

## ERADICATING THE LABEL “OFFENDER” FROM THE LEXICON OF RESTORATIVE PRACTICES AND CRIMINAL JUSTICE

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*This Essay enumerates three reasons for abandoning the prevailing practice of utilizing the label “offender” when referring to a person who has committed a crime. The Essay next identifies and debunks reasons that have been cited for persisting in referring to a person as an “offender.” The Essay then explores the question of what term or terms could supplant this label and profiles signs of emerging support for desisting from the convention of calling people “offenders.” One of the themes that permeates this Essay is that the language we use when referring to people can thwart systemic and cultural change – in this context, a change in how people who have committed a crime are viewed and treated, both within the criminal-justice system and by society at large.*

For years, I had no compunction about calling people in the criminal-justice system “offenders.” References to “offenders” were sprinkled throughout my writings, both my books and articles. Then my world changed.

Embarking on studies for a Master of Science in Restorative Practices, I began delving deeply into a construct unlike any typically encountered in the world of law, policy, procedures, and programs in which I have been immersed throughout my career as a law professor and criminal-justice reformer. In this new construct marked by what

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are termed “restorative practices,”<sup>1</sup> a person who causes harm to someone else can learn about the depth and breadth of that harm during a facilitated dialogue with the person harmed and others who offer insights and feedback about the nature and gravity of the harm. The group of people gathered together then identifies what steps the person responsible for the harm needs to take to help remedy it. “Restorative justice” is the term used when referring to this reparative function of restorative practices.<sup>2</sup> Often, though, restorative practices are utilized proactively – to avert conflict and harm and build and strengthen relationships.<sup>3</sup> In sum, whether implanted in criminal-justice systems, juvenile-justice systems, schools, workplaces, or other realms of human activity and interaction, restorative practices offer the mesmerizing possibility of prioritizing harm reduction and repair, relationships, reconciliation, and healing.

In exploring the far-reaching potential of restorative practices, I have come to recognize the discordance, though, between its aims and some of the terminology employed by those of us in the field of restorative practices. While all people share a responsibility to refrain from using words that inflict harm on others, those who endorse restorative practices would, one would think, more readily and intentionally model how to carry out that responsibility. Instead, we continue to employ a harm-inflicting label when referring to a person who has committed a crime. We choose to follow the convention of calling that person an “offender” instead of choosing to lead by our example.

Part I of this Essay enumerates three of the principal reasons for abandoning the prevailing practice of labelling people as “offenders.” First, the practice harms those who are the object of this label. Second, pigeonholing someone as the “offender” contravenes values that lie at the core of restorative practices. And third, the onus cast by this stigmatizing label is an impediment to the systemic and cultural change for which the proponents of restorative practices are advocating and striving. These reasons not only counsel the abandonment of this terminology by those whose work centers on restorative practices but also support the jettisoning of this label

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1. For a synopsis of the history of restorative practices, the conceptual framework and research in which restorative practices are rooted, and examples of prototypical restorative processes, see Ted Wachtel, *Defining Restorative*, INT'L INSTITUTE FOR RESTORATIVE PRACTICES (2016), [https://www.iirp.edu/images/pdf/Defining-Restorative\\_Nov-2016.pdf](https://www.iirp.edu/images/pdf/Defining-Restorative_Nov-2016.pdf).

2. For a succinct overview of the theoretical underpinnings of restorative justice and its purposes, see HOWARD ZEHR, THE LITTLE BOOK OF RESTORATIVE JUSTICE (rev. & updated ed. 2015). For details on how to structure restorative-justice conferences, one of the mechanisms for implementing restorative justice, see TED WACHTEL ET AL., RESTORATIVE JUSTICE CONFERENCING (2010).

3. Wachtel, *supra* note 1, at 1. For details about peacemaking circles, one of the classic means for effectuating the proactive aims of restorative practices, see CAROLYN BOYES-WATSON & KAY PRANIS, HEART OF HOPE RESOURCE GUIDE (2010); KAY PRANIS, THE LITTLE BOOK OF CIRCLE PROCESSES (2005).

across society, including by judges, criminal-justice officials, and members of the media.

