

REPAIRING THE HARMS OF HATE CRIME: TOWARDS A RESTORATIVE JUSTICE APPROACH?

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I. INTRODUCTION

The commission of offences which are either motivated by bias towards the victim's identity, or where hostility is demonstrated towards the victim's identity during the commission of the offence, are called hate crimes. Responding to the causes and consequences of hate crime is more important than ever, as we have entered into what academics, media commentators and politicians have referred to as a global "era of hate".¹ The growth in activities and electoral success of far-right groups has been observed across the globe, while the numbers of reported hate crime incidents continues to skyrocket.² These types of crime are unique in that they are aimed at attacking a victim due to a group characteristic (or characteristics) that they hold. Hence, whether an incident involves a premeditated violent physical assault by a gang of extreme racists, or the hurling of a homophobic insult by a neighbour in the heat of the moment, in each case the victim, and others who display similar characteristics, will know that they have been targeted because of *who they are*. The fact that group identity is central to both the nature and dynamics of hate crime creates an exceptional set of challenges for victims that are likely to impact significantly upon both their emotional and physical well-being.³ The harms of hate are also likely to ripple out, affecting entire communities of people who can experience similar traumas to those of direct victims. Comprehending how hate crimes have unique *direct* and *indirect* impacts is central to determining how these offences can be effectively addressed by criminal justice systems.⁴

A. Addressing the Harms of Hate

1. The Conventional Approach

Governments across North America, Europe and Australasia have tended to focus their attentions on combating hate-based criminality by enacting new laws that enhance the penalties of hate crime offenders.⁵ They have done so using a number of different methods of legislation. Broadly speaking, hate crime laws fall into one of two categories, either an animus model (whereby an offence is considered a hate crime where it is motivated by hate or prejudice, or where hate or prejudice is demonstrated during the commission of an offence), or a group selection model, whereby an offence becomes a hate crime where the offender selects his or her victim by reason of their identity characteristics.⁶

There are a number of justifications that have been advanced for enacting either type of hate crime legislation⁷. These can be summarized as follows:

- Penalty enhancers recognize the elevated levels of harm that are typically caused by hate crimes (retributive theory)
- New laws send a strong message of social condemnation (censure), that hate-based crimes will not be

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¹ May Bulman, "Thousands across Europe march in protest against racial and religious discrimination", *The Independent*, March 18, 2018; Jennifer Scheppe and Mark A. Walters, eds., *The Globalization of Hate: Internationalizing Hate Crime?* (Oxford, OUP, 2016).

² See e.g. Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London: Home Office, 2018). The total number of hate crimes rose 17% to 94,098 in England and Wales between 2017-18.

³ Linda Garnets, Gregory. M. Herek and Barrie Levey, "Violence and victimization of lesbians and gay men: Mental health consequences", in *Hate Crimes: Confronting Violence Against Lesbians and Gay Men*, G. Herek and K. Berrill, eds. (Newbury Park, Sage, 1992).

⁴ NB parts of this paper are adapted from Mark. A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014).

⁵ Frederick Lawrence, *Punishing Hate: Bias Crimes under American Law* (London, Harvard University Press, 1999).

⁶ See examples in *ibid*.

⁷ For a detailed analysis see, *ibid*.

- tolerated in society (deterrence and retributive theories)
- The law helps to support positive social norms that reject public expressions of prejudice (educative deterrence)
- New laws simultaneously send a message of support to targeted identity groups that they will be protected from victimization (fair protection paradigm)
- Legislation ensures more effective resource deployment to tackle hate-based offences, as the police and prosecution services must enforce specific laws (practical reasons)

By legislating for hate-based offences, the government sends out a strong message to society that such crimes will not be tolerated and that commonly targeted groups will be protected from such violence. However, the criminalization of hate-motivated offences also has a particularly important role for the effective implementation of justice interventions for hate crime. This is because hate crime legislation helps to ensure that criminal justice agencies officially record and monitor these types of offences, and in turn, criminal justice agencies must attend specifically to this “type” of offending. Indeed, within the UK, since hate crime laws were first enacted in 1998, there is now a large body of policy and guidance documentation aimed at tackling hate crime.⁸

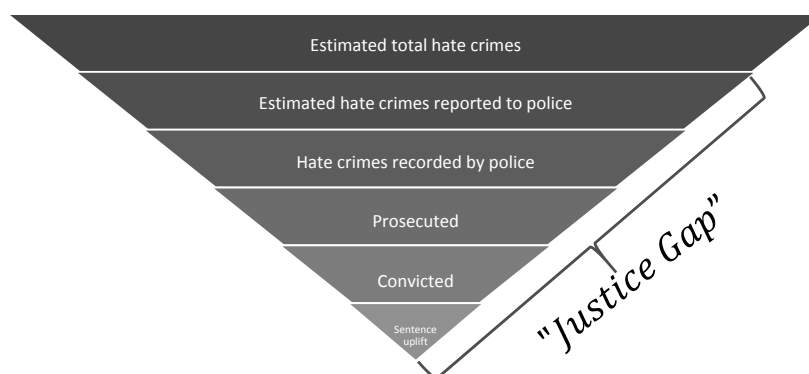
a. The “Justice Gap”

Despite the persuasive arguments that can be proffered in favour of legislating against hate, there are two fundamental criticisms to relying solely on this approach to addressing hate crime:

1. The enhancement of punishment and additional criminalization of hate-motivated perpetrators does little to repair the harms caused by incidents of hate;
2. Enhancing the penalties of offenders is unlikely to effectively challenge the underlying causes of prejudice, at least at an individual level.

Firstly, penalty enhancers do little to challenge the enhanced vulnerability of hate crime victims (explored in more detail below) or minority communities more broadly – at least in the short term. In fact, some have even argued that punishment enhancements serve only to uphold victims’ emotional attachments to “hate, anger, malice and revenge”, none of which are conducive to emotional or physical convalescence.⁹ Secondly, one must also question whether punishing an offender more, will make them hate less. Does the labelling and stigmatizing of an individual as a “racist” or “hater” help to challenge the underlying causes of prejudice and identity-based hostility in society? Indeed, there is little evidence to show that hate crime laws yield any meaningful reparative benefits directly to victims, or to society by reducing overall levels of hate crime offending.

Figure 1: Calculating the Justice Gap for Hate Crime¹⁰



⁸ Mark A. Walters, Abenaa Owusu-Bempah and Susann Wiedlitzka, “Hate Crime and the ‘Justice Gap’: The Case for Law Reform”, *Criminal Law Review*, vol. 12 (2018) 961.

⁹ Les Moran and Beverley Skeggs, *Sexuality and the Politics of Violence and Safety* (London, Routledge Taylor & Francis Group, 2004).

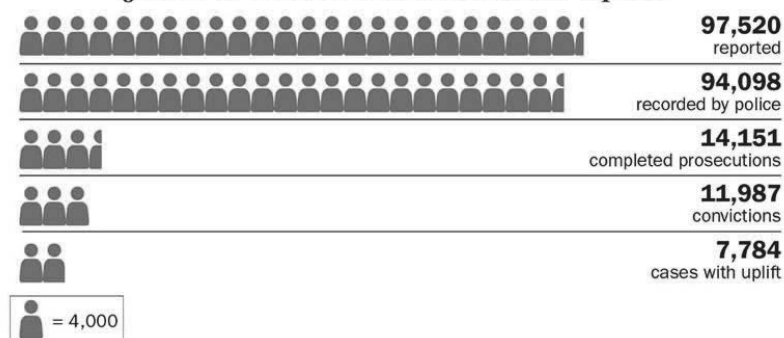
¹⁰ Figure adapted from Mark A. Walters, Susann Wiedlitzka and Abenaa Owusu-Bempah, *Hate Crime and the Legal Process: Options for Law Reform* (Brighton, University of Sussex, 2017).

