

Dignity and human rights in correctional practice

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Abstract

Interventions with offenders have a normative layer as well as a scientific basis and therefore it is not possible to quarantine ethical questions from discussions of best practice. My aim in this paper is to provide an expanded ethical canvass from which to approach correctional practice with offenders. The cornerstone of this broader ethical perspective will be the concept of human dignity and its protection by human rights norms and theories. I also explore the relationship between responses to crime and offender rehabilitation based on an enriched theory of punishment that is sensitive to offenders' moral equality and their attendant rights.

Keywords: Correctional practice - Human dignity – Punishment - Human rights

Introduction

Criminal acts are by definition illegal and are almost always ethically unacceptable because of the unjustified harm intentionally inflicted on innocent parties by persons who are held accountable (Kleinig, 2008). It is impossible to dissociate the normative components in an analysis of crime from a description of the specific actions committed by individuals and their impact upon other people. This is because concepts inextricably embedded within the discourse of crime and law such as “harm” or “justification” are deeply value laden and thick with normative and factual associations (Duff, 2001). However, the fusion of the normative and factual facets of crime extends well beyond its definition and law enforcement considerations. We have recently argued that offender rehabilitation or reintegration is an evaluative and capacity building process because of its emphasis on both practitioners' and offenders' practical reasoning (Ward & Maruna, 2007; Ward & Nee, 2009). Practical reasoning is a form of rationality that involves evaluating goals and the values that underlie them, and formulating an action plan that integrates individuals' goals and helps to achieve desired outcomes in an efficient manner (Ward & Nee, 2009). One way of reconceptualising correctional intervention programs is as systematic attempts to provide offenders with the requisite internal and external resources to implement plans likely to result in better lives. The *evaluative* component of rehabilitation is evident in its concern to reduce risk of further reoffending by reorienting individuals' value judgments

from offence supportive goods to ones that are personally meaningful and socially acceptable. The *capacity building* process involves the application of psychological and social interventions to facilitate the acquisition of capabilities and opportunities to secure socially endorsed outcomes valued by offenders. This component of rehabilitation is based upon the facts of human functioning and the technology of skill acquisition.

Once it is acknowledged that interventions with offenders have a normative layer as well as a scientific basis it is not possible to quarantine ethical questions from discussions of best practice. It is apparent that in the psychological literature on offender rehabilitation the level of ethical debate has been disappointingly superficial and oriented around procedural matters such as duty to warn, conflicting roles, and risk prediction and management (e.g., Bush, Connell, & Denny, 2006; Haag, 2006). There has been relatively little analysis of such important topics as offenders' moral status, the relationship between punishment and rehabilitation, or the degree to which offenders retain their basic human rights (Ward & Birgden, 2007; Ward & Salmon, 2009). This neglect cannot be dismissed as essentially benign in terms of its effects on assessment and program delivery. I propose that it is a critical oversight that threatens the ethical integrity of correctional practice and any empirically supported interventions that are based on unexamined and arguably unacceptable assumptions about what is ethically permissible in the realm of practice.

My aim in this paper is to provide an expanded ethical canvass from which to approach correctional practice with offenders. The cornerstone of this broader ethical perspective will be the concept of human dignity and its protection by human rights norms and theories. I will also explore the relationship between responses to crime and offender rehabilitation based on an enriched theory of punishment that is sensitive to offenders' moral equality and their attendant rights. In brief, first I analyze the concept of human dignity and arrive at a conception that respects the basic conditions of a human life and also stresses the importance of individual autonomy. Second, I outline the key features of human rights and their relevance for practitioners in the correctional domain. Third, I examine the relationship between the two normatively distinct but overlapping frameworks of punishment and rehabilitation. Finally, I sketch out some overall implications for intervention arising from the concepts of dignity, human rights, and punishment.

Human Dignity and Vulnerable Agency

The concept of human dignity is an ancient moral idea concerned with the intrinsic value and universal moral equality of human beings. Because of their inherent dignity human beings are assumed to possess equal moral status and therefore are expected to receive equal consideration in matters that directly affect their core interests. The equal moral standing of each person within a moral community means that every person is entitled to make specific claims against other members of the moral community, and in turn is expected to acknowledge his or her own obligations to acknowledge others respective legitimate claims. In essence, the concept of dignity designates the moral *worth* or value of all human beings although the meaning of this term has changed considerably since its origins just over two thousand years ago (Sulmasy, 2007).