Part II of the Essay identifies and then debunks what some restorative practitioners have espoused as reasons why they persist in referring to a person as an “offender.” Part III then explores the question of what term or terms could supplant the term “offender.” After profiling in Part IV the decisions of what, at this point, is a small cadre of criminal-justice officials to abandon the practice of calling people “offenders,” the Essay concludes with an invitation to join those of us choosing to desist from calling people a name that is injurious, the verbal equivalent of a scarlet letter, and antithetical to core restorative values.

## I. REASONS TO DISCARD THE TERM “OFFENDER”

### A. *Reason #1: Halting the Harmful Impact on Those Referred to as “Offenders”*

When trying to ascertain whether a term we use when referring to someone is injurious, the starting point is the people subject to that term. When grappling after the commencement of my restorative-practices studies with the implications and effects of my own and others’ use of the term “offender,” I spoke to two of those individuals.<sup>4</sup> Both are in higher education, one at a university and the other at a law school. Both work extensively with, and on behalf of, people within the criminal-justice system. And both have homicide convictions for which they were previously imprisoned. These two men, whose identities I will keep confidential, were in unison in describing how denigrating – how dehumanizing – it feels to be referred to as “offender” or “ex-offender.” One reported that these words made him feel like an “inanimate object.” The other confided: “The label is like the ‘N’ word. It impacts you negatively.” He added that being typecast as an “offender” imparted the message that he “deserved the condemnation of society no matter what he did” now.

Stigmatizing labels can also have pernicious effects on others, negatively altering how they perceive and treat people who are the objects of the labels. For example, when undergraduate students, professional counselors, and counselors-in-training were surveyed in one study, they were more likely to support isolating those alluded to as “the mentally ill” from others in the community than they were when these individuals were referred to as “people with mental illnesses.”<sup>5</sup> A concern emanating from studies like this one is that the

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4. This outreach was part of an action-research project undertaken during one of my graduate courses on restorative practices. The focus of action research is on the researcher’s own practices and how they can be improved. For additional information about action research, see JEAN MCNIFF & JACK WHITEHEAD, ALL YOU NEED TO KNOW ABOUT ACTION RESEARCH (2d ed. 2011).

5. Darcy Haag Granello & Todd A. Gibbs, *The Power of Language and Labels: “The Mentally Ill” Versus “People with Mental Illnesses,”* 94 J.

pejorative label “offender” will trigger the proverbial “vicious cycle” in which condemnatory attitudes and pariah-like treatment fostered by that label propel some of those labeled “offender” to act in conformance with it, further fueling reliance on the opprobrium-casting label.

Most of the criminal-justice and restorative-practices experts from whom I also elicited feedback about the term “offender” during my graduate studies mirrored these concerns. A common theme that suffused this feedback aligned with what one of the individuals who has been on the receiving end of this label had said to me earlier: “People are more than whatever they did.” For example, the director of a nonprofit legal organization in Illinois that represents people in prison decried the denomination of people as “offenders,” calling this label “offensive as it defines people by the worst day of their lives, rather than as whole people.”<sup>6</sup> A Research Scholar at Yale Law School (now a federal public defender) also objected to the debasement of others through what she considered “dehumanizing” and “reductive” language that suggests that they are “inherently bad.”<sup>7</sup> The terms “offender” and “ex-offender,” she noted, “define an entire human being by a single bad act.”<sup>8</sup>

Research has confirmed what others have experienced, witnessed, or intuited about stigmatizing labels – that they have harmful effects on those who are their objects. They evoke shame and color the labeled individuals’ self-perceptions.<sup>9</sup> The people subject to a negative label begin to perceive themselves in ways that accord with that label.

The corrosive effects of stigmatizing labels are not solely internal, however, as concerning as those internal effects might be. The cultivation of negative stereotypes through the aspersions cast by stigmatizing labels also has overt, discernible adverse impacts. The labels heighten the risk, for example, that people will act in accordance with those stereotypes about them, a phenomenon

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COUNSELING & DEV. 31, 34–36 (2016). When “the mentally ill” terminology was used, the survey respondents were also more likely to espouse the view that those with mental illnesses “need the same kind of control and discipline as a young child.” *Id.* at 34.

6. Posting of Alan Mills, Exec. Dir., Uptown People’s Law Ctr., to [prison-law-and@googlegroups.com](mailto:prison-law-and@googlegroups.com) (Feb. 26, 2016, 1:02 PM CST) (on file with author).