Further limitations of this legislative approach to combating hate crime have been examined in detail during a two-year empirical study on the application and enforcement of hate crime legislation conducted in England and Wales.¹¹ The researchers identify what is referred to as the “justice gap” for hate crime, which refers to the percentage of cases that “drop out” of the system once reported to the police and that do not result in the implementation of hate crime laws. The justice gap is calculated using official statistics on recorded hate crimes and comparing these with data from the Crime Survey for England and Wales. It should be noted that the “justice gap” percentage does not represent the “conviction rate” for hate crime, but rather is an *estimate* of how many hate crimes are filtered out of the justice system.¹²

Data from 2017-18 shows that there were an estimated 97,520 incidents of hate crime that came to the attention of the police. During this same period the police recorded 94,000 hate crimes. The Crown Prosecution Service charged and prosecuted 14,233 hate crimes that year, resulting in just over 12,000 convictions. Of these convictions, an estimated 7,784 cases received a sentence uplift, signifying the application of hate crime legislation. This means that the percentage of cases that drop out of the criminal justice system or which do not result in the application of hate crime laws is 92%. In other words, the vast majority of hate crime cases may result in no justice at all.

Figure 2: The Justice Gap for Hate Crime, England and Wales¹³

Of the estimated 97,500 hate crimes reported in 2017-18,
just 8% resulted in a sentence uplift



B. Readdressing Hate Crime: Understanding the Harms of Hate Crime

1. The Direct Harms of Hate

If hate crime laws are failing to provide justice for victims and communities, what else can be done to help repair the harms of hate? In order to determine how hate crimes can be most effectively addressed, we need to first understand how demonstrations of hate harm individuals. A crime that is a direct attack against a victim’s identity is likely to heighten that individual’s sense of vulnerability, beyond that of a non-hate-based incident.¹⁴ Vulnerability relates to two elements of victimization. The first relates to the *risk* of victimization,

¹¹ Mark A. Walters, Abenaa Owusu-Bempah and Susann Wiedlitzka, “Hate Crime and the ‘Justice Gap’: The Case for Law Reform”, *Criminal Law Review*, vol. 12 (2018) 961.

¹² The data should also be viewed with caution as there are some differences in which “hate crime” is defined by the criminal justice agencies. The agreed definition of hate crime across the criminal justice system is “An offence which is perceived by the victim or anyone else as being motivated by prejudice or hostility”, College of Policing, ‘Hate Crime Operational Guidance’ (2014). However, “aggravated” offences in law are defined as offences which are (partly) motivated by (racial, religious, sexual orientation, disability, or transgender identity) hostility, or where hostility is demonstrated during the commission of an offence (see e.g. ss. 145 & 146 Criminal Justice Act 2003). Note also that the different datasets (CSEW, police, CPS data) may not precisely match with police data time periods, as some recorded hate crimes take months before coming to court and definitions for hate crime vary for each dataset.

¹³ Ibid.

¹⁴ Gregory M. Herek, J. Roy Gillis, Jeanine C. Cogan, Eric K. Glunt, “Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults: Prevalence, Psychological Correlates, and Methodological Issues”, *Journal of Interpersonal Violence*, vol. 12, No. 2 (1997)

which is increased for certain groups due to their identity, while the second relates to the *level* of harm that victims are likely to experience as a direct result of their targeted victimization. In the first element, hate crime victims' vulnerability becomes heightened due to the personal danger that is correlated with their membership of a particular identity group; typically linked to race/ethnicity, religion, sexual orientation, disability and gender identity (amongst other characteristics).¹⁵ This heightened sense of vulnerability is exacerbated by the fact that hate crimes are often repetitive in nature, meaning that victims are more likely to experience multiple incidents of hate crime compared with non-hate victims.¹⁶

Victims of hate crime often try to grapple with their experiences while attempting to make sense of the world as a just and fair place.¹⁷ Such a process can be difficult, as unlike non-hate victims, when hate crime victims try to bring about a renewed sense of security and safety, they are less able to rationalize their victimization as being in the "wrong place at the wrong time". Indeed, in attempting to come to terms with their experience of hate victimization, some individuals will feel that they are to blame for their own victimization and, consequently, that they deserve to be punished for being "different". Such an outcome can be described as a process of internalized prejudice, whereby individuals from some identity groups experience a sense of shame for who they are, compounding further their emotional turmoil.¹⁸ For example, those who have had to come to terms with their homosexuality in an environment hostile towards LGB people, or who have parents who have been disapproving of gay relationships, will have had emotional burdens put upon them that require they conform to a heterosexual "lifestyle".¹⁹ Such social pressures are likely to result in feelings of internalized homophobia. In other words, LGB people can feel that their being gay (bisexual) equates to them being less decent, or worse still to their feeling that they are dirty or immoral compared to others.²⁰ Noelle states that experiences of hate crime can confirm that something is wrong with them, which can create "characterological self-blame...in which one feels there is something they could do differently if faced with the situation again".²¹ The questioning of one's own value as a decent human being invariably destabilizes a person's sense of "self" and their "place" in society. As a result of both internalized and externalized experiences of hate, victims will often attempt to adjust the way they portray themselves to the world in order to "fit in". Those who can do little to change who they are can become trapped in a cycle of self-loathing and of constantly feeling "othered". It is no wonder, then, that LGB and also T youth and adults experience higher rates of suicidal ideation compared with their straight cis gender counterparts.²²

The constant threat of targeted victimization, and the internalized feelings of prejudice that many victims experience, ultimately serve to enhance victims' feelings of isolation, anxiety and depression.²³ Data from the Crime Survey for England and Wales (CSEW) has shown that victims of hate crime are more likely than victims of CSEW crime overall to say they are emotionally affected by the incident (89% and 77%, respectively), and more likely to be "very much" affected (36% and 13%, respectively).²⁴ Further analysis of this data showed that more than twice as many hate crime victims suffer a loss of confidence or feel vulnerable after an incident (40%), compared with CSEW crime overall (18%). Hate crime victims are also more than twice as

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¹⁵ Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London, Home Office, 2018).

¹⁶ Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London, Home Office, 2018).

¹⁷ Linda Garnets, Gregory M. Herek and Barrie Levey, "Violence and victimization of lesbians and gay men: Mental health consequences", in *Hate Crimes: Confronting Violence Against Lesbians and Gay Men*, G. Herek and K. Berrill eds. (Newbury Park, Sage, 1992)

¹⁸ Gregory M. Herek, "Beyond 'homophobia': Thinking about sexual stigma and prejudice in the twenty-first century", *Sexuality Research and Social Policy*, vol. 1, No. 2 (2004) 6.

¹⁹ Monique Noelle, "The Psychological and Social Effects of Antibisexual, Antigay, and Antilesbian Violence and Harassment", in *Hate Crimes*, P. Iganski, ed., vol. 2 (London, Praeger, 2009).

²⁰ Ibid.

²¹ Ibid: 86.

²² See e.g., Katherine Johnson, Paul Faulkner, Helen Jones, Emma Welsh, *Understanding Suicide and Promoting Survival in LGBT Communities* (Brighton, University of Brighton, 2007).

²³ Gregory M. Herek, J. Roy Gillis, Jeanine C. Cogan, Eric K. Glunt, "Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults: Prevalence, Psychological Correlates, and Methodological Issues", *Journal of Interpersonal Violence*, vol. 12, No. 2 (1997) 195; Gregory M. Herek, Jeanine C. Cogan and Roy Gillis, "Victim Experiences in Hate Crimes Based on Sexual Orientation", *Journal of Social Issues*, vol. 58, No. 2 (2002) 319; Jack Mcdevitt, Jennifer Balboni, Luis Garcia, Joann Gu, "Consequences for Victims: A Comparison of Bias- and Non-bias-Motivated Assaults", *American Behavioural Scientist*, vol. 45, No. 4 (2001) 697.

²⁴ Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London, Home Office, 2018).

likely to experience fear, difficulty sleeping, anxiety or panic attacks or depression compared with victims of CSEW crime overall.