The pivotal role of the concept of human dignity in regulating human relationships and coordinating competing interests is evident in most major moral theories and various human rights treaties such as the Universal Declaration of Human Rights (UDHR – United Nations, 1948). The preamble of the UDHR asserts that, “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world.” The UDHR was followed by the European Convention on Human Rights (came into force in 1953; Smit & Snacken, 2009) and two international covenants in 1966 (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social, and Cultural Rights) that provided more detail on the various articles outlined in the original UN declaration (Freeman, 2002).

There are also references to human dignity in the various articles of the UDHR and in the other treaties, as well as in the many books and commentaries on these important human rights documents. It is apparent that from the standpoint of the authors of the UDHR, human dignity is a core moral idea rather than primarily a legal concept and therefore theoretically grounds or justifies laws and political norms that are designed to protect fundamental human needs and interests (Churchill, 2006).

While it is commonly accepted that *dignity* refers to human worth, the term has been conceptualized in various ways by modern theorists (Beyleveld & Brownsword, 2001; Malpas & Lickiss, 2007). More specifically, dignity has been defined in terms of the minimal living conditions required for an acceptable level of existence (Nussbaum, 2006). For example, a lifestyle characterised by inadequate drinking water, lack of nutritious food, a polluted environment, and a deficit of caring relationships is likely to slip beneath the minimal threshold of a dignified human life. Another attempt to define dignity states that a person has dignity when he or she is free to form his or her own intentions and is able to act in accordance with them without interference (Driver, 2006). By way of contrast, some theorists have proposed that individuals have dignity if they live their lives in accordance with the norms of their community and its practices and traditions (Beyleveld & Brownsword, 2001). Such a viewpoint is more constraining than that allowed by a conception of dignity based on autonomy. For example, certain actions or lifestyles may be evaluated as undignified and therefore ethically unacceptable if they are believed to violate cherished community sexual or social norms (Beyleveld & Brownsword, 2001). A final conception of dignity evident in the literature is based upon the idea that dignity depends on being a flourishing member of a kind. According to this standpoint, individuals have dignity if they are fulfilling themselves as *human* beings and their unique abilities are fully developed (Miller, 2007; Nussbaum, 2006).

The above conceptions of dignity only represent a few of the ways this important concept has been unpacked. In a seminal analysis Beyleveld and Brownsword (2001) set out to unify the multiple meanings of dignity by making a distinction between dignity as *empowerment* and dignity as *constraint*. The notion of dignity as empowerment stresses the importance of uncoerced choice and freedom of movement for human beings as they go about their lives. The emphasis placed on empowerment points to the value of self-governance and the capacity and opportunity of individuals to actively and freely pursue their self-selected goals without interference from others. The second aspect of dignity acknowledges its links with constraints on the way people are treated and also on how they behave. According to this viewpoint, people only retain their dignity if they follow the norms of their community and do not act in ways that cast shame or ridicule on themselves or others. An example of such social constraints is a recent legal case in France where dwarf throwing was outlawed despite protests from the dwarf in question that he wished to participate in such contests (Beyleveld & Brownsword, 2001).

To take stock, relying on the analysis by Beyleveld and Brownsword, the dignity of human beings is located in their capacity to formulate and pursue their interests in the world without unjustified interference by other people. However, individuals' own judgements are not the only determinants of what constitutes a dignified life and sometime people can act in ways that are freely chosen that unfortunately diminish their status as human beings. An example in the correctional domain might be where offenders agree to harsh and humiliating interventions because they do not believe they are worthy of better treatment. A notable implication of a concept of dignity based on empowerment and constraint is that it points to the vulnerabilities of human beings because of their nature as embodied, social animals. In order to be able to act in pursuit of personally selected goals and their translation into plans of action, basic needs have to be met as well and educational opportunities and social scaffolding provided. In other words, human beings require certain primary goods and opportunities to be able to act in ways worthy of their intrinsic value.

Because of their critical role both in helping people lead a life of dignity and ensuring they have the necessary capabilities to function according to their inherent dignified nature, these resources are viewed as *entitlements* and therefore are protected by fundamental moral and legal rights (human rights – see below).