7. Posting of Sarah Baumgartel, Senior Liman Fellow, Yale Law Sch., to [prison-law-and@googlegroups.com](mailto:prison-law-and@googlegroups.com) (Feb. 26, 2016, 8:43 AM EST) (on file with author).

8. *Id.*

9. See Rebecca Gray, *Shame, Labeling and Stigma: Challenges to Counseling Clients in Alcohol and Other Drug Settings*, 37 CONTEMP. DRUG PROBS. 685, 686, 688 (2010); Stephanie Madon et al., *The Accumulation of Stereotype-Based Self-Fulfilling Prophecies*, 115 J. PERSONALITY & SOC. PSYCHOL.: INTERPERSONAL REL. & GROUP PROCESSES 825, 841 (2018).

psychologists refer to as a “self-fulfilling prophecy.”<sup>10</sup> Thus, when females take a math test in a setting in which they know they are perceived by others as less competent in this subject, they will not perform as well as they do in an environment not pervaded by this stereotype.<sup>11</sup>

Against the backdrop of such research, hearing others banter about “offenders” might, one would think, trigger not just cringes, but alarm. Calling people by a name that, they report, makes them feel “subhuman” and like “an animal” might lead some of them, one might reasonably postulate, to behave in ways that correspond with others’ conveyed perception of them – that their past crime has made them, forever, a beast in society’s eyes. As a former judge with expertise in restorative practices said to me about the parallel label “criminal,” “If we call them criminals long enough, they will believe it.”<sup>12</sup> And, I might add, they may act like it. Researchers have found that the labeling of a person as a delinquent or criminal increases the risk of reoffending.<sup>13</sup>

#### B. Reason #2: Acting in Accord with the Values Embedded in Restorative Practices

In a world in which cost-benefit analyses abound, invoking values as a touchstone for decision-making might seem, to some, a bit touchy-feely. But restorative practitioners have unabashedly acknowledged that values provide the bedrock – the underpinning – for restorative practices and justice.<sup>14</sup> New Zealand’s Ministry of Justice, for example, considers the recognition of the values and virtues underlying restorative justice to be a “best practice.”<sup>15</sup> The

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10. See, e.g., Madon et al., *supra* note 9, at 826 (referring to “good evidence” stereotypes can have “self-fulfilling effects” on those subject to them); see also *id.* at 843 (noting the abundant research on the “power of beliefs to create reality”).

11. Belle Derks et al., *The Neuroscience of Stigma and Stereotype Threat*, 11 GROUP PROCESSES & INTERGROUP RELS. 163, 165, 169 (2008); see also *id.* at 169 (discussing fMRI (functional magnetic resonance imaging) studies revealing differences in brain activity in women reminded, before taking math tests, of the stereotypical view that women have inferior math skills).

12. Telephone Interview with Sheila Murphy, Co-Dir., Restorative Justice Project, John Marshall Law Sch. (Feb. 15, 2016).

13. Gwenda M. Willis, *Why Call Someone by What We Don’t Want Them to Be? The Ethics of Labeling in Forensic/Correctional Psychology*, 24 PSYCHOL., CRIME & L. 727, 728 (2018).

14. See, e.g., MINISTRY OF JUSTICE, RESTORATIVE JUSTICE: BEST PRACTICE IN NEW ZEALAND 30 (2011), <https://www.justice.govt.nz/assets/Documents/Publications/RJ-Best-practice.pdf> (“It cannot be emphasized too strongly that process and values are inseparable in restorative justice. For it is the values that determine the process, and the process that makes visible the values.”); ZEHR, *supra* note 2, at 46 (“The principles of restorative justice are useful only if they are rooted in a number of underlying values. . . . [T]o apply restorative justice principles in a way that is true to their spirit and intent, we must be explicit about these values.”).

15. MINISTRY OF JUSTICE, *supra* note 14, at 31.

alignment of “standards of practice” with those values constitutes another best practice.<sup>16</sup>

Examining what are touted as restorative values, though, reveals a great disconnect between many of those values and the practice of calling someone “offender.” For example, according respect to others is a value that the restorative community trumpets.<sup>17</sup> Criminologist Howard Zehr, considered one of the pioneers of restorative justice, has, in fact, singled out “respect for all” as the premier restorative value, one that transcends all others.<sup>18</sup> Explaining that without respect, justice cannot be restorative, Zehr cites not only the need to view people with respect but to also treat them with respect.<sup>19</sup> And therein is the rub. Calling people with criminal convictions a name they find “deeply offensive”<sup>20</sup> – a verbal branding of sorts from their perspective – is the antithesis of the respect that, we are told, undergirds restorative practices.

