoners' well being, and a routine of constructive activities all reduce the risk of discipline problems, conflict and breaches of security. Furthermore by having positive relationships with prisoners staff will not only act as positive role models but will also be more aware of what is going on generally and with individual prisoners and be able to 'nip problems in the bud'.

Adopt a holistic strategy

7. Support the development of holistic strategies in metropolitan areas based upon the restorative city model. This would provide an opportunity to research the effectiveness of integrating more humane approaches throughout the 'offender pipeline' from prevention to reintegration.

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