In conclusion, individuals' inherent dignity grounds their authority to claim basic entitlements to resources and also to non-interference from others in pursuit of justified goals. Alternatively, and crucially, because all people possess equal dignity each has a corresponding obligation to respond appropriately to other people's legitimate claims and wishes. It is important to emphasize that because respect for all individuals ultimately stems from their inherent dignity it cannot be ethically justifiably be taken from them through the actions of the state or by other people. Darwell's (2006) distinction between *recognition respect* and *appraisal respect* nicely captures the inviolate nature of dignity. Recognition respect is based upon the assumed moral equality and standing within a moral community of all individuals. All people have an equal voice in matters that affect their core interests and there is agreement that accountability goes hand in hand with entitlements to certain levels of treatment and functioning. On the other hand, the level of appraisal respect accorded persons ought to reflect their actions towards others and the degree to which they are evaluated as morally praiseworthy or blameworthy at any particular time. The key point is that recognition respect modulates the way appraisal respect is translated into ethical responses to unacceptable actions. For example, punishments ought to be implemented in a manner that fully acknowledges a person's inherent dignity, and should never be delivered in a demeaning or humiliating way.

Human Rights

The above discussion of human dignity has demonstrated its foundational role in locating the intrinsic value or worth of human beings in their capacity for action and in achieving a certain level of well-being. A significant insight arising from my analysis is that the concept of dignity is necessarily connected to people's relationship to others within their community, and arguably to the wider human race. The dependence of dignity on interconnectedness emerges because a capacity for action and ability to achieve acceptable levels of well-being only makes sense, and is only possible, within a social network. A second implication is that ethical issues arise when there are conflicting interests, and a major function of ethical norms is to establish practices that effectively coordinate the diverse, and often competing, interests of individual agents (Driver, 2006). The implication for correctional practitioners is that all offenders are entitled to be treated in ways that reflect this inherent dignity, or to put it in Darwell's language, the fact that offenders have behaved unethically and merit punishment does not mean they forfeit their status as moral equals. In other words, any response to crime or interventions that occur while individuals are within the criminal justice system ought to be delivered in ways that ensure recognition respect is evident.

What are human rights?

While establishing the crucial role of dignity in ethical thought is an important first step in developing an enriched ethical framework for correctional practitioners, it is not sufficient. What is needed is the specification of norms that are designed to protect the empowerment and well-being requirements that comprise dignity. Human rights are an important set of norms that were designed with this purpose in mind and can usefully be regarded as protective capsules. The relationship between values and human rights is well articulated by Michael Freedman (1991) who argues that:

...a human right is a conceptual device, expressed in linguistic form, that assigns priority to certain human or social attributes regarded as essential to the adequate

functioning of a human being; that is intended to serve as a protective capsule for those attributes; and that appeal for deliberate action to ensure such protection. (p. 7)

Freeden's definition points to the fact that human rights are intended to function as *protective capsules*, to provide a defensive zone around individuals so that they can get on with the business of leading good and meaningful lives. That is, a life that is chosen by them and that involves the unfolding of personal projects embodying their particular commitments. Summarising their key properties, Nickels (2007) asserts that human rights:

- are universal and extend to all peoples of the world;
- are moral norms that provide strong reasons for granting individuals significant benefits;
- exert normative force through both national and international institutions;
- are evident in both specific lists of rights and at the level of abstract values; and
- set minimum standards of living rather than depicting an ideal world.

The possession of human rights by individuals will not necessarily guarantee that they will achieve rich and satisfying lives; arguably they are necessary not sufficient conditions for a good life. Rather, the ability to claim certain fundamental entitlements for core goods from others and to have these entitlements accepted is likely to result in the acquisition of the basic capabilities required to shape a life that is valued and one's own. Human rights both reflect and confer moral status and remind governments, agencies and other people that consider rights holders' essential interests when pursuing outcomes that are likely to harm or benefit those individuals.