Experts in restorative practices describe “interconnectedness” as another foundational value underpinning restorative practices.<sup>21</sup> This value reflects the recognition that, as Zehr has noted, “we are all connected to each other” and are adversely affected by disruptions in this “web of relationships.”<sup>22</sup> This value propels restorative practices towards inclusion. Due to our interconnectedness, excluding others is considered “literally throwing away a part of ourselves.”<sup>23</sup> Yet by using the derisive label “offender” when speaking to or about another person, our speech becomes a means of exclusion, in derogation of restorative precepts. This process of viewing and labelling a category of individuals as different in a way that makes them inferior to

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16. *Id.*

17. See, e.g., CORR. SERV. CAN., RESTORATIVE JUSTICE PRINCIPLES AND VALUES (2012), <https://www.csc-scc.gc.ca/restorative-justice/003005-0006-eng.shtml>; MINISTRY OF JUSTICE, *supra* note 14, at 32; OFFICE ON DRUGS & CRIME, U.N., HANDBOOK ON RESTORATIVE JUSTICE PROGRAMMES 8 (2006), [https://www.unodc.org/pdf/criminal\\_justice/Handbook\\_on\\_Restorative\\_Justice\\_Programmes.pdf](https://www.unodc.org/pdf/criminal_justice/Handbook_on_Restorative_Justice_Programmes.pdf).

18. ZEHR, *supra* note 2, at 47 (“[O]ne basic value is supremely important: respect. If I had to put restorative justice into one word, I would choose respect: respect for all – even those who are different from us, even those who seem to be our enemies.”).

19. *Id.*

20. Charlie Ryder, *Why Are the Labels “Offender” and “Ex-Offender” So Offensive?*, DISCOVERING DESISTANCE (Stephen Farrall ed., Feb. 11, 2013) <https://blogs.iriss.org.uk/discoveringdesistance/2013/02/11/820/> (reporting what it feels like to be the object of a “permanent label based purely on the worst thing you have ever done”).

21. See, e.g., MINISTRY OF JUSTICE, *supra* note 14, at 33; ZEHR, *supra* note 2, at 46.

22. ZEHR, *supra* note 2, at 46.

23. BOYES-WATSON & PRANIS, *supra* note 3, at 17 (“[T]his principle reminds us that there are no throw-away kids or people. We cannot drop out, kick out, or get rid of anything without literally throwing away a part of ourselves.”).

ourselves is known as “othering.”<sup>24</sup> By exerting what has been termed “stigma power,”<sup>25</sup> we are, though perhaps unwittingly, helping to keep those pegged as “offenders” down and away rather than fully connected with us and others.<sup>26</sup>

Categorizing people as “offenders” abridges other values identified as bedrocks of restorative practices. To cite but one more example here, restorative practices is grounded on a value that some in the field of restorative practices describe as “hope”<sup>27</sup> and others as “transformation.”<sup>28</sup> Whatever the name ascribed to this value, the premise is that we can all grow, heal, and change for the better. A label like “offender” that suggests, to some and likely many people, that a person is “inherently bad” is at odds with this premise.<sup>29</sup>

### C. Reason #3: Removing an Impediment to Systemic and Cultural Change

The words we utter, sometimes none too carefully, make a difference. They can have an impact, either positive or negative, on the individuals with whom we are conversing. They can affect the dynamic within our families and workplaces, fueling discord or fostering harmony. And they can have culture-producing and culture-changing effects, affecting not only the tenor of our conversations but how we view and treat others within our society.

Research, including in the fields of neurophysiology and cognitive neuroscience, points to a linkage between the language we employ and our thoughts – how we perceive and categorize other people or things.<sup>30</sup> In short, “the words we use to describe what we see . . . actually determine what we see.”<sup>31</sup> If anyone doubts this truth, consider how likely it would be that people with intellectual disabilities – people who are “differently-abled” – would be integrated

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24. Susan J. Stabile, *Othering and the Law*, U. ST. THOMAS L.J. 381, 382–83 (2016); *see also* Jonathan Todres, *Law, Otherness, and Human Trