Workplace violence –Extending the Boundaries of Criminology

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Abstract

There is a growing body of research concerned with the prevalence, antecedents and impacts of interpersonal workplace violence which causes significant psycho-social injuries. Contributions have been made by sociologists, psychologists, organisational behaviourists and management functionalists. However there has been a paucity of attention by criminological theorists or empiricists despite the well documented costs for victims, bystanders, employers and the public purse. Drawing from key themes within existing literature, this paper applies constructive criminology principles and normalisation theory to extend the understanding of interpersonal violence within the workplace and challenges to prevention. This is not an argument for greater application of criminal law but rather an argument that such violence and consequent psycho-social injuries be recognised as a source of victimisation and a matter of justice.

Key Words: workplace violence, constructive criminology, discursive practice, normalisation, psycho-social injury

Introduction

Sociologists, psychologists, organisational behaviourists and managerial functionalists have produced a body of literature describing, categorising and explaining the prevalence, antecedents and impacts of interpersonal violence within the workplace (for example Einarsen et al 2011; Bartlett and Bartlett 2011; Griffin and Lopez 2005; Bowie 2002). While the criminality of physical violence is unquestioned, there is greater controversy with respect to those acts of interpersonal workplace violence which result in psycho-social injuries. This is true despite the significant impact on victims and bystanders, with substantial costs to employers and the public purse. For example, annual costs of interpersonal workplace violence causing psycho-social injury have been estimated by the Australian Productivity Commission (2010) to exceed 6 billion dollars, and the British Health Services Executive (HSE, undated) has estimated annual costs to exceed 2 billion pounds. The existing literature addressing interpersonal workplace violence documents its prevalence across a diverse range of work environments. This includes (but is not limited to) call centres (D'Cruz et al 2011) the public sector (Shallcross 2008); defence services (Pershing 2003), police (Tuckey et al 2009), higher education (Keishley and Neuman 2010) and nursing (Hutchinson et al 2010). Nonetheless, there have been few attempts to apply criminological theory to

this form of interpersonal violence (Hinduja (2007)). This paper considers how constructive criminology, in concert with normalisation theory, can extend understanding of this form of interpersonal workplace violence and consequent psycho-social injuries, with implications for prevention and regulation. This is not to argue simply for the application of criminal law, but rather to assert that it is timely to engage with workplace violence as a source of victimisation and a matter of justice.

Aim of Paper

The aim of this paper is to draw attention to the capacity of criminological theory to provide alternative perspectives on the framing and discourse which has grown up around interpersonal violence in the workplace. This paper is concerned with non-physical violence resulting in psycho-social injuries and which is perpetrated by employees and/or employers working within an organisation and directed towards each other. Although violence may be perpetrated by those external to the workplace, such as clients and consumers, such actions involve different legal frameworks and issues, and therefore are not included in this discussion. A central assumption underpinning this paper is that interpersonal violence within the workplace is profoundly different from that occurring between children within school by the fundamental fact that it involves legally responsible adults and organisations.

First I consider the challenges in defining non-physical interpersonal workplace violence. Second I review critical recurring themes found in prominent explanations of this form of interpersonal workplace violence and highlight the limits of current regulatory frameworks. This is followed by a discussion of how criminological theory may provide a useful framework for enhancing understanding, prevention and intervention to reduce the incidence of this form of violence. Finally, the implications for the establishment, and potential implications for the development of, a replacement discourse are considered.

The Problematic of Defining Workplace Violence

In the absence of any universally accepted definition, there have been extensive efforts to categorise and enumerate those types of behaviours which are appropriately classified as forms of non-physical workplace violence. Generally, interpersonal workplace violence involves an overt or covert threat to personal safety, health and well-being and can take the form of aggression, intimidation, harassment, bullying and threats of physical assault. The HSE *Violence at Work a Guide for Employers* (undated) defines work-related violence as “Any incident in which a person is abused, threatened or assaulted in circumstances relating to their work. This can include verbal abuse or

threats as well as physical attacks.” Similarly the European Agreement (2007) recognises that harassment and violence can be physical, psychological and /or sexual, involve systematic patterns of behaviour or single events, and range from minor to serious acts including criminal offences. These definitions therefore include complementary terminology found in research and regulation such as bullying, anti-social behaviours (Robinson and O’Leary-Kelly, 1998) and workplace aggression (Neuman and Baron 1998). Critically, these definitions conceptualise violence from an individualized and behaviourist perspective in which contextual factors are absent.

However consensus with respect to definitions is problematic, as Liefoghie and Mackenzie Davey contend (2001:74). The process of developing typologies and definitions has the effective outcome of shaping and constraining understanding by ‘legitimizing, reinforcing or subverting’ the nature of discourse. For example, as will be reasoned in this paper, the copious research and regulatory language which has been based on the now commonly used terms ‘bullying’, ‘mobbing’ and ‘moral harassment’ has degraded the import of such injurious behaviour. Such terminology has effectively redirected the discourse outside the framework of traditional understandings of violence.ⁱ This problem was well presented by Levi with Maguire (2002:811) who noted that “Much of the criminological literature on explaining violent crime takes as its field

of enquiry the 'conventional' kinds of assault which dominate the 'offences against the person' recorded in Criminal Statistics."