How are human rights defined? In essence, a human right is a *claim right* legitimately possessed by persons because they are human beings (Griffin, 2008; Morsink, 2009, Orend, 2002). A claim right reflects the duties another person or agency has to the claimant to provide specific goods such as essential materials for survival or to allow the claimant to engage in certain actions (i.e., non-interference in the rights-holder's affairs). Following on from this analysis a claim right has five key elements: a *rights-holder*, the assertion of a *claim*, an *object* of the claim (e.g., education), the *recipient* of the claim (i.e., duty-bearer), and the *grounds* for the claim. Human rights have a metaphysical basis in the nature of human beings and therefore conceptually exclude secondary characteristics such as social class, professional group, culture, racial group, gender, or sexual orientation. In other words, individuals hold human rights simply because they are members of the human race and as such are considered to be entitled to a life characterized by a certain level of dignity. As stated earlier, a dignified life is one characterised by personal choice and a certain level of well-being. In order to achieve such a life it is necessary that certain *well-being* and *freedom* goods are available to the person (Gewirth, 1996; Griffin, 2008; Miller, 2007).

It is possible to trace the origins of human rights from middle-eastern legal codes to their modern manifestation in natural rights inspired declarations such as the French Declaration of the Rights of Man and Citizen (Donnelly, 2003). Eventually the enlightenment versions culminated in the publication of the Universal Declaration of Human Rights in 1948 with its focus more on human dignity than natural law (United Nations, 1948). The Universal Declaration of Human Rights (UDHR) consists of a preamble expressing the inherent dignity of human beings and 30 articles specifying rights to objects such as freedom from torture, security of the person, a fair trial and due process, right to own property, freedom to and from discrimination, freedom to marry, the right to work, and religious freedom (United Nations, 1948). One difficulty with the the UDHR is that it is simply a list of relatively specific claims for access to goods or non-interference from others (negative rights). The Canadian philosopher Brian Orend (2002) has usefully conceptually collapsed the articles of UDHR into five clusters, each cluster associated with a particular human rights object. The five types of goods determined by Orend are as follows: Personal freedom, material subsistence, personal security, elemental equality, and social recognition.

The question of how to justify human rights remains. In my view the most powerful theoretical defences of human rights are universal in nature and go beyond legalistic conceptions rooted in power politics. Instead, the aim is to identify aspects of human functioning that are considered to be particularly important and to present an argument for anchoring human rights and their value in these features. A number of theorists have presented justification of human rights based on needs or agency/personhood concepts, arguing that such ideas reliably extend the reach of human rights to all persons within a society and those living in different countries. James Griffin (2008) proposes that human rights can be grounded in three core features of persons: (a) autonomy or the ability to make important decisions for oneself, (b) possession of a set of minimal resources and capabilities, such as education and health, and (c) liberty, where other people do not prevent someone against their will from applying their conception of a worthwhile life (p. 33). Relatedly, Alan Gewirth (1981; 1996) asserts that human rights function to protect the fundamental conditions necessary for people to operate as moral agents. That is, as individuals capable of formulating their own personal projects and realizing them in their lives. According to Gewirth, individuals have rights to whatever is necessary to achieve the purposes of their actions because without such guarantees, they may not be able to effectively act at all (i.e., will be unable to achieve valued outcomes). A third important rights theorist, David Miller (2007), argues that human rights are justified by their ability to facilitate the satisfaction of people's intrinsic human needs. Miller defines intrinsic needs as "...those items or conditions it is necessary for a person to have if she is to avoid being harmed" (p. 179).

All three theorists claim that what holds for any individuals with respect to their rights also extends to all other people and that in any community the rights and obligations of every person needs to be respected and incorporated into social and political decisions (Ward & Birgden, 2007; Ward & Langlands, 2008). According to the above theorists, human rights impose both positive and negative duties on states and other people, which they are ethically obligated to meet within certain practical constraints (e.g., they have the resources and/or abilities to meet the claim). Furthermore, when there are conflicting interests and demands arising from individuals' human right claims, it is necessary to evaluate each claim with respect to its importance and to arrive at a solution that seeks to achieve a balance between the entitlements of all individuals concerned. Sometimes, it may not be possible to satisfy all just entitlements and the respective duties may be prioritized according to their degree of need or urgency. The crucial point is that it is ethically obligatory to engage in a process that acknowledges the inherent dignity and associated rights of all members of the moral community and not to arbitrarily dismiss or seek to strip away an individual's basic entitlements. Theorists such as Griffin, Miller, and Gewirth argue that human rights are designed to protect the essential interests of all human beings: needs, capacities, and experiences that if instantiated respect their dignity as persons and if violated result in diminished and broken lives. The breaching of human rights occurs when individuals are treated primarily as means to other people's goals rather than as valued agents themselves. An example of this is when individuals from a certain ethnic group are denied basic health services because of the expense to the state and yet are exploited as sources of cheap labour. A correctional example could be when sex offenders are detained indefinitely in special hospitals because they are considered a high risk for future offending (Vess, 2009).

In summary, human rights create a space within which individuals can lead at least minimally worthwhile lives that allow them to maintain a basic sense of human dignity. Human rights are a relatively narrow set of rights and are only intended to protect the internal and external conditions necessary for a *minimally* worthwhile life. I agree with human rights theorists who assert that the core requirements of personhood and agency constitute these basic conditions and therefore such conditions ought to be provided, and

defended by the state, relevant agencies, and all citizens. I will consider the correctional practice implications of human rights in the final section of the paper. At this point I would respond to individuals who argue that offenders have forfeited their human rights by replying that if such rights are inherent to human beings, they cannot legitimately be taken away. And if the purpose of human rights is to ensure that the inherent dignity of all human beings is maintained then it follows that offenders' entitlements to agency and well-being should be safe guarded to the fullest degree possible (Lippke, 2002). Any restrictions upon their liberty and conditions of living need to be carefully argued for and not simply be assumed to be ethically acceptable. Furthermore, punishment practices ought to be implemented accordance with the dignity and rights of offenders and not delivered in a manner that is demeaning and dehumanising (Lazarus, 2004; Lippke, 2002).

Punishment and Rehabilitation

To summarize my argument so far, I have suggested that the concept of human dignity is the ethical foundation for human rights protocols and theories. A dignified human life is one that allows a person to make fundamental choices concerning his or her life goals and also addresses core well-being needs. Human right theories provide the justification for specific treaties and other normative mechanisms that are designed to protect the core conditions required for a dignified life. Because offenders are human beings it follows they hold human rights and therefore ought to be treated in accordance with the basic values and the specific norms evident in human rights protocols. It now remains to examine the ethical implications of punishment and its relationship to offender rehabilitation. In the following section I argue that the only ethically justified theory of punishment is some kind of restorative or communicative theory, such as the theory developed by Antony Duff (2001). One of the major reasons this theory is ethically justifiable is that it advocates treating offenders with respect and also acknowledges their right to be reconciled with the community following completion of a sentence. Punishment requires ethical justification as it is commonly accepted that harming another person without sound reasons is wrong.

I do not have space in this paper to critically examine the other two main theories of punishment, consequential and nonconsequential theories (for a comprehensive analysis see Ward & Salmon, 2009). But briefly, consequential theories of punishment are based on an evaluation of the total amount of happiness or good obtained through punishment practices while non consequential theories tend to focus on the intrinsic rightness of inflicting proportionate harm on someone who has harmed others (Boonin, 2008; Golash, 2005). A problem with the former is that it can involve treating offenders as simply means to advance the goals of communities (e.g., reduced risk) while the latter may ignore legitimate well-being needs of offenders. Both theories run the risk of failing to acknowledge the inherent dignity of offenders and the fact that moral agents are embedded within communities to whom they are accountable but also against which they have legitimate claims to primary goods such as the possibility of social reentry.

What is Punishment?

Essentially state inflicted punishment in the criminal justice system involves the intentional imposition of harm on an individual who has unjustifiably harmed a fellow citizen (Bennett, 2008; Duff, 2001). More specifically, punishment in the criminal justice system has five necessary elements (Boonin, 2008): punishment practices are *authorized* by the state, *intentional*, *reprobative* (they express disapproval or censure), *retributive* (they follow a wrongful act committed by the offender) and *harmful* (they result in suffering, a burden, or deprivation to the offender).

There are three major reasons why correctional practitioners are unable to avoid addressing the ethical challenges posed by the institution of punishment. First, it is possible that psychologists, social workers, therapists, and program staff may work within institutions

that are unduly harsh and abusive. Second, assumptions concerning the justification of punishment are likely to be reflected in the specific penal policies and practices embedded in the criminal justice system and shape professional tasks and roles. For example, the emphasis on risk assessment and management currently evident in the correctional systems throughout the western world is arguably conceptually dependent upon a consequential ethical theory (Ward & Salmon, 2009). Third, punishment and rehabilitation practices are distinct but overlapping normative frameworks (Ward & Salmon, 2009). Punishment is a response to crime based on ethical values while rehabilitation aims to facilitate social reentry and is based on prudential (well-being) values. However, some aspects of what have been called treatment may in fact be punishment given their intended effects (Glaser, 2003; Levenson & D'Amora, 2005). For example, cognitive restructuring in sex offender intervention programs is partly designed to cause offenders to feel remorse and take responsibility, arguably an aspect of punishment. The point is that unless practitioners are able to justify punishment then such interventions are unethical and ought to be avoided.

These examples indicate that the justification of punishment is of relevance and ethical concern for all practitioners. It is not possible to insulate the role of program deliverers from the ethical issues associated with punishment. Therefore, correctional practitioners ought to endorse punishment practices external and internal to their practice by reference to an acceptable punishment theory. In my view, any such theory ought to be responsive to the inherent dignity and associated human rights of offenders. I will now briefly describe the communicative theory of punishment which I argue meets these requirements.

Communicative theory of punishment

Communicative justifications of punishment have their basis in a liberal communitarian view of political and moral public institutions (Duff, 2001). According to Antony Duff (2001), communicative theories of punishment have a *relationship focus* and as such insist that the rights of all stakeholders in the criminal justice system, including offenders, are taken into account when constructing theories of punishment. Because all individuals are presumed to have equal moral status, offenders are viewed as fellow members of a normative community (i.e., offenders are viewed as “one of us”) and therefore are bound and protected by the community’s public values of autonomy, freedom, privacy and pluralism. Duff argues that these values are those of a liberal democracy where all human beings are considered to possess inherent dignity and therefore have equal moral standing within the community. A major assumption of communicative perspectives is that punishment practices ought to be *inclusive* of offenders rather than involving some type of social exclusion or quarantining. Duff asserts that while individuals who have committed public wrongs ought to be held accountable they should be treated with respect because of their moral status in the process of administering punishment. Therefore, he proposes that due to their equal moral status any punishment inflicted upon offenders should seek to *persuade* rather than coerce them to take responsibility for their crimes. Furthermore, because offenders are viewed as fellow members of the moral community it is accepted that the primary aim of punishment is to *communicate* to them the wrongness of their actions. The aim of this process of communication is give wrongdoers an opportunity to redeem themselves and ultimately to be reconciled to the community. Duff argues that hard treatment such as imprisonment is obligatory within the criminal justice system because it draws offenders’ attention to the seriousness of the wrongs committed and appropriately expresses social disapproval. Crimes are regarded as violations of community norms that the offender as a fellow moral agent is assumed to endorse as well. There are three aims integral to the institution of punishment from the standpoint of Duff’s communicative theory: secular repentance, reform, and reconciliation through the imposition of sanctions. The communitarian orientation of this theoretical position is nicely captured in his statement that punishment is a “a burden imposed on an offender for his crime, through which, it is

hoped, he will come to repent his crime, to begin to reform himself, and thus reconcile himself with those he has wronged” (Duff, 2001, p. 106).

Practice Implications

As a theory of punishment, Duff’s communicative theory has the virtue of being inclusive rather than exclusive in its ethical reach. The interests of all relevant stakeholders affected by crime are taken into account in the implementation of punishment. The offender is regarded as an equal moral agent and treated with the respect and dignity this status entails. A significant feature of communicative theories of punishment is that crime is conceptualized as a community responsibility rather than simply an individual one. While offenders are held accountable to the community their core interests are not neglected. Relatedly, victims are not ethically required to forgive offenders but do owe them a meaningful opportunity to be reintegrated within the community once they have served their sentences. Thus, the community is obligated to actively help offenders in the process of integration by the necessary internal and external resources such as education, work training, accommodation, and access to social networks.

From a practice viewpoint, *secular repentance* takes the moral agency of offenders seriously and emphasizes the importance of their acknowledging the unjustified harm they have inflicted on members of the community. The *reform* strand of the communicative theory of punishment refers to the desirability of offenders becoming motivated to change themselves and their behavior for ethical as well as prudential reasons. The realization that they have unjustifiably caused other people to suffer will hopefully lead to a firm resolution to do what is necessary to become law abiding citizens. Finally, the *reconciliation* strand of the communicative theory of punishment expresses the desire of both offenders and communities for reconciliation following repentance and efforts at reform. There are two aspects to the process of reconciliation that are practically relevant: the offender’s obligation to apologize and make appropriate reparations to victims and possibly other people affected by his or her crimes, and the community’s obligation to help the offender reintegrate back into the community following the completion of a sentence.

Practice Implications

I will now briefly outline some of the major implications for practitioners arising from the preceding discussion. I will concentrate the discussion on five points. First, a rehabilitation approach that focuses entirely on risk management elements may violate the inherent dignity and rights of offenders. Second, conflict between the rights of offenders and the rights of others should not always be resolved in favour of the latter’s interests. Third, the two core aspects of a dignified life have direct relevance for practice and the type of programs that are ethically acceptable. Fourth, punishment practices that fail to acknowledge the inherent dignity and entitlements of offenders are ethically unacceptable and ought to be rejected by practitioners. Fifth, strength based approaches are ethically more justified because of their commitment to offenders’ entitlements and autonomy, alongside the interests of the community.

First, intervention programs for offenders that focus primarily on risk reduction are ethically problematic because they are rooted almost entirely in the interests of the community and typically ignore the legitimate interests of offenders. Risk management initiatives such as civil commitment and community notification for sex offenders aim to protect the community from possible future sexual offences. Offenders, who after a systematic assessment are deemed to be high risk in many US jurisdictions, are committed to high security special hospitals indefinitely (Vess, 2009). Sex offenders who are released from prison are often subject to severe geographical restrictions and also can have their identities and residential location made publicly available. A danger of such initiatives is that offenders experience stigmatization and find it extremely difficult to resume or start a

normal life within the community. An ethically more acceptable model would be to offer offenders social supports and the available resources to live personally meaningful and better lives. The fact that western criminal justice systems often refuse to do this does not make it ethically acceptable or suggest practitioners should simply accommodate to such practices. The main problem with risk management strategies such as those outlined above is that they leave offenders living marginal lives devoid of dignity and undermine their chances of reconciliation and redemption.

Second, conflict between the rights of offenders and those of non offenders is inevitable and likely to revolve around the question of how best to balance their respective entitlements and obligations. Human rights are mechanisms designed to protect the core features of human functioning relating to well being and freedom. These two sets of conditions are important because when present they enable individuals to act in pursuit of valued goals and to live in dignified and mutually respectful ways. The critical issue to note is that aside from their role in enforcing personal entitlements, human rights also entail *obligations* to respect the core interests of other members of the community and to ensure that in any situation where competing interests are at stake, care is taken to arrive at a balanced outcome. The need to strive for social and ethical decisions that take the interests of all stakeholders into account is especially salient in the case of offenders where too often their claims for the various goods protected by human rights are casually dismissed (Ward & Birgden, 2007). As stated above, risk management policies that place severe liberty restrictions upon offenders because of the possibility they may commit future offences represents such an ethical flashpoint (Vess, 2009). While victims of crimes and members of the community may have legitimate concerns about the potential of offenders to harm other people, it is all too easy to impose unnecessarily severe restrictions or sanctions on individuals in such cases. For example, it may be prudent to require newly released high risk sex offenders to notify police departments when moving into a new residential area but it is not clear why such knowledge should be made public. Furthermore, imprisonment conditions need to be secure enough to prevent escapes but ought not to remove offenders' privacy, well-being entitlements (e.g. adequate exercise, contact with families, right to work, leisure, etc.), and freedom of choice completely (Ward & Birgden, 2007). The concept of core entitlements logically entails *threshold requirements* below which individuals should not be allowed to fall. Furthermore, the aim ought to be to only remove or reduce access to primary goods when there is a compelling ethical reason (e.g., threat to others, necessary security) to do so. It should never be a default position that offenders' dignity is irrelevant and fundamental benefits provided only at the discretion of the state. Finally, it is well known that a considerable number of sex offenders have in the past been physically and sexually abused and that this abuse has resulted in significant psychological and social injuries (Ward & Moreton, 2008). To deny such individuals therapy because they are offenders and therefore have allegedly forfeited their treatment entitlements is ethically unfounded and pragmatically unwise (Ward & Moreton, 2008). In light of these considerations, I argue any restrictions on offenders' necessary agency conditions need to be carefully justified. Without such justifications, the recognition of the inherent dignity all people and subsequent mutual respect that ought to reside at the heart of a just criminal justice system, and the moral community it serves, will be unacceptably absent.

Third, the two strands of the concept of dignity evident in my analysis have direct relevance for correctional programming and practice. Individual empowerment is basically concerned with the need to address agency and autonomy requirements in order to ensure offenders can actively participate in a life shaped by their own values and goals. The constraint stand of dignity sets out conditions within which such a life ought to be lived. First, the prudential aspect dictates that individuals need to have their basic needs for relationships, health, education, and nourishment met as without such goods their capacity to function in an autonomous (free) way would be severely compromised. Second, because dignity is inherent in all individuals, offenders are ethically unjustified in seeking to implement a life

plan that harms other people. Therefore, intervention programs should strengthen offenders' abilities to function as moral agents and thus aim to equip them with coping skills such as self-regulation abilities, problem solving skills, and emotional competencies. All of these abilities are core targets of current correctional programs. In addition, well being orientated programs include social skills training, anger management, leisure, substance abuse interventions, and sexual health programs. Again, all of these types of interventions are currently offered to offenders. What my analysis indicates is that the concept of dignity and its attendant concerns of empowerment and constraints are arguably the ethical foundation of correctional practices. An advantage of making this dependence more explicit is that such programs will become more integrated and also reduce the chances of the interests of both offenders and members of the community getting overlooked.

Fourth, correctional practitioners ought to be aware of the punishment practices occurring in their institutions and also those contained within their own practice. If punishment is underpinned by an unacceptable ethical theory, one that violates the inherent dignity and associated rights of offenders, then practitioners have an ethical obligation to address such concerns. Problems are easier to deal with if they are external in my experience. When therapists or social workers are unreflectively engaged in punishment within an intervention program, they ought to immediately think about its ethical acceptability. An example of an unacceptable practice is when group workers consider it their responsibility to take a hard line with offenders and consistently challenge and harshly confront them. Intervention practices like this are clearly punishment but without a legitimate justification, and are often erroneously construed as therapeutic practices. Such abusive behavior is neither acceptable therapy nor ethically justified punishment and should not to be engaged in. Sometimes a reason for overly harsh and untherapeutic behavior is that practitioners are so preoccupied with attempting to reduce offenders' risk that they fail to appreciate their rights and entitlements as well. These entitlements are grounded in their inherent dignity and their status as moral equals.

Finally, an ethical advantage of strength based rehabilitation theories, such as the good lives model (GLM), is that that they seek to equip offenders with the resources to pursue their own visions of better lives while also being concerned to reduce risk for reoffending. Programs derived from rehabilitation theories like the GLM are able to achieve this because of an emphasis on individual agency and also the interconnectedness of all people. Therefore, any intervention plan that is guided by the assumptions of the GLM will be sensitive to risk factors while taking offenders' personal goals and aspirations seriously. The provision of the internal and external conditions required to implement offenders' plans of living will be undertaken in a way that also ensures individual and contextual risk elements are targeted. Because the GLM is an ecological model it is always a question of balancing the core, and sometimes competing, interests of all individuals rather than privileging the interests of the community at the expense of offenders. To do this is to effectively ignore the moral equality of offenders and therefore deny them recognition respect. A notable feature of strength based programs is that they locate responsibility for crime prevention and management with the community as well as the individual offender.

Conclusions

Ethical thinking ought to be regarded as integral to the role of correctional practitioners and not simply an additional, slightly peripheral, consideration wrapped around the core business of assessment and program delivery. I have argued that the concepts of human dignity and human rights are the ethical cornerstones of correctional practice and penetrate deeply into every facet of our work. Furthermore, it is the responsibility of individuals involved in the delivery of correctional programs to be aware of the punishment assumptions supporting practice and to reflect upon the adequacy of any justification given. I have argued that the only ethically defensible view of punishment is a communicative one,

largely because of its assertion that all the major actors involved in the criminal justice system are mutually accountable and have intrinsic value. The value of dignity demands that each person is treated with respect and is also responsive to others in a mutually sustaining manner. If practitioners keep in mind the intrinsic value of offenders and victims as they go about their various professional tasks, it is less likely they will act in ways that deny the inherent dignity of either.

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