The emotional traumas that are likely to be experienced by hate victims can also go on for longer periods of time, compared with non-hate victims. Gregory Herek et al. found, for instance, that victims of homophobic violence suffered from periods of depression, stress and anger for as long as five years after their primary experience of a hate crime.²⁵ In contrast, non-hate related victims showed vast improvements within two years. These prolonged periods of emotional trauma are likely linked to a heightened perception of threat towards certain groups' sense of safety in society.²⁶ Iganski, for example, found that higher proportions of hate victims reported being "worried" or "very worried" about future victimization.²⁷ Such concerns are likely to have behavioural consequences, with many victims feeling that they no longer feel safe in their own neighbourhood, which in turn results in them avoiding certain locales.²⁸

2. Indirect and Community Harms

Hate crimes are not only likely to hurt individual victims more, but they can also have negative impacts that affect entire communities of people. Hate crimes serve a symbolic message that certain groups of people are unequal and undeserving of social respect in society.²⁹ As such, hate crimes can have invidious effects, not just on direct victims, but on all members of the victim's "in-group".³⁰ Reports of hate-motivated violence in both national and local media help to promote a message of *danger* to groups of people, which in turn fosters a hostile environment for those who are targeted.³¹

Paul Iganski refers to these impacts as "waves of harm"³² as they emanate out into society. Research has shown that the indirect effects of hate crime can have profound emotional and behavioural impacts that extend to those who share the victim's group characteristic.³³ For example, Monique Noelle conducted a qualitative study with lesbian, gay and bisexual participants in the wake of the homophobic murder of Matthew Shepard in the USA in 1998. Noelle found that the murder of Matthew had significant consequences for other LGB people who stated that they felt personally threatened as a consequence of sharing the victim's LGB identity. Barbara Perry and Shahid Alvi have also studied these indirect impacts, finding that victim group members often experience feelings such as shock, anger, fear, inferiority, and a sense that violence towards them is the "norm".³⁴

Most recently, the Sussex Hate Crime Project spent five years studying the indirect impacts of both anti-LGBT and anti-Muslim hate crimes in England. The researchers conducted a total of 21 separate studies focusing on both quantitative methods (such as surveys and experiments) and qualitative methods (interviews). Over 3,000 LGBT and Muslim people participated in the project. In their final report the researchers report that simply knowing other LGBT or Muslim people in the local community who had been a victim of a hate crime, had significant impacts on their emotional well-being (most frequently resulting in high levels of

²⁵ Gregory M. Herek, J. Roy Gillis, Jeanine C. Cogan, Eric K. Glunt, "Hate Crime Victimization Among Lesbian, Gay, and Bisexual Adults: Prevalence, Psychological Correlates, and Methodological Issues", *Journal of Interpersonal Violence*, vol. 12, No. 2 (1997) 195.

²⁶ Ibid.

²⁷ Paul Iganski, *Hate Crime and the City* (Bristol, The Policy Press, 2008), p. 83.

²⁸ Ibid: 78-79.

²⁹ Barbara Perry and Shahid Alvi, "'We are all vulnerable': The in terrorem effects of hate crimes", *International Review of Victimology*, vol. 18, No. 1 (2012) 57.

³⁰ Paul Iganski, "Hate crimes hurt more", *American Behavioural Scientist*, vol. 45, No. 4 (2001) 626.

³¹ Jenny L. Paterson, Rupert Brown and Mark A. Walters, "The short and longer term impacts of hate crimes experienced directly, indirectly and through the media", *Personality and Social Psychology Bulletin* (2018). <https://doi.org/10.1177/0146167218802835>

³² Paul Iganski (2001), "Hate crimes hurt more", *American Behavioural Scientist*, 45(4): 626-38.

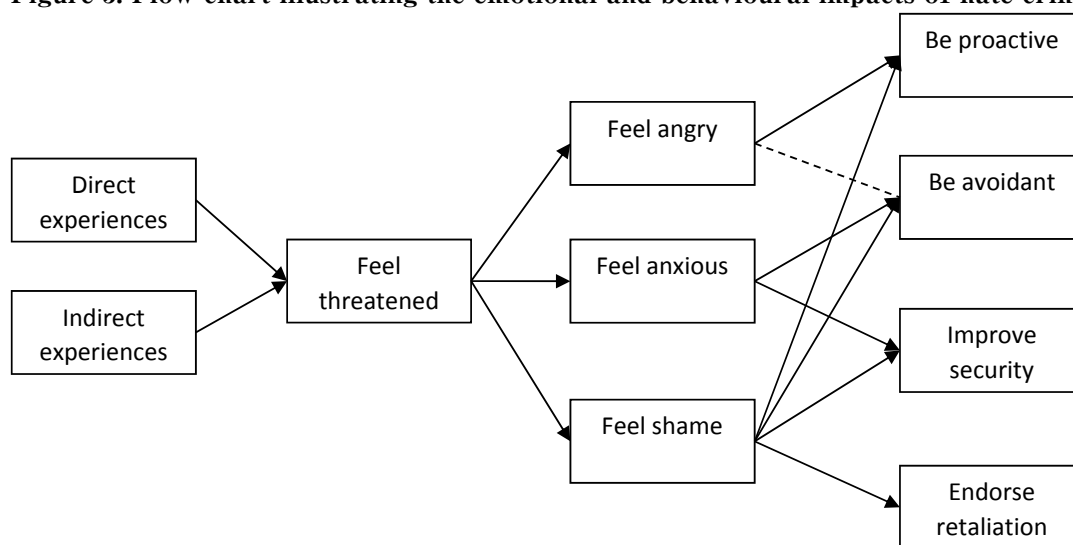
³³ Jenny L. Paterson, Rupert Brown and Mark A. Walters, "Feeling for and as a group member: understanding LGBT victimization via group-based empathy and intergroup emotions", *British Journal of Social Psychology* vol. 58, No. 1 (2019) 211; Jenny L. Paterson, Rupert Brown and Mark A. Walters, "The short and longer term impacts of hate crimes experienced directly, indirectly and through the media", *Personality and Social Psychology Bulletin* (2018). <https://doi.org/10.1177/0146167218802835>

³⁴ Barbara Perry and Shahid Alvi, "'We are all vulnerable': The in terrorem effects of hate crimes", *International Review of Victimology*, vol. 18, No. 1 (2012) 57.

anger, anxiety, vulnerability and, to a lesser extent, shame).³⁵ The study was the first quantitative study to evidence both correlation and causation of negative emotions with behavioural responses. In particular, it showed that experiences of both direct and indirect hate crimes were linked to an individual's perceptions of threat (both physical and symbolic). Heightened perceptions of threat were linked to three main emotions: anger, anxiety and shame. Each of these emotions predicted certain behavioural reactions. For example, anxiety was strongly correlated with avoidant behaviours (e.g. avoiding certain locations and changing one's appearance), while feelings of anger were most strongly correlated with proactive behavioural intentions (e.g. joining rights-based groups, community-focused charities, and being more active on social media).³⁶

In a series of longitudinal studies and psychological experiments the researchers also tested the effects that media coverage of anti-LGBT hate crimes has on LGBT people. They found that media exposure to reported anti-LGBT hate crimes had *lasting* impacts on individuals' emotions. The study found that individuals from within the LGBT community were more empathic towards other LGBT individuals' experiences of hate crime, which in turn heightened their emotional responses to observing incidents via media outlets.

Figure 3: Flow chart illustrating the emotional and behavioural impacts of hate crime³⁷



Note. Black lines denote a positive correlation and the dotted line denotes a negative correlation

Figure 3 illustrates the emotional and behavioural reactions to hate crime using a pathway model. Each emotional reaction to feeling threatened by hate crime predicts different behavioural responses. Black lines denote a positive correlation with the following emotion/behaviour. The dotted line in the diagram denotes a negative correlation. For example, the emotion of anger is negatively correlated with avoidance, meaning that those who experience anger as a predominant emotion are less likely to avoid certain locations, and are instead more likely to be proactive (including joining rights groups or posting supportive messages about LGBT rights on social media). It should be noted that the emotion of shame, experienced by fewer respondents overall, may have the most negative consequences for individuals. Not only is this emotion positively correlated with all the behavioural responses that are connected to other emotions, but it was the only emotion to be linked with an endorsement to retaliate with violence.

C. Addressing the Harms of Hate Crime through Restorative Justice

Given the significant direct and indirect impacts caused by hate incidents it is incumbent upon governments to invest in measures and interventions that can reduce these harms. One of the most increasingly utilized

³⁵ Jennifer Paterson, Mark. A. Walters, Rupert Brown and Harriet Fearn, *The Sussex Hate Crime Project: Final Report*, Project Report (Brighton, University of Sussex, 2018).

³⁶ Jennifer Paterson, Rupert Brown, and Mark A. Walters, "Understanding victim group responses to hate crime: shared identities, perceived similarity and intergroup emotions", *Testing, Psychometrics, Methodology in Applied Psychology*, vol. 25, No. 2 (2018) 163.

³⁷ Flow chart taken from Jennifer Paterson, Mark. A. Walters, Rupert Brown and Harriet Fearn, *The Sussex Hate Crime Project: Final Report*, Project Report (Brighton, University of Sussex, 2018) with permission of authors.

interventions aimed at reducing the harms of crimes and other forms of conflict over the past 15-20 years is restorative justice (RJ) practices. Howard Zehr in his seminal book *Changing Lenses: A New Focus for Crime and Justice* argued that crime is a “wound in human relationships” which requires convalescence.³⁸ Zehr asserted that instead of focusing on punishing offenders for wrongdoing, perpetrators of crime should be obliged “to restore and repair” harm. The restorative process works by bringing together the “stakeholders” of an offence, typically the victim, offender and other affected community members, via a dialogical process focused on how harms can best be repaired.³⁹

Restorative justice practice emphasizes equal participation, with each participant having a voice and no single individual being silenced by the domination of others.⁴⁰ The main objective is for the parties to find resolution through inclusive discussion that is typically settled by a restorative agreement.⁴¹ In most cases, perpetrators of harm are asked to put right the wrongs they have inflicted. Restoration should not be imposed on the perpetrator and the aim is not to inflict further pain on them. In most cases, this involves discussion and then agreement on a form of reparation that the perpetrator will carry out. Examples of restoration are provided below in Figure 4.

Figure 4: Types of reparation in restorative justice practices

Types of reparation	Examples
Material	Provision of materials goods/ property <ul style="list-style-type: none"> - Financial restitution to victim/s - Replacement of damaged goods - Fixing of damaged property (e.g. painting fence)
Emotional	Apology <ul style="list-style-type: none"> - Verbal - Written - By physical gestures (handshake / embrace)
Relational	Renewal of interpersonal relations <ul style="list-style-type: none"> - Proactive: agreement regarding future interaction, e.g. “to say hello” when walking past each other in the street - Restrictive: agreement to desist from certain future action (not to use certain words or language/ not to play music at certain times)
Community	Unpaid work in local community <ul style="list-style-type: none"> - Volunteering at a charity - Removing graffiti from public property - Tidying/ litter picking in local parks
Moral learning	Studying/ research projects/ attendance at workshops/ courses <ul style="list-style-type: none"> - Carrying out a short research project supervised by a (restorative) justice practitioner - Providing a short report on a topic relating to the harm caused - Presenting a reflections document to victim/family/local community about what has been learned/new understandings
Multiagency support	Provision of additional social support <ul style="list-style-type: none"> - Social services support (social worker) - Educational support (teachers) - Housing advice (housing officers) - Medical (psychiatric) referral (doctors) - Alcohol or drug awareness (rehabilitation centres)

The restorative process typically begins by focusing on the perpetrator’s responsibility for having harmed another (others). The aim of this part of the dialogical process is to bring about a greater level of understanding of the consequences of the perpetrator’s actions and is often accompanied by what Braithwaite labels as “reintegrative shaming”:

³⁸ Howard Zehr, *Changing Lenses: A New Focus for Crime and Justice* (Scottdale, Herald Press, 1990), pp. 181.

³⁹ Ibid. See also, Howard Zehr and Harry Mika, “Fundamental Concepts of Restorative Justice”, *Contemporary Justice Review*, vol. 1 (1998) 47.

⁴⁰ John Braithwaite, “Restorative Justice and Social Justice”, in *Restorative Justice: Critical Issues*, E. McLaughlin, R. Fergusson, G. Hughes and L. Westmorland, eds (London, Sage, 2003), pp. 157.

⁴¹ Tony Marshall, *Restorative Justice: An Overview* (Research Development and Statistics Directorate, London, Home Office, 1999); Howard Zehr and Harry Mika, “Fundamental Concepts of Restorative Justice”, *Contemporary Justice Review*, vol. 1 (1998) 47.

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Because shaming is a participatory form of social control, compared with formal sanctioning, which is more professionalized than participatory, shaming builds consciences through citizens being instruments as well as targets of social control. Participation in expressions of abhorrence toward the criminal acts of others is part of what makes crime an abhorrent choice for us ourselves to make.⁴²

The stakeholders of an offence, including the main parties' community supporters, share their "stories" of what has happened, and provide disapproval of the perpetrator's *actions*. Facilitators should attempt to engage stakeholders in a process that focuses on encouraging the taking of responsibility for harmful actions, and not on dialogue that emphasizes the perpetrator as a bad person (known as shame management).⁴³ Dialogue that focuses on action and harm as against individuals as wrongdoers, helps to ensure that the process is "reintegrative" as against "stigmatic"; the latter serving mostly to alienate and ostracize offenders.

Structured dialogue that is focused on harm reparation can also assist in inducing feelings of remorse, which are the result of "empathy or understanding the effects on victims".⁴⁴ Those who are directly (or indirectly) confronted with the victim's pain are more likely to feel compassion for them compared with processes that separate individuals and focus *solely* on punishment.⁴⁵ Indeed, one factor that has consistently been shown to be associated with increased empathy between different identity groups is structured intergroup contact.⁴⁶ If members of different groups encounter each other under the right conditions—broadly, those which do not exacerbate existing negative or unequal intergroup relations—then increased empathy and trust and lessened anxiety are commonly observed.⁴⁷ It is through the forming of these empathic connections with those who have been harmed, that perpetrators are most likely to reassess their past behaviour. Where this is possible, perpetrators are better equipped to offer genuine reparation and show contrition for the hurt they have caused.⁴⁸

The dialogical process and the empathic connections that can be made during restorative meetings may additionally form the catalyst for attitudinal and behavioural change. Though this cannot be an expected outcome in every case, the most successful outcomes are where a perpetrator is reintegrated back into a community where they are less likely to re-harm others (Braithwaite 1989).

Figure 5: Howard Zehr's Paradigms of Justice⁴⁹

Two Different Views	
<i>Criminal Justice</i>	<i>Restorative Justice</i>
<ul style="list-style-type: none"> • Crime is a violation of the law and the state. • Violations create guilt. • Justice requires the state to determine blame (guilt) and impose pain (punishment). • <i>Central focus: offenders getting what they deserve.</i> 	<ul style="list-style-type: none"> • Crime is a violation of people and obligations. • Violations create obligations. • Justice involves victims, offenders and community members in an effort to put things right. • <i>Central focus: victim needs and offender responsibility for repairing harm.</i>

⁴² John Braithwaite, J. (1989), *Crime, Shame, and Reintegration*, Cambridge: Cambridge University Press, 80.

⁴³ John Braithwaite and Valerie Braithwaite, "Part I. Shame, shame management and regulation," in *Shame Management Through Reintegration*, E. Ahmed and others, eds. (Melbourne, Cambridge University Press, 2001).

⁴⁴ Gabrielle Maxwell and Allison Morris, "The Role of Shame, Guilt, and Remorse in Restorative Justice Processes for Young People", in *Restorative Justice: Theoretical Foundations*, E. Weitekamp and H. Kerner, eds. (Cullompton, Devon, Willan Publishing, 2002), pp. 280-81.

⁴⁵ Nathan Harris, Lode Walgrave and John Braithwaite, "Emotional Dynamics of Restorative Conferences", *Theoretical Criminology*, vol. 8, No. 2 (2004) 191.

⁴⁶ Rupert Brown and Miles Hewstone, "An integrative theory of intergroup contact", *Advances in Experimental Social Psychology*, vol. 37 (2005) 255.

⁴⁷ Ibid.

⁴⁸ Nathan Harris, Lode Walgrave and John Braithwaite, "Emotional Dynamics of Restorative Conferences", *Theoretical Criminology*, vol. 8, No. 2 (2004) 191.

⁴⁹ Taken from Howard Zehr, *The Little Book of Restorative Justice* (Intercourse, PA, Good Books, 2002).

Johnstone and Van Ness state that for a justice process to be considered as credibly “restorative” it must be guided by three key principles: “encounter”, “repair” and “transformation”. In effecting these principles practices should encompass a number of attributes:⁵⁰

1. It must be relatively informal and aim to engage the victim, offender(s) and others closely connected to them (or the crime) in dialogue about what happened, why it happened, what harms resulted from it and what should be done to repair those harms.
2. The process should emphasize empowering individuals who have been affected by the crime.
3. Facilitators must promote a response to the incident that focuses on responsibility and repairing harms, rather than on labelling, punishing and stigmatizing the offender.
4. Decisions made during meetings should be based on set values such as equality, respect and inclusion, thereby resisting domination by any of the stakeholders.
5. Time should be devoted to talking about harm, the needs of victims and what is required to help them recover from their experience of victimization.
6. Emphasis should be placed on strengthening or renewing relationships and resolving interpersonal conflict.⁵¹

At the global level, the UN Resolution 2002/12 on the Basic Principles on the Use of Restorative Justice Programmes in Criminal Matters states at principle 6:

Restorative justice programmes should be generally available at all stages of the criminal justice process.

The Resolution defines “Restorative process” as:

...any process in which the victim, the offender and/or any other individuals or community members affected by a crime actively participate together in the resolution of matters arising from the crime, often with the help of a fair and impartial third party.

Since the UN’s resolution, there has been a significant increase in the number of practices being used globally within and outside criminal justice systems that aim to integrate most or all of these attributes, including (among others): victim-offender mediation; family group conferencing; police-led restorative interventions; neighbourhood dispute panels; and community-based practices such as community mediation.⁵² Within the UK, for example, the Code of Practice for Victims 2015 states that victims are “entitled to receive information on Restorative Justice from the police or other organization that delivers Restorative Justice services for victims in your area, including how you could take part”.⁵³ A recent amendment to the Powers of Criminal Courts (Sentencing) Act 2000 also now allows for the deferment of sentence for restorative justice activities (sections 1 & 1ZA). These new developments in criminal justice practice mean that RJ interventions are becoming increasingly common as both alternative justice mechanisms (especially in cases involving low-level offences) and as additional interventions used alongside conventional/court processes.

With the proliferation of restorative practices comes the question: how effective have these practices been in repairing harms and reducing reoffending? It is outside the scope of this paper to examine in any detail whether RJ helps to reduce reoffending or if it helps to repair harms of crime generally. In brief,

⁵⁰ Gerry Johnstone and Daniel Van Ness, “The meaning of restorative justice”, in *Handbook of Restorative Justice*, G. Johnstone and D. Van Ness, eds. (Cullompton, Devon, Willan Publishing, 2007), p. 7.

⁵¹ See also, Howard Zehr and Harry Mika, “Fundamental Concepts of Restorative Justice”, *Contemporary Justice Review*, vol. 1 (1998) 47; and John Braithwaite, “Restorative Justice and Social Justice”, in *Restorative Justice: Critical Issues*, E. McLaughlin and others, eds. (London, Sage, 2003), for RJ “signposts”.

⁵² For an overview of these see Mark A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014), chap 2.

⁵³ Ministry of Justice, *The Code of Practice for Victims of Crime* (London, Ministry of Justice, 2015), p. 35.

research has shown that victims “almost always indicate a high level of satisfaction with the process”.⁵⁴ Numerous studies have also shown that restorative conferencing is more likely to reduce feelings of emotional trauma such as anger, anxiety and fear compared with the court process.⁵⁵ Victims are also less likely to fear that their victimization will be repeated. For instance, Strang’s study in Australia found that just two per cent of victims of violent offences anticipated that the offender would repeat the offence against them after participating in a restorative conference, compared to 18 per cent who went to court.⁵⁶

In terms of reoffending rates post RJ, the research here is less equivocal, though many studies have produced encouraging results. One recent study on juvenile offending and variations of restorative intervention by Jeff Bouffard et al. found that “[o]ur results... suggest that each type of RJ intervention, even those that are minimally involved (e.g., indirect mediation) reduces recidivism risk relative to juvenile court proceedings.”⁵⁷ In another meta-analysis of ten studies by Lawrence Sherman et al. the authors similarly conclude that, “on average, RJs [restorative justice conferences] cause a modest but highly cost-effective reduction in the frequency of repeat offending by the consenting offenders randomly assigned to participate in such a conference.”⁵⁸

While these studies are broadly positive in outlining the potential benefits that restorative practices have for resolving crime, there has been little research on whether RJ works for offences involving hate and prejudice. The question remains, then, can RJ help to repair the unique harms caused by hate crime, while reducing repeat offending? In answering that question, I turn now to my own research study on two restorative interventions that have been used to address the causes and consequences of hate crime in England and Wales.

1. The Hate Crime Project, Southwark Mediation Centre, London

The Hate Crime Project (HCP) is a project run at Southwark Mediation Centre (a civil society organization based in London, England) that deals with cases involving both hate crimes and hate incidents. Cases are often referred to the Project by schools, housing associations, the police and anti-social behaviour units, as well as by self-referral. The key aims and objectives of HCP are:

- To use inclusive dialogue to explore the effect that inter-personal conflicts has had on the lives of those directly and indirectly involved;
- To enquire into issues around prejudice and identity, which may be at the heart of the conflict; and
- To find a resolution that is acceptable to all or most.

The mediation process is typically completed with a written and signed agreement outlining the undertakings that each party has agreed to. Agreements often include a commitment to cease certain activities (including hate speech), commitments to avoid combative communication if similarly provoked in the future; and sometimes an apology. Although the mediation process may not be termed as “fully” restorative (most prominently because it does not typically involve individuals who have been charged with a criminal offence – although many had been accused of committing one), it does embody most of the

⁵⁴ Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (London, The Smith Institute, 2007).

⁵⁵ Heather Strang, *Repair or Revenge: Victims and Restorative Justice* (Oxford, Oxford University Press, 2002). Reductions in feelings of fear after RJ are also reported in many other studies, see summary in Mark A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014) chap 2.

⁵⁶ Ibid.

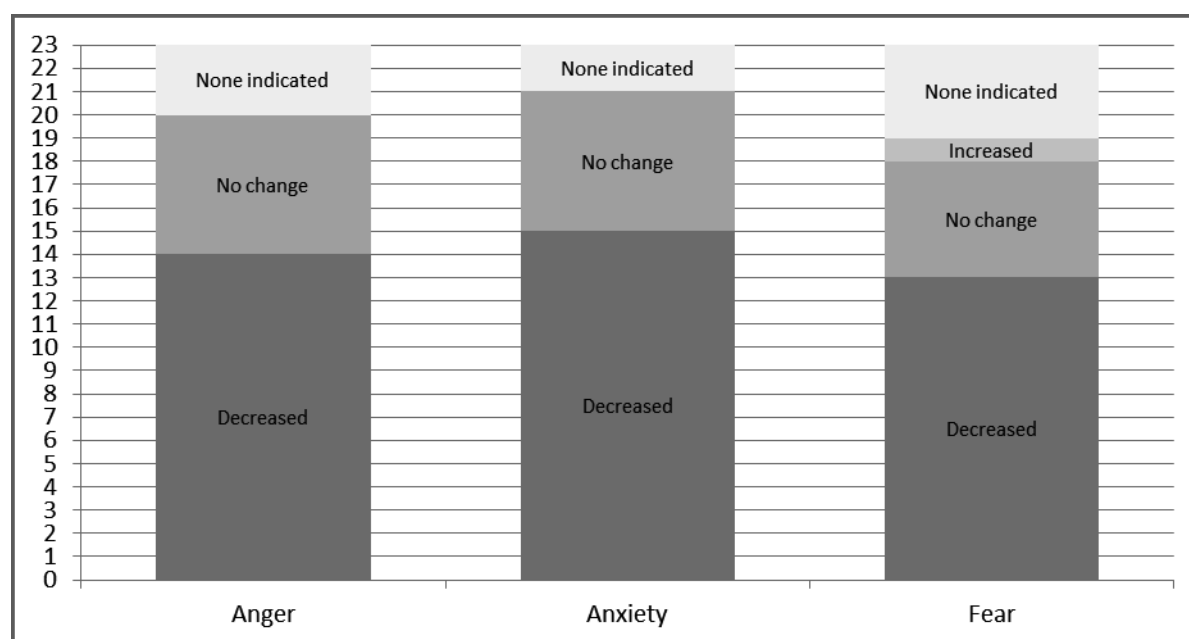
⁵⁷ Jeff Bouffard, Maisha Cooper, Kathleen Bergseth, “The effectiveness of various restorative justice interventions on recidivism outcomes among juvenile offenders”, *Youth Violence and Juvenile Justice*, vol. 15, No. 4 (2017) 465.

⁵⁸ Lawrence W. Sherman, Heather Strang, Evan Mayo-Wilson, Daniel J. Woods, Barak Ariel, “Are Restorative Justice Conferences Effective in Reducing Repeat Offending? Findings from a Campbell Systematic Review”, *Journal of Quantitative Criminology*, vol. 31, No. 1. Some studies have shown no difference between reoffending rates (Lawrence Sherman and others, *Preliminary Analysis of Northumbria Restorative Justice Experiments*, Lee Center of Criminology, Philadelphia Pennsylvania, unpublished (2006), cited in Lawrence Sherman and Heather Strang, *Restorative Justice: The Evidence* (London, The Smith Institute, 2007), while in one study on drink driving the reoffending rate increased post RJ (Lawrence Sherman, Heather Strang and Daniel Woods, *Recidivism Patterns in the Canberra Reintegrative Shaming Experiments (RISE)*, Canberra, Centre for Restorative Justice, 2000).

principles that are central to restorative justice and was therefore considered to be a “restorative practice”.

The HCP was evaluated during 2008-2011 and involved 15 direct observations of direct and indirect mediation meetings, followed by 23 semi-structured interviews with complainant victims involved in a total of 19 separate hate crimes/incidents, each of whom had completed the mediation process. The study found that, in the majority of cases researched (17/23), interviewees stated that the mediation process had directly improved their emotional well-being. In addition, most participants indicated that their levels of anger, anxiety and fear were reduced directly as a result of having participated in the project. Such a finding is particularly significant considering that these emotions are found to be heightened in cases involving hate crime (outlined above).

Graph 1: Impact of community mediation on victims’ feelings of anger, anxiety and fear



Total N = 23.

NB: Measurement of fear was carried out on a 6-point ordinal scale. The measurement of anger and anxiety was based on a 10-point interval scale.

Analysis of interviewee data revealed four common variables that helped to explain the improvement of emotional well-being during the restorative process:

1. Participants were able to explain to the accused perpetrator and others the harms they had experienced, while additionally talking about what it is like for them to be “different” in the community;
2. Participants felt supported by mediators who listened to their version of events;
3. The accused perpetrator signed an agreement promising to desist from further hate incidents; and
4. Reparation was made to the complainant victim, including material, emotional, relational, community, moral learning and multi-agency social support (see Figure 5).

As is outlined at the start of this paper, those who are perceived as somehow “different” are often exposed to the threat of targeted victimization, which in turn heightens their sense of vulnerability. Important, therefore, is that any justice process that aims to address the harms of hate crime, reorientates victims from a position of disempowerment to that of empowerment. Restorative practices aim to achieve this by bringing victims centre stage in the justice process where they are given a say over how their case should be resolved. At the HCP, complainant victims were encouraged to express how they had been harmed by their experience of targeted victimization. By sharing their “stories” of harm, victims were able to explain to

others, not only the impacts of their direct experience of victimization, but also what it was like for them to be “different” in the community. For many complainant victims this also involved them articulating other experiences of prejudice and discrimination in the past and in other areas of their life. One restorative practitioner interviewed explained:

In cases where I've worked with homophobia the party has wanted them [the offender] to know... what it's like to be a gay man or a woman in the community, what it's like to experience... homophobic prejudice, so there's a lot of learning that can be gained.

The inclusivity of restorative practices also means that other “community” members can participate in dialogue. As I have outlined above, part of hate crime's unique character is that its harms extend beyond the immediate victim, often affecting entire groups of people. Interventions that include the indirect victims of hate crime are therefore particularly useful to repairing its broader harms. For example, one restorative practitioner interviewed as part of the study (outside of the HCP) illustrated the importance of the victims' “community of care” also talking about their group identity.

They [the victim's family members] went to great lengths telling me about their own family history and who of their own family members they'd lost during periods of time [referring to the Holocaust], and showing me memorabilia in the house, paintings and things which had been done by relatives who were no longer with us, very personal stuff. And probably half an hour or more spoke about those sorts of issues... Their identity was very, very important to them. And they went to lengths to tell me how proud they were to be Jewish. And they certainly want to maintain and hang on to that identity and those roots.

Allowing participants to vocalize their stories in this way can help them to recover from their experiences of targeted victimization. This is especially important where victims' narratives have been destabilized and where individuals experience self-blame, shame and internalized feelings of prejudice. By allowing victims of hate to talk about their “difference”, restorative processes may help them to regain a sense of control over their victimization, while simultaneously reasserting their identity as something that should not be shamed. A further case study from the HCP helps to illustrate the importance of talking about the effects of prejudice.

Case Study One: Homophobic violence and community mediation

Mr V's case involved homophobic harassment and violence, which occurred over a period of 18 months. A new neighbour (Mr X) moved in directly above Mr V's apartment. At first the two neighbours would say hello as they passed each other. However, when Mr X found out that Mr V was gay, he began to verbally abuse him calling him amongst other things an “AIDS spreader” and on one occasion Mr V came home to find “AIDS F**KER” spray painted on his front door.

Over the course of his targeted victimization, Mr V had his car keyed (scratched), he was spat on, and had liquids poured over him by Mr X. Mr V's abuse came to a head when on returning home from hospital one day on crutches, he was pushed to the ground by one of Mr X's friends. His front two teeth were knocked out and he required hospital attention where he was given medication and several stitches in his chin. Mr V described at interview the impacts of his victimization:

“... it's almost soul destroying for me because it took away everything I had and am as a person... it reached the stage where I was frightened to go out of my home. I used to sit in here in the dark because I didn't want anyone to know I was in because I was frightened that if they knew I was in that they would do something.”

Eventually, Mr X was referred to the HCP where he and his neighbour were invited to participate in indirect (shuttle) mediation. The mediation process had a profound impact on both Mr V and his neighbour. Mr V conveyed how important it was to be able to tell someone how the incidents had been affecting him. This, he believed, had a profound impact on Mr X's understanding of him and the harms he had been inflicting:

“I know that one of the things that [Mr X] automatically presumed was that all gay men are also paedophiles... I think that was one of the issues and once all those issues were put to him in sensible conversation whilst he's not going to change his opinion totally, I think it led to him realising that everything was not as black or white.”

Mr V obtained assurances from Mr X that the incidents would stop. He commented further that:

“because the incidents have stopped... I'm healthier again I don't have the stress, I'm not frightened to go out of my own home. Overall everything about my health is better.”

a. Preventing hate crime from recurring

Research suggests that hate crime victims are more likely to experience repeat forms of targeted victimization compared with non-hate victims.⁵⁹ In fact, in all of the 19 cases of hate crime and hate incidents studied at the HCP, conflict between the stakeholders had been ongoing, usually occurring over a period of several months but in some cases many years. Out of these 19 separate cases studied, 11 ceased directly after either direct or indirect mediation between the parties took place. A further six cases stopped after the mediator included other local agency professionals within further mediation meetings, including schoolteachers, social services practitioners, community police officers and local authority housing officers.

These findings suggested that the HCP helped to change the behaviours of those accused of hate and prejudice. However, it remained unclear whether those who had participated had also transformed their prejudiced attitude towards those they had previously targeted. The success of a justice measure cannot be judged solely on whether an offender has reoffended against the same victim. Recidivism rates must also be examined in relation to whether the perpetrator has reoffended against others. If restorative practices are capable of bringing about a genuine transformation in perpetrators' world views, then RJ will not only help to reduce harm in individual cases, but it might be a mechanism through which broader social change can be brought about.

What, then, did the research tell us about RJ's capacity to challenge the underlying causes of hate? Earlier in this paper, I briefly outlined the theory of reintegrative shaming, and the role that empathy may play in transforming attitudes and in turn behaviour. In relation to hate crime, those who participate in structured dialogue that focuses on harm *and identity* can be challenged to reassess their prejudiced beliefs and attitudes. This was revealed in Case Study 1 where Mr X's beliefs that all gay men were paedophiles and his stereotypes that they spread HIV and AIDS were challenged. Numerous other examples were observed of individuals whose views and attitudes were challenged and where renewed relationships emerged during dialogue.⁶⁰ However, it is not only through restorative dialogue that attitudinal change can be fostered. There are also opportunities for moral learning to be integrated directly into restorative agreements themselves. The following case study illustrates how restorative justice can help to address both the behaviour and the attitudes of perpetrators through the study of identity "difference".

Case Study 2: Antisemitic harassment – Exploring the harms of the Holocaust through restorative dialogue

A 17-year-old Jewish male (K) was racially and religiously harassed by another 17 year old white British male (Y) in Oxford. Y was later prosecuted and convicted of racially and religiously aggravated harassment under section 32 of the Crime and Disorder Act 1998. As a first-time offender, Y was sentenced to a Referral Order and later referred to Oxford Youth Offending Service where a restorative justice practitioner was assigned to his case.

The RJ practitioner met with K and his father who spoke at length about how the incident had affected them and how important their Jewish roots were. The facilitator asked K how the offender might help to repair some of the harms he had caused. K suggested that the offender learn about the impacts caused by antisemitism. This suggestion led to the offender being asked to undertake a research project on the rise of the Nazi party and the devastating effects of antisemitism during WWII.

The offender manager, herself Jewish, supervised the project which was completed over a two-week period. A project report was then presented back to the victim and his family by the RJ facilitator. At the end of the six-page report, the young offender reflected:

"I feel that I understand why incidents involving racial abuse against Jewish citizens and [other] races are taken so seriously. As I have been... reading about... the Holocaust... [and] I understand the hurt and pain the victim and his family must of [sic] felt when I said what I said to him as it was obviously a terrible time for there [sic] race... it is not just him that it relates to but a whole race of people and that's not what I

59 Home Office, *Hate Crime, England and Wales, 2017/18 Statistical Bulletin 20/18* (London, Home Office, 2018).

60 See Mark A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014), chaps 4, 6 and 8.

intended to do. On reflection of my actions I now feel that I will be able to use language more appropriately towards over [sic] people and not to talk about peoples religions and believes [sic] in such a way... as it is unacceptable because of the pain it causes to the people it happens to."

When asked whether K believed the offender now had a better understanding of his identity background, he replied:

"Somewhat I think, well the fact that he had to do this [referring to the report]... he's looked into some things that hatred can do... the bad times of the Holocaust..."

The victim went on to state that he had not experienced any further forms of harassment from Y.

Whether the perpetrator in this case study experienced a genuine transformation in attitude is to some extent unclear.⁶¹ His own words indicated that he had come to a new understanding about the experiences of Jewish people, while the words of his victim were also hopeful that his attitudes and behaviours will change.

Although cases such as these illustrate the potential of RJ to facilitate both attitudinal and behavioural transformations, such an outcome does not occur in every case. In fact, the study also found examples of perpetrators who continued to deny that they had acted out of prejudice throughout the restorative process. In a couple of cases, perpetrators held deep-seated animosity towards certain communities and were keen to vocalize their disdain of these groups.⁶² It is questionable whether the stakeholders of hate crime in such cases can truly form the empathic connections that are key to promoting behavioural and attitudinal transformation.

Yet in many respects it is questionable whether we can expect any justice measure to truly change how someone sees others in the world. Indeed, we might even question whether it is ever the role of the criminal justice system to attempt such a feat. Perhaps, then, what the case examples above show is not that RJ should have as its key *objective* attitudinal change, but rather to acknowledge that it has the *capacity* to facilitate moral learning that is *more likely* to bring about such changes when compared with other punishment based interventions.

However, if restorative practices are to achieve even this, its practitioners must carefully apply the underlying principles and processes (outlined above) that give RJ its unique reparative and transformative capabilities. As we will see below, failure to administer these key principles properly may undermine RJ's capacity to both repair harm or challenge prejudice and hate.

2. Restorative Police Disposals, Devon and Cornwall

The research study showed that, when administered with care, a restorative practice such as the HCP can help not only to reduce harm, but also potentially reduce the likelihood of revictimization. What though of other "restorative" practices that do not specialize in hate crime and which are run more centrally by agencies such as the police? In attempting to evaluate a broader range of restorative practices, I included within the study a newly established police-led restorative intervention.

In 2008, Devon and Cornwall Police Service trained all of its officers to use a new restorative disposal for "low level" offences. The disposal is only used where the victim agrees to take part in a street level restorative encounter, (direct or indirect) victim-offender mediation or a restorative conference. A total of fourteen victims of hate crime were interviewed who had participated in the restorative disposal. Out of these 14, seven (half) stated that they were satisfied with the outcome of their case. Seven interviewees also felt that they were provided with an opportunity to explain how the incident affected them – a key aspect of restorative justice outlined above. However, unlike the HCP, only a minority of interviewees (four) stated that they felt the restorative disposal had helped to repair the harms caused by the hate crime.

There were several reasons outlined by interviewees explaining this lower level of emotional recovery.

⁶¹ The offender was not available for interview during the study period.

⁶² See examples in Mark A. Walters, *Hate Crime and Restorative Justice: Repairing Harms, Exploring Causes* (Oxford, OUP, 2014), chap 8.

The first related to the fact that some participants had felt pressured by a police officer to participate in the disposal. This had direct implications for the voluntariness of the process and effectively undermined a key aspect of restorative practice. Despite 11 out of 14 victims stating that they had received an apology from the offender, most felt that the apology had been disingenuous. In several cases, the apology had been written on a note pad without explanation as to why the crime had been committed. One interviewee explained:

It was a scam, it wasn't really an apology. It made me feel really upset. If someone had really felt that they had done something wrong they would have written something in a way to express their feelings... sending me a piece of paper was like rubbing salt into the wound. I would have been more happy not receiving anything, it was like making fun of it.

Such a situation left this victim feeling more harmed by the intervention, while similar conditions resulted in several other victims feeling "let down" by the police.

It should be noted that most offenders took part in what is called a "Level One" restorative intervention (i.e., street level encounters commonly used at the scene of the crime).⁶³ Such encounters do not include preparation meetings and they are unlikely to be held in a neutral setting. Only one victim was given an opportunity to talk directly with the offender about the offence and how he could repair the harms he had caused. These findings gave rise to the question of whether the Devon and Cornwall police restorative disposals should be labelled as a "restorative" intervention at all.

D. Avoiding the Risks of Using Restorative Justice for Hate Crime

Interventions such as "restorative disposals" highlight a number of potential risks that are posed to victims when using RJ for hate crime. The most significant concern is that restorative meetings might expose victims to revictimization. The worst-case scenario is where an offender uses a restorative meeting to re-vocalize their animosity towards the victim. Other concerns, however, relate to more subtle but potentially equally invidious, manipulation of dialogue which sees those in positions of power exerting control over other participants; thereby perpetuating their social marginalization.

These issues were central concerns during the HCP study and all victims and practitioners were interviewed in depth about any experiences of inequality, domination or revictimization during the restorative process. Revictimization and power differentials are important considerations for all practitioners facilitating restorative justice interventions. The study found that all complainant victim interviewees, bar one, stated that they did not experience any feelings of inequality or revictimization during any part of the restorative process.⁶⁴ The direct observations also supported these claims, with detailed notes taken of communication, including paralanguage⁶⁵ and body language throughout, revealing no evidence of direct revictimization and little evidence of communicational domination. There were several factors that were highlighted during the study as minimizing power divisions, causal to hate crime cases, and that limited the risk of revictimization during the restorative process:

- Thorough preparation of participants before any direct dialogue took place. This involved outlining the aims and objectives of RJ meetings, to prepare participants for difficult questions, and to ascertain whether accused perpetrators/offenders would re-vocalize their prejudices in direct meetings.
- Ground rules at the start of meetings outlining expected language and behaviour during meetings.
- Arranging for other participants to take part who supported the participant, but not the prejudice/s that were central to the case, including: schoolteachers, sports coaches, friends and family members.
- Using indirect mediation meetings, allowing participants to talk and for an agreement to be reached between participants without them directly meeting.