Such an argument is consistent with the position that it is essential to examine how language and discourse is used for the legitimization of relations of power, knowledge and social relationships (Henry and Milovanovic 2000).

The way non-physical workplace violence which causes psychosocial injury has been conceptualised can be linked with the nature of the regulatory response which has evolved. Although the positioning of relevant workplace violence regulation in Australia, Europe, Scandinavia and the United States has differed, each legislative response has been conceptualised and situated outside the criminal law. McCarthy (2003) observed that, because such interpersonal violence has been largely constructed as a problem between a perpetrator and victim requiring remedial action, the problem itself has been effectively marginalised from other perspectives, even in the face of evidence to the contrary. He concluded that as a consequence of such positioning, conduct which might otherwise be considered unacceptable has been relegated to a lower or lesser order of violence. This point was also argued by Tombs (2007) with respect to a failure of criminology to adequately consider 'safety crimes'

within the workplace - and in particular corporate liability. A similar assessment made by Hatcher and McCarthy (2002) was that the promotion of mechanisms such as policies and procedures, surveillance and training promote a therapeutic model which largely overlooks systemic factors, criminal or corporate culpability. Taking then the argument by Harding (2007) that legal processes and liability are intertwined and interact with each other, where victims must rely on civil and limited industrial processes for recourse, the problem is effectively oriented away from a criminological framework. As Johnstone and Sarre (2004) point out, for example, the process of fining without conviction reflects ambivalence about 'true criminality' and tends to trivialise occupational health and safety more broadly. This conceptualisation and positioning of protections has not only influenced the way in which such violence is viewed but also the options for intervention or recourse.

The positioning of workplace violence regulation outside criminal law and discursive practice can be shown to have roots in the evolution of late twentieth century rights based legislation. These precedencies were to a significant extent designed to offer protections of individuals within the workplace. Early foundations can be found in 1970's lobbying to prevent sexual harassment in the workplace as part of a larger activism associated with women's rights. This precedence was followed in the 1980's

and 1990's by recognition of the need for anti-discrimination protections based on race or disability. Legislation protecting against age discrimination was not long in following. In each of these cases two critical features were present. First, pressure for such protections was grounded in the lobbying actions of well-formed interest groups and supported by sympathetic media coverage. Second, breaches of such protections were adjudicated broadly as a human rights issue and outside the mainstream criminal justice system. In contrast, Hearn and Parkin (2001) argue that the individualised and marginalised nature of interpersonal workplace violence effectively undermined the development of organised approaches to activism. The positioning of regulatory protections against violence causing psychosocial injury outside the criminal justice system appeared consistent with such precedence. It was not until the last decade that there was mounting recognition of the need to provide protections within workplace health and safety regulation.

The consequence of this evolutionary pathway has been that, internationally, legal responses to interpersonal workplace violence have been constructed and theorised from the anti-discrimination perspective (USA) or from the perspective of universal dignity (European approach) and couched either in occupational and health or human rights legislation (Australia). Despite more recent legislative changes which establish a

potential for criminal prosecution in many jurisdictions, there is little evidence of the use of or inclination to exercise such powers in Australia, Great Britain or the United States (Hoel and Einarsen 2010; Rhodes Pullen and Vickers 2010; Yamada 2007; House of Representatives Standing Committee on Education and Employment 2012).

Consistent with this individualised and non-criminalised perspective, corporate and regulatory strategies have often obscured the liability of organisations or the significance of psychosocial injury caused by workplace violence. From the corporate perspective there has been a propensity by employers to respond to claims as singular events, separate from any contextual, systemic or structural considerations. This process of isolating events shapes the strategy of individual blaming. Separately, but relevantly, regulators have adopted strategies that rely on negotiating compliance through education and training, cooperation and persuasion with little inclination to more formal regulatory actions (Johnstone, 2003; Tombs 2013b). A consequence of this relatively 'soft approach' (characteristic of contemporary responsive regulation models) has been that organisations have been able to dodge significant consequences for workplace violence (Rhodes, Pullen Vickers et al 2010).

Power and Culture: Instrumental Conductors

Factors which have been found to be instrumental or conducive to the occurrence of interpersonal workplace violence include individual, organisational and environmental dynamics. Although there are varying degrees of import ascribed to such factors by researchers drawing from diverse disciplinary perspectives, there is substantial agreement that it is the interaction of power differentials and organisational culture which underpins the occurrence of and strategies for prevention of such violence. These then are the focus of the discussion below.

A power imbalance is fundamental to the occurrence of workplace violence with the victim feeling disempowered or unable to defend him/herself. Irrespective of the status relationship, the target has no confidence in his/her ability to respond, defend him/herself or take action (Einarsen and Kogstad, 1996; Keashly, 1998). As observed by Niedl (1995, cited by Einarsen 2000, p383) disempowerment may be a consequence not only of unequal status, but also a result of a formal or informal power relationship or as a consequence of the victimisation itself.

Across perspectives, there is uniform recognition of the primacy of the organisation as a culpable actor. Whether as a matter of direct or vicarious liability, organisations have a responsibility for the occurrence of such violence. At the same time, Rhodes, Pullen,

Vickers et al (2010) argue that there is little evidence that methods for improving employer performance in prevention and intervention have reduced the overall incidence of workplace violence.

