RESPONSES

Reconceptualising hate crime in a restorative framework

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The Notes from the Field on the developments in the use of restorative justice for hate crime are largely framed from a North American and European perspective, signalling at first the legal/retributive 'gains' that were made in the global North in efforts to increase the punishment of hate crime offenders to conclude after a review of scant alternative practices that future tensions (read *old* – own emphasis) will likely persist between the punitive emphasis that governments have given to tackling hate crime and those who advocate a restorative approach to resolving harms. The tension between restorative and criminal justice as competing paradigms in dealing with hate or identity crime seems rather remote and appears here as a so-called *First World* problem when focusing also on more fundamental concerns in large parts of the world that relate to the very prosecution of victims of identity crimes as offenders by the state and criminal justice as its agent. To demonstrate, in Africa only, 34 countries (Human Dignity Trust, 2020) criminalise private, consensual sexual activity between adults of the same sex, and the death penalty is imposed for similar deeds in five countries. Also, on the colonial-postcolonial continuum, state hate crime has been imported and perpetrated in the majority of countries in the Commonwealth, most of them former British colonies.

'Hate crime' is therefore obviously a problematic label, and its application could over-simplify the interpretation of offending behaviour and victimisation with implications for accountability, identity and variability across a range of geographic, historical and social settings. Furthermore, dynamic or inter-changeable relationships exist between victim and offender populations (Fattah, 2020), and the framing of 'irrational hatred' from 'psychologically dangerous offenders' may result in further distortions as it would distract with its labelling from broader societal imbalances and injustices. In fact, according to Chakraborti and Garland (2015), research into the aetiology of hate crime has demonstrated that very few 'hate crime' offenders are motivated by an ideology of hatred but rather display superficial, or 'low-level', prejudices towards certain groups. Often such prejudices are based on little other than fallacious stereotypes perpetuated within society about a group's social 'worthiness'. Within a decolonising framework it could also be argued that localised workings of privilege and power and the hierarchies that inform these relationships are connected to global

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patterns and consequences of structural subordination and victimisation. According to the Notes from the Field of Walters and at least at a community level:

> the dialogical processes involved in most restorative encounters provide an opportunity to explore these harms by offering a platform from which individuals can feel empowered to share their experiences of identity 'difference' – *including* their broader experiences of structural and institutional prejudice.

But also, with a cautionary reference that contemporary restorative justice practices could only resolve micro-level conflicts and that wider structural inequalities would remain drivers of hate and identity-based hostility since restorative justice cannot undo structural inequalities. At best, a multi-agency approach is viewed as mitigating to precarious social positionality since it may provide access to state resources.

The very scope and value of restorative justice may be a matter of conceptualisation and/or of whether practices adhere to the underlying values and principles of non-domination and inclusive dialogue in particular (Braithwaite, 2003), but the valid appeal from the field for a multi-agency approach stands in stark contrast to realities in both the global North and global South. Recent research (Groenhuijsen, 2019) on the *European Union Directive Establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime* (2012) shows victim support systems and access to justice fall short for all types of victims among all Member States. Also, within the global South, which is marked by the 'resource curse', the aftermath of colonisation and its associated structural and institutional victimisation continues to play out in multiple deprivations, recurrent indignities, elite politics, sociopolitical instability, state-corporate crime and corruption with little access to state resources and a meagre regard for so-called 'disposable' or marginalised victim groupings (Peacock, 2019).

In the Notes from the Field, Walters argues that even with evidence of public support, a system-wide offering of restorative justice to victims of hate is unlikely to occur in the absence of the necessary expertise that is required to facilitate complex dialogue that focuses on harm and identity. With the threat of secondary victimisation, skilled intervention would be critical to any context, also across different patterns of victimisation. With reference to the paucity of research on restorative justice and identity-based hostility, it may be useful to reflect critically on the progress of capacity development in the broader victim empowerment sector. Also, to engage with relevant tertiary and regulatory bodies to make the necessary changes in curricula and scope of practice to field more contextualised, diverse and culturally responsive expertise, and to advocate more strongly for the development and implementation of volunteer policies. Praxis or justice in action serves well to advance changes in society (Shapland, 2019). However, with the term 'hate crime', which denotes an individualistic notion of crime causation (thereby lacking in a systemic perspective of the social roots of conflict), advancing practice would also require a recognition and challenging of questions

Robert Peacock

of power, structural subordination and forms of disadvantage in order to engender institutional and cultural changes.

Being mindful and with a sense of realism about the persistence of the worst features of the political environment, criminal law and criminal justice, the inclusive and flexible values of restorative justice could serve well to facilitate dialogue in order to create empathy and tolerance of 'difference' in communities (Chakraborti & Garland, 2015). Transcending micro-level conflicts, lessons can also be drawn from restorative justice in a transitional justice context. In this regard, the South African Truth and Reconciliation Commission (1998) sought to demonstrate how the formation of emotional connections can transform damaged relationships and humanise 'difference', despite the accumulative impact of so-called 'message' or identity crimes in high-risk communities.

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