⁶³ See Criminal Justice Joint Inspection (CJJI), *Facing Up To Offending: Use of Restorative Justice in the Criminal Justice System* (London, HMIC, HMI Probation, HMI Prisons and the HMCPSI, 2012).

⁶⁴ A total of 38 complainant victims were interviewed. The one victim who stated that he had felt discriminated against because of his ethnicity noted that this came from the facilitating police officer and not the other party involved in the incident.

⁶⁵ Vocal features that accompany speech and contribute to communication, such as intonation, tone and timbre of voice.

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Preparation was reiterated by practitioners throughout the study as being *the* key factor in reducing risk to victims. This is most effectively achieved at the beginning of the process when facilitators meet and talk to the parties separately. It is here that practitioners can ask questions about what participants hope to gain from the process and, importantly, how they feel about what has happened and what they feel towards each other. During direct meetings, ground rules as to expected behaviour and language were invariably set out. Facilitators at this stage also considered involving participants who supported the accused perpetrator but not the prejudices which they had demonstrated. This could, for example, involve inviting a teacher, sports coach, or other person to engage in the dialogical process. Finally, where there is a risk of revictimization, facilitators often offered complainant victims the opportunity to participate in an indirect/shuttle mediation process. Half of complainant victims at the HCP decided that this was the better option for them.⁶⁶

II. CONCLUSION

Restorative practices that are administered by experienced practitioners who prepare stakeholders of hate crime for inclusive dialogue that is focused on the harms caused by targeted victimization can, in most cases, expect to assist in the emotional recovery of victims and prevent ongoing incidents from recurring. The success of any restorative practice is predicated on: the amount of preparation that facilitators put into outlining the aims and objectives of RJ and preparing stakeholders for dialogue; facilitating opportunities for “story telling”; the support offered by facilitators and other agencies during the process; and agreements that contain promises of desistance. There are, however, risks to administering “restorative” interventions for hate crime. The research study suggested that short “restorative encounters” that are used at the scene of an incident risk exacerbating the harms of hate incidents and therefore should not be used. These so called “Level One” restorative disposals lack adequate preparation, with participants often feeling cajoled into accepting the intervention. There is very little that is “restorative” about such practices.

Although RJ may well help to address both the causes and consequences of hate crime, it must not be concluded that this approach is a panacea to tackling hate crime. In particular, policymakers and practitioners must recognize that the concept of “community”, central to many restorative practices, can have both a benevolent and malevolent effect on hate crime. The study found that in most cases practitioners can utilize “community” as a tool; for example, by ensuring that the victim’s family and friends (part of their “community of care”) are there to provide support during restorative meetings. However, simultaneously practitioners working in the area of hate crime must come to understand that the notion of “community” can itself be causal to hate incidents. Community, defined by Braithwaite as a set of “dense networks of individual interdependencies with strong cultural commitments to mutuality and obligations”,⁶⁷ is often bound by norms and values that can lead to the rejection of certain identities within its sphere. Barbara Perry argues that communities that become fearful of certain “Others” develop mechanisms of control that are used to marginalize certain groups.⁶⁸ This can occur, for instance, where a community predominantly made up of a single ethnic and religious group, evinces hostility towards new minority ethnic members who seek to practice different religious beliefs in the community. Some “dominant” community members may even take it upon themselves to police the boundaries of what is acceptable community “membership” (including what identities are acceptable) and use violence in order to vanquish those who fail to conform. In fact, a cogent reason explaining why RJ did not completely repair the harms caused by hate crime in this study was that victims, although less fearful and angry towards the perpetrator in their case, continued to remain fearful and anxious that other community members might target them. Practitioners must, therefore, be mindful that the inclusion of “community” members in the restorative process can involve those who are fearful or prejudiced towards “othered” victims, potentially resulting in their experiencing further marginalization during the process itself.

While concerns about the cultures of prejudice that can pervade entire communities must not be underestimated, neither should they exclude the use of RJ for hate crime as some have suggested.⁶⁹ Important

⁶⁶ Note that the findings regarding emotional wellbeing did not differ across those who participated in direct compared with indirect mediation.

⁶⁷ John Braithwaite, *Crime, Shame, and Reintegration* (Cambridge, Cambridge University Press, 1989), p. 85.

⁶⁸ Barbara Perry, *In the Name of Hate: Understanding Hate Crimes* (New York, Routledge, 2001).

⁶⁹ Terri Lee Kelly, “Is Restorative Justice Appropriate in Cases of Hate Crime” (published in the Western Pacific Association of Criminal Justice Educators Conference Papers, Lake Tahoe, Nevada).

is that practitioners fully comprehend both the harming and healing qualities of “community”, and are equipped with the knowledge of how to exploit those aspects which are healing, while guarding against those which may be victimizing. As we have seen above, this can be achieved via adequate preparation, ground rules, and ensuring that appropriate “community supporters” participate in dialogue.

A. The Future of RJ for Hate Crime: Effective Training

Given the potential reparative outcomes of RJ for hate crime, should restorative measures be available to all victims of hate crimes across criminal justice systems? The answer to this question may depend on two factors. The first relates to who the facilitators of RJ are. The realization of RJ’s key goals may depend largely on whether facilitators are specialist independent practitioners, or whether they are existing criminal justice practitioners who are *additionally* trained as RJ facilitators. Practitioners who are completely independent from the criminal justice system are likely to bring with them greater levels of independence and impartiality. In turn, they are less inclined to be influenced by the institutional processes that are ingrained within a “system” and the institutional prejudices (i.e. unwitting and unthinking bias that can be demonstrated towards certain groups) that continue to permeate many criminal justice systems.⁷⁰ If justice agencies do decide to use professionals from within the system (such as was the case in Devon and Cornwall Police), it is likely that the organization’s traditional institutional values and practices will compete with those of RJ. This means that the principles of repair, encounter and transformation may be situated within a paradigm of justice that remains focused predominantly on retribution and/or punitivism. If this is the case, and recent experience from the UK suggests that practitioners will mostly come from within such organizations, it will be pivotal that these practitioners operate exclusively as restorative facilitators. Only then can the values of conventional justice practices become secondary to the work of restorative practitioners.

The second factor relates to training and experience. Practitioners will clearly need to undertake advanced training on the causes and consequences of hate in order to effectively negotiate the minefield of socio-cultural issues pertinent to such cases. The HCP manager, herself a British African-Caribbean woman, had over ten years’ experience mediating hate crime cases in one of London’s most diverse boroughs and was discernibly well qualified in helping to resolve complex cases that involved hate-based conflict. Other providers of RJ must ensure that facilitators have a suitable comprehension of the issues relevant to hate crime before they carry out adequate preparation and effective facilitation of direct dialogue. In many respects, I believe that this is RJ’s greatest hurdle in promoting justice for victims of hate crime. Cultural resistance within some institutions, especially those with strong conventional retributive values, will actively limit practitioners’ ability to fully embrace the aims and objectives of RJ.

It is even more important, then, that facilitators represent the communities that they will be helping to resolve conflict. While I would not go so far as to suggest that only minority ethnic practitioners facilitate conflict involving stakeholders from such backgrounds, it is certainly the case that facilitators who have themselves experienced socio-cultural marginalization will have a greater appreciation of the harms that discrimination and prejudice can cause. First-hand knowledge of identity “difference”, cultural diversity and the socio-structural dynamics of hate crime will mean that facilitators are better able to understand pre-existing divisions and help encourage the emotional connections central to restorative dialogue. Only when restorative practitioners represent the multicultural communities that they serve can restorative practices be truly inclusive of the differing cultures, ethnicities and orientations of the communities that are affected by hate crime.

⁷⁰ William Macpherson, *The Stephen Lawrence Inquiry*, Cm 4262-I (London: The Stationery Office, 1999); David Lammy, *The Lammy Review: An Independent Review into the Treatment of, and Outcomes for, Black, Asian and Minority Ethnic Individuals in the Criminal Justice System*, (London, Lammy Review, 2017).