There is inter-disciplinary consensus that workplace violence involves a complicated interaction between individual and organisational influences. As observed by Vickers (2001), workplace violence flourishes in an environment where it is allowed to exist unfettered. Organisational conditions are critical to the creation of an atmosphere conducive to interpersonal workplace violence (Liefvooghe and MacKenzie Davey, 2001; Rayner, Hoel and Cooper, 2002; Roscigno, 2011; Harvey et al 2008; Hutchinson, Vickers, Jackson and Wilkes, 2005). A group dynamic can also be a significant factor in which aggressive behaviours become contagious and ultimately normalised within the group culture (O'Leary-Kelly, Griffin and Grew, 1996; Robinson and O'Leary, 1998; Glomb & Liao, 2003). It is argued then that simply pathologising the perpetrator or victim without identifying and addressing the role organisational factors play in enabling if not fostering such violence undermines the potential for effective prevention.

Recognising the interplay of organisational and individual factors, Salin (2003) identified four key conductors for interpersonal violence in the workplace. These conductors include motivating structures and processes, precipitating processes and enabling structures. This model supports the observation of Rhodes, Pullen and Vickers et al (2010) that there is a paucity of evidence that typical responses such as training and counselling are effective if the focus remains simply on 'the bad apple'. Hoel and Giga (2006) similarly found that the impact of such interventions was consistently compromised by other attendant organisational factors to the extent that no significant improvement could be found. It is also consistent with observations by Hoque and Noon (2004), Gouveia (2007) and Roscigno (2011) that having policies and procedures provides no guarantee of either protection of individuals or accountability by organisations. There is then agreement that the culture of the workplace environment shapes a fundamental dynamic in which interpersonal violence can occur, be neutralised and normalised.

Limits of Regulatory Frameworks – Responsibilising the Victim

The effectiveness of existing regulatory frameworks, irrespective of positioning within workplace health and safety, rights or anti-discrimination legislation, has come under criticism across jurisdictions. Reviews of various international legislation intended to

address interpersonal workplace violence have identified limitations based upon the placement of responsibility and culpability on the individual (Harthill 2008, Yamada 2011, Einarsen and Hoel 2010, Squelch and Guthrie 2010). Harthill (2008) in reviewing the United Kingdom's *Protection from Harassment Act 1997* highlighted a significant weakness of the legislation due to the requirement to show intentional wrong-doing as a prerequisite to prosecution of the employer. This requirement is similarly noted by Fischinger (2010) in reviewing the French provisions for 'moral harassment'. The United States legislative protections for workplace violence lie primarily in the context of discrimination based harassment. Although the U.S. *Healthy Workplace Bill* was intended to address cases of psycho-social injury, it has not passed in any of the 17 State legislatures in which it has been introduced. Remarking on the failure to pass such legislation, Yamada (2011) noted considerable resistance, primarily from the employer representative groups. Hoel and Einarsen (2010) found weaknesses in the Swedish legislation, including a lack of transparency of organisational factors, inadequate sanctions against employers and lack of follow up. Further, they maintained that effective regulation is difficult to achieve in an environment in which employers strongly argued against any regulation inhibiting their ability to maximise productivity and difficult employment conditions reduce the likelihood of victims taking action. Squelch and Guthrie (2010) reviewed the Australian legal framework,

finding that despite relevant provisions within state and national workplace health and safety legislation, there is limited evidence of effective enforcement or prosecutions. Further, even where a case of violence causing psychosocial injury is proven, it remains the victim's responsibility to take action to access redress.

Responsibility for taking action when offences occur is a critical feature of the administration of all legislation and regulation. Unlike the case of criminal law, any remedial action or regulatory response for victims of workplace violence requires the individual to initiate a complaint. Given the threats that may persuade a victim not to act (such as further victimisation, stigmatisation, ostracism or denial of action by management), this requirement represents a substantial obstacle to receiving any relief or protection. Globally the capacity to employ legislative protections is also inhibited by evidentiary requirements. The evidence required to demonstrate psychosocial injury (and consequent negative health outcomes) places the victim in a disadvantaged position compared with that of a victim of physical assault. The requirement to prove intent as well as the cause and severity of injury, all of which may be far less visible or more difficult to verify, makes evidentiary requirements difficult to meet (Hoel and Einarsen 2010; Fischinger, 2010; Kelly 2011). Collectively, these features can exacerbate victimisation and reflect inadequacies in regulatory

frameworks. Given such limitations, it is reasonable to suggest that the current regulatory environment is not designed to provide justice for victims and presents sufficient hurdles to limit efficacy in responding to interpersonal workplace violence.

The extent to which the features of the criminal law would be a more appropriate avenue for addressing working place violence has received some attention. Feinberg (1984) contended that significant benefits accrue through application of the criminal law, arguing that the threat of penal punishment influences public opinion and provides an instrument for prevention of deliberate or reckless injury to another. However, Loveland (1995) maintained that criminalisation is difficult to administer given the general diffusion of responsibility. Lee (2011) suggested that the translation of organisational liability into a discourse of collective responsibility (irrespective of intentionality) overcomes this limitation. Finally, as pointed out by Becker (1968), the rationale underpinning the criminalisation of occupational health and safety breaches is that “prosecution plays an important role in securing compliance, and also that more severe penalties have a greater deterrent impact ” (1968, cited in Schofield 2009 p264). However, the general reluctance to prosecute in combination with the barriers and limited options available to victims suggests that despite the acknowledged cost of workplace violence, the quality and effectiveness of regulatory performance across

jurisdictions is lacking (Hoel and Einarsen 2010; House of Representatives Standing Committee on Education and Employment 2012; Tombs & Whyte 2013).

Viewing Workplace Violence through a Theoretical Lens

Adopting alternative theoretical perspectives opens up an opportunity for enhanced understanding of how political, economic, social and power relationships contribute to the way workplace violence is viewed. This includes the discursive and ideological frameworks which have shaped the conceptualisation of, and responses to, such violence. For the purposes of this discussion, selective tenets of constructive criminology (Henry and Milovanovic, 2000) and governmentality (Foucault 1991) provide a complementary set of arguments. Whilst other theoretical frameworks would add to the discussion, and the full complexity of these theories is not presented, the intention here is to demonstrate how such theoretical frameworks offer the potential to revise existing discursive practices. As noted by Garland (1997:204), “all analytical frameworks are partial, and there is much to be gained by specificity and the targeting of enquiry”.

Constructive criminology and governmentality are concerned with how crime is produced and reproduced through discourse. Discursive practice directs and shapes

what is produced as knowledge through the adoption of processes that are made possible by those with the power and authority operating in particular institutional sites (Walton, 2005). Governmentality, as proposed by Foucault (1991), suggests that the way power is exercised is dependent upon specific ways of thinking and acting, as well as subjectifying individuals and populations to be governed. Similarly, Henry and Milovanovic (1996) suggest that socially constructed discourse is the basis for organisational activity, institutions and social structure. Accordingly, both theoretical conceptualisations suggest that it is essential to interrogate the prevailing rationalities and assumptions that shape and determine discourse and discursive practice. For example, if the dominant discursive lens conceptualises and constructs workplace violence as the problem of individuals, it effectively conceals the power and privilege infused within the social dynamic of the workplace. Further, the process of creating typologies of behaviours and personality characteristics, which has underpinned much empirical research into psycho-social harming, can be viewed as being complicit in promoting a discursive practice which increasingly marginalises the real injury being done and has the potential to exacerbate it.

Reinforcing the construction and discursive framing of workplace violence has been the emergence of the terminology such as 'bullying' and 'mobbing' with an emphasis

on behaviours rather than consequences. As a surrogate classification of actions which may lead to social and psychological injury, applying labels like bullying, mobbing and moral harassment effectively minimises the actual damage, suggesting that such violence is somehow less serious than that causing physical injury. Such labels, then, are fashioned and embedded in discursive practice, in which social psychological injury is explicitly excluded from more conventional definitions of violence, criminality or liability. Once institutionalised as a way of thinking, this has effectively shaped and supported discursive practices of individualisation, blaming and responsabilisation of behaviours and suppressed the interrogation of the broader organisational exercise of authority which is the vector for violence. As noted by Liefvooghe et al (2001:88), this process of individualisation “precludes appropriate attention to the more systemic root cause”.

In arguing for greater recognition of safety crimes, Tombs (2007: 539) highlights the implicit moral imperative to prevent and respond to acts of violence in the workplace. Thus, by adopting terminology such as bullying, mobbing and moral harassment it has been possible to move from a frame which might otherwise have a tacit element of criminality or at least liability. This, in turn, can be interpreted as a reflection of the relative power and interests which are vested in the relationship between the state as

an employer and regulator and the private sector - or from Foucault's perspective from the intricate network of relationships which are political, institutional, social and historical.

A particular reflection of the way in which violence has been conceptualised as an individual phenomenon isolated from the environmental context, social dynamics and power relations is found in the approach of anti-violence education. As noted by Walton (2005) and Hoque and Giga (2006), in critiquing anti-bullying education in schools and the workplace, the emphasis and approach adopted is based on the victim / perpetrator dynamic with greatest prominence given to the problematic individual. Thus, while intended as a preventative, such programs reproduce an individualised discourse of causation.

This then raises the need to explore how discursive practices which shape the workplace environment, including social dynamics and power, enable the transformation of conventional norms and rules of behaviour and normalise workplace violence. Whether viewed as a political act intended to achieve personal goals, as an abuse emerging from a formal power of authority, or as a consequence of

organizational processes, ultimately there is an inherent link between injury-inducing abuse and the application of a power relationship.

Normalisation Produces and Reproduces Enabling Environments

Henry and Milovanovic (2000:270) assert that power is “a socially and culturally sanctioned and celebrated feature of institutions, economy and polity in Western industrial society” (1996:174). Further, it is through discursive practices that it is possible to legitimise the exercise of power in a way which is corrupting and injurious. By understanding the discursive practices which justify and guide the exercise of power it is possible to expose the way in which actions which in other contexts would be intolerable are able to fit into a frame of acceptability. The theoretical frameworks of Cressey (1973) and Bandura (1996) are helpful in exposing the way in which the discourse of workplace violence has been reproduced and has enabled it to be rationalised, neutralised and normalised. This, then, is the first step in being able to approach the development of an alternative or replacement discourse.

In Cressey’s (1973) exploration of violation of trust, the rationalisations of trust violators included a belief that their actions were essentially non-criminal, justified or part of a greater irresponsibility for which the individual was not completely

accountable. Further, Cressey argued that rationalisations which enable the violation of trust in an environment, in which trust is ostensibly the norm, do not “occur in a void nor are invented by the individual but rather applies a verbalization which is available through contact with a culture in which such rationalities already exist” (1973:137). This view was similarly observed by Brief et al (2001:414) who observed that “organisations embody a number of processes through which employees are socialized into accepted and standardized ways of thinking and acting that can constitute a kind of organizational moral microcosm. This context can produce an isolated style of moral thinking and action, which formal regulations may in part embody” (cited by Zoghbi-Manrique-de-Lara 2010:414). Further, as noted by Hirschi (1969) a hardening process can occur in which previous rationalisations and rationalities become accepted as a basis for recurrent offending. This then leads to the conundrum in determining how the discursive and regulatory framework ultimately acknowledges power and allocates culpability (Harding 2007).

Organisational participants individually and collectively contribute to the normalisation of workplace violence and to an environment which enables its continuation. The process of normalisation is revealed by the types of rationalities which are used by individuals and organisations in vocalising explanatory justifications. Bandura et al

(1996) proposed a model of moral disengagement which enabled offenders to selectively over-ride what is described as self-regulation which would otherwise obviate offending. Bandura identified four mechanisms including diffusion and displacement of responsibility, misrepresenting or disregarding the injurious effects inflicted on others, and vilifying the recipients of maltreatment by blaming and dehumanizing them. Although Bandura made no reference to the work of Cressey (1973) or Sykes and Matza's (1957) earlier work on neutralisation, the propositions were demonstrably closely aligned. Significantly, the mechanisms identified by Bandura are found in environments in which workplace violence has occurred.

Indicators of the influence of neutralisation and normalisation can be observed through studies of the role played and explained by witnesses or bystanders to such offending behaviours. This may include, for example, upper management and human resource staff as well as peers. As noted by Bauman (2010) the witness or bystander resides in a 'grey area' in which they risk becoming accomplices to offending through passivity or active participation. Examination of the way in which witnesses and bystanders rationalise their behaviour provides insight into the neutralisation and normalisation processes including the role of organisational culture. Case studies examining the willingness or reticence of bystanders to take action (Pershing 2003;

D'Cruz and Noronha, 2011) and perceptions of accused perpetrators (Jenkins et al 2012) provide illustrative weight to the argument. Pershing (2003: 172) found, for example, that members of an organisation are not likely to report on peers' misconduct because they were unable to perceive any clear organizational incentives to do so. Other explanations offered by respondents included an acceptance of rationales of the wrong doer, fear of organisational responses, and a belief that blame was more appropriately ascribed to others in position of power. Similarly, D'Cruz and Noronha (2011) found that organisational processes overshadowed the weight of friendships and that managerialism, which values employer interests legitimises mistreatment. The combination of these factors undermines the potential for bystander intervention. Of relevance, Jenkins et al (2012) found that alleged perpetrators similarly adopted rationalisations involving both a denial of harm and denial of responsibility as well as defending their actions as consistent with management practice within the organisational culture. He concluded that 'it confirms antecedents to bullying as being a combination of organisational culture and workplace social culture, as well as perpetrator and target behaviours' (Jenkins et al 2012:501). Similarly, Katrinli et al (2010) suggest that when the aim of mistreatment is to serve self-interest within the organisation, particularly in a highly competitive

environment, then such behaviours can be considered as organisational politics in which an accepted exercise of power may be horizontal as well as vertical.

It is from this perspective that Banyard et al (2007) argued that bystander intervention education (and indeed anti-violence training more broadly) will be ineffective in the absence of a supportive organisational culture, that is training based on compliance with policies is unproductive when lacking evidence of any alignment with organisational values. Biron (2010: 876) correspondingly cited research supporting the strong association between employee perceptions of acceptable workplace behaviour and perceived organisational ethical values. Consistent, then, with Cressey's (1973) and Brief's (2001) conclusions, Biron (2010) contended that the perceived values of the organisation become the guide for behaviour - and in particular what is acceptable and what is not. This includes the way in which power is exercised, the normalisation of forms of behaviour and ultimately the capacity to rationalise individualised mistreatment and workplace violence.

Replacement Discourse

A genuinely alternative replacement discourse envelops not just crimes as popularly understood but harms that cause pain, regardless of whether these have been defined as criminal by the political process (Henry and Milovanovic 1996:219)

In addition to deconstructing harmful constructions and identifying their sources, constitutive criminology is concerned with establishing replacement discourses and creating new social constructions which can repair harm and open up opportunities for growth. Consistent with this framework, the aim of this paper has not been to specifically argue for the criminalisation of workplace violence. As maintained by Henry and Milovanovic (1996), retributive and rehabilitative processes are inadequate if discursive practices and relational arrangements which produce a culture of harm remain unchanged. Rather, the intention has been to draw attention to the way in which interpersonal workplace violence involving psychosocial injury has been problematized, the consequences for prevention or intervention and ultimately to assert the need to reconfigure the way in which such violence is discursively constructed.

This paper has argued that psycho-social injuries resulting from interpersonal violence in the workplace, and perpetrated by employees and or employers, has been commonly viewed as a lesser order of harm and violence by organisations and regulators. The focus on defining and developing typologies of behaviours has effectively shifted the emphasis away from a discursive practice of violence. Further, adopting regulatory frameworks which are best designed to respond to singular events

has enabled avoidance of the problem of institutionalised and normalised abusive behaviours, exacerbating a discourse of individualisation. Although empirical evidence strongly supports the assertion that institutionalised and normalised culture and values enable such violence, there is relatively little proof that adoption of technical practices such as risk assessments, policies and procedures are sufficient to deflect the impact of environmental conditions and power relations which are collusive if not causally related.

Replacement discourse then is directed to displacement of prevailing “structures of meanings and displacing them with new conceptions, distinctions, words and phrases, which convey alternative meanings” (Henry and Movanovic, 1196:204). The aim is ultimately to be transformative. Importantly, to be successful, the processes of replacement must occur in the public domain and are likely to be linked with a dimension of activism. It is in this context that the terms bullying and mobbing have taken on a public presence and discursive way of understanding psycho-social injuries and which has had negative outcomes. With such terms separated from the notion of violence and simultaneously linked to a term often associated with children, the severity and seriousness of injury has been effectively diminished and devalued. Acknowledging the lack of any evidential support, it might nonetheless be worth

considering whether the general individualised stigma attached to mental health does not play into the current problematizing of psycho social injury. Additionally, the individual power relationship and hegemonic nature of the employment relationship has been relatively well served by such definitions.

The establishment of a replacement discourse must then focus on redressing the distinctions which serve to differentiate and minimize the harm done by psycho-social injuries as compared with physical injury as an outcome of workplace violence. This will necessarily require revision of the lexicon of terminology which has emerged and serve to construct the dynamic as event-based, singular and a consequence of individual behaviours. A replacement discourse would recognise the essential power relationships and processes which enable such violence and underpin more effective approaches to prevention, intervention and compliance. This includes a reconsideration of the way in which enabling environmental conditions are understood as an essential component of organisational liabilities.

Finally, a replacement discourse will recognise that victimisation represents a justice issue as well as a compliance problem for organisations. Until justice is understood as a

significant vector in the regulatory regime, the processes and outcomes will fail to meet the fundamental objectives for prevention or intervention.

References

- Bandura A, Barbaranelli C, Vaprarra G and Pastorelli C (1996) Mechanisms of Moral Disengagement in the Exercise of Moral Agency. *Journal of Personality and Social Psychology* 71(2): 364-374.
- Banyard VL, Moynihan MM and Plante EG (2007) Sexual violence through bystander education: An experimental evaluation of community psychology 35(4): 463-481.
- Bartlett J and Bartlett M (2011) Workplace Bullying: An Integrated Literature Review. *Advances in Developing Human Resources* 13:69-84.
- Bauman, Z (2010) From bystander to actor. *Journal of Human Rights* 2(2):137-151.
- Biron M (2010) Negative reciprocity and the association between perceived organisational ethics values and organisational deviance. *Human Relations* 63(6): 875-897.
- Braithwaite V, Ahmed E and Braithwaite C (2005) Workplace bullying and victim: The influence of organizational context, shame and pride. *International Journal of Organizational Behaviour* 13(2): 71-94.
- Brief AP, Buttram RT and Dukerich JM (2001) Collective corruption in the corporate world: Toward a process model. In: Turner ME (eds.) *Groups at Work: Theory and Research*. Mahwah: Lawrence Erlbaum, pp. 471–499.
- Cressey DR (1973) *Other People's Money*. New Jersey: Patterson Smith.
- Di Martino V, Hoel H and Cooper C (2003) Preventing violence and harassment in the workplace. *European Foundation for the Improvement of Living and Working Conditions*. Available at: <http://www.eurofound.europa.eu/publications/htmlfiles/ef02109.htm> (accessed 10 May 2012)
- D'Cruz P and Noronha E (2011) The Limits to Workplace Friendship Managerialist HRM and Bystander Behaviour in the Context of Workplace Bullying. *Employee Relations* 33(3): 269-288.
- Einarsen S and Kogstad A (1996) Bullying at work: Epidemiological findings in public and private organisations. *European Journal of Work and Organizational Psychology* 5(2): 185-201.
- Einarsen S (2000) Harassment and bullying at work: A review of the Scandinavian Approach. *Aggression and Violent Behaviour* 5(4): 379-401.

European Social Partner Agreement (2007) Preventing Workplace Harassment and Violence. Available at: <http://www.hse.gov.uk/violence/preventing-workplace-harassment.htm> (accessed 10 May 2013)

Feinberg J (1984) *Harm to Others: The Moral Limits of the Criminal Law*. New York: Oxford University Press.

Fischinger P (2010) Mobbing: The German law of bullying. *Journal of Comparative Labour Law and Policy* 32(1): 153-184.

Foucault (1991) 'Governmentality'. In: Burchell G, Gordon C and Miller P (eds.) *The Foucault Effect*. Chicago: The Chicago University Press, pp87-104.

Garland D (1997) 'Governmentality' and the problem of crime: Foucault, criminology, sociology. *Theoretical Criminology* 1(2): 173-214

Glomb T and Liao H (2003) Interpersonal aggression in work groups: Social influence, reciprocal and individual effects. *Academy of Management Journal* 46(4): 486-495.

Gouveia C (2007) From laissez faire to fair play: Workplace violence & psychological harassment. *University of Toronto Faculty Law Review* 65(2): 137-166.

Harding C (2007) *Criminal Enterprise Individuals, Organisation and Criminal Responsibility*. Devon: Willan Publishing.

Harthill S (2008) Bullying in the workplace: Lessons from the United Kingdom. *Minnesota Journal of International Law* 17(2): 247-302.

Harvey M, Treadway D, Heames, J, and Duke, A (2009). Bullying in the 21st century global organization: An ethical perspective. *Journal of Business Ethics* 85(1): 27-40

Hatcher C and McCarthy P (2002) Workplace bullying: In pursuit of truth in the bully-victim-professional practice triangle. *Australian Journal of Communication* 29(2): 45-58.

Health Services Executive (undated) Violence at Work A guide for Employers, HSE Available at: <http://www.hse.gov.uk/pubns/indg69.pdf> (accessed 10 May 2013).

Hearn J and Parkin W (2001) *Gender, Sexuality and Violence in Organisations*. London: Sage Publications.

Henry S and Milovanovic D (1996) *Constitute Criminology: Beyond Postmodernism*. London: SAGE.

Henry S and Milovanovic D (2000) Constitutive criminology: Origins, core concepts, and evaluation. *Social Justice* 27(2): 268-289.

Hinduja S (2007) Work place violence and negative affective responses: A test of Agnew's general strain theory, *Journal of Criminal Justice* 35(6): 657-666.

Hirschi T (1969) *Causes of delinquency*. Berkeley and Los Angeles: University of California Press.

Hoel H and Einarsen S (2010) The Swedish Ordinance Against Victimisation at Work: A Critical Assessment, *Journal of Comparative Labor Law and Policy* 32(1): 225-250.

- Hoel H and Giga S (2006) Destructive Interpersonal Conflict in the Workplace: The Effectiveness of Management Intervention. University of Manchester. Available at <http://bohrf.org.uk/downloads/bullyrpt.pdf> (accessed 15 December 2012).
- Hoque K and Noon M (2004) Equal Opportunity Policy and Practice in Britain: Evaluating the "Empty Shell" Hypothesis. *Work Employment and Society* 18(3): 481-506.
- Hutchinson M, Vickers MH, Jackson D and Wilkes L (2010) Bullying as circuits of power: An Australian nursing perspective. *Administration Theory and Praxis* 32(1): 25-47.
- Hutchinson M, Vickers M, Jackson D and Wilkes, L (2005). I'm gonna do what I wanna do! Organizational change as a vehicle for bullies. *Health Care Management Review* 30(4): 331-338.
- House of Representatives Standing Committee on Education and Employment (2012) *Workplace Bullying We just want it to stop*. Canberra: Commonwealth of Australia.
- Jenkins MF, Zapf D, Winefield H and Sarris A (2012) Bullying allegations from the accused bully's perspective. *British Journal of Management* 23(4): 489-501.
- Johnstone R (2003) *Occupational Health and Safety, Courts and Crime: The Legal Construction of Occupational Health and Safety Offences in Victoria*. Victoria: The Federation Press.
- Johnstone R and Sarre R (2004) *Regulation: Enforcement and Compliance*. AIC Research and Public Policy Series No 57. Canberra: AIC.
- Katrinli A, Atabay G, Gunay G and Cangarli BG (2010) Nurses perceptions of individual and organisational political reasons for horizontal peer bullying. *Nursing Ethics* 17(5): 614-627
- Keashly L (1998) Emotional abuse in the workplace: Conceptual and empirical issues. *Journal of Emotional Abuse* 1(1): 85-117.
- Keishley L and Neuman JH (2010) Faculty experiences with bullying in higher education: Causes, consequences, and management. *Administrative Theory and Praxis* 32(1): 48-70.
- Lee I (2001) Corporate criminal responsibility as team member responsibility. *Oxford Journal of Legal Studies* 31(4): 755-781.
- Lerouge L (2010) Moral harassment in the workplace French law and European perspective. *Comparative Labor Law and Policy* 32(1): 109-152.
- Levi, M and Maguire M (2002) Violent crime. In: Maguire IM, Morgan R and Reiner R (eds) *The Oxford Handbook of Criminology Third Edition*. Oxford: Clarendon, pp. 795-843.
- Liefoghe, MacKenzie Davey (2001) Accounts of workplace bullying: The role of the organisation. *European Journal of Work and Organizational Psychology* 10(4): 375-392.

- Lippel K (2010) The law of workplace bullying: An international overview. *Comparative Labor Law and Policy* 32(1): 1-13.
- Loveland I (1995) *Frontiers of Criminality*. London: Sweet and Maxwell.
- McCarthy P (2003) *A Postmodern Experience in Bullying and Emotional Abuse in the Workplace*. London: Taylor and Frances.
- Namie G and Lutgen-Sandvik P (2010) Active and Passive Accomplices: The Communal Character of Workplace Bullying. *International Journal of Communication* 4:343-373.
- Neuman JH and Baron, R (1997) Aggression in the workplace. In Giacalone R and Greenberg J (eds.) *Antisocial Behaviour in Organizations* London: Sage, pp. 37-67.
- Neuman J and Baron, R (1998) Workplace violence and workplace aggression: Evidence concerning specific forms, potential causes and preferred targets. *Journal of Management* 24(3): 391-419.
- O'Leary K, Griffin R and Glew D (1996) Organization motivated aggression: A research framework. *Academy of Management Review* 21(1): 225-253.
- Pershing J (2003) To snitch or not to snitch? Applying the concept of neutralisation techniques to the enforcement of occupational misconduct. *Sociological Perspectives* 46(2): 149-187.
- Productivity Commission (2010) *Performance Benchmarking of Australian Business Regulation: Occupational Health and Safety*, Research Report: Canberra.
- Rayner C, Hoel H and Cooper C (2002) *Workplace Bullying What We Know, Who Is To Blame and What Can We Do?*. London: Taylor Francis.
- Robinson S and O'Leary-Kelly AM (1998) Monkey see, Monkey do: The influence of work groups on the anti-social behaviour of employees. *Academy of Management Journal* 41(5): 658-672.
- Rhodes C, Pullen A, Vickers M et al (2010) Violence and workplace bullying what are an organisation's ethical responsibilities?. *Administrative Theory and Praxis* 32(1): 96-115.
- Roscigno V (2011) Power revised. *Social Forces* 90(2): 349-374.
- Saam N (2010) Interventions in workplace bullying: A multilevel approach. *European Journal of Work and Organisational Psychology* 19(1): 51-75.
- Salin D (2003) Ways of explaining workplace bullying: A review of enabling, motivating and precipitating structures and processes in the work environment. *Human Relations* 56(10): 1213-1232.
- Samnani A and Singh, P (2012) 20 Years of workplace bullying research: A review of the antecedents and consequences of bullying in the workplace. *Aggression and Violent Behaviour* 17(6): 581-589.
- Schofield T, Reeve N and McCallum, R (2009) Deterrence and OHS Prosecutions: Prosecuted employers' responses. *Australia and New Zealand Journal of Occupational Health and Safety* 25(4): 236-276.

- Shallcross LZ (2008) *Workplace mobbing: Expulsion, exclusion and transformation*. PhD Thesis, Griffith University Business School, Australia.
- Squelch J and Guthrie, R (2010) The Australian legal framework for workplace bullying (the law of workplace bullying). *Commonwealth Labor Law and Policy Journal* 33(1):15-54.
- Sykes G and Matza D (1957) Techniques of neutralization: A theory of delinquency. *American Sociological Review* 22(6): 664-670.
- Tombs S (2007) Violence, safety crimes and criminology. *British Journal of Criminology* 47(4): 531-550.
- Tombs S & Whyte D (2013a) The Myths and Realities of Deterrence in Workplace Safety Regulation. *British Journal of Criminology* 53 (5): 746-763
- Tombs S & Whyte D (2013b) Transcending the deregulation debate? Regulation, risk and the enforcement of health and safety law in the UK. *Regulation and Governance* 7:61-79.
- Tuckey MR, Dollard M, Hosking, PJ and Winefield, AH (2009) Workplace bullying: The role of psychosocial work environment factors. *International Journal of Stress Management* 16(3): 215-252.
- Vickers M (2001) Bullying as unacknowledged organizational evil: A researcher's story. *Employee Responsibilities and Rights Journal* 13(4): 205-217.
- Walton G (2005) The notion of bullying through the lens of Foucault and critical theory. *The Journal of Educational Thought* 39(1): 55-73.
- Wortley R (1996) Guilt, shame and situational crime prevention. In: Homel R (eds.) *The Politics and Practice of Situational Crime Prevention*. New York: Criminal Justice Press, pp 115-132.
- Yamada D (2007) Potential Legal Protections and Liabilities for Workplace Bullying. New Workplace Institute Available at: http://www.academia.edu/161810/Potential_Legal_Protections_and_Liabilities_for_Workplace_Bullying
- Yamada D (2011) Workplace bullying in America. *Comparative Labor Law and Policy Journal* 32(1): 250-284.
- Zoghbi-Manrique-de-Lara P (2010) Do unfair procedures predict employees' ethical behaviour by deactivating formal regulations? *Journal of Business Ethics* 94(3): 411-425.

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ⁱ Namie and Lutgen-Sandvik (2010) note that terms synonymous or related to workplace violence include for example abuse, aggression, harassment, undermining as they are reflective of behaviours which are linked to psycho social injury. It is this diversity of terminology which contributes to the potential to undermine perceptions of the seriousness and severity of injury that such behaviours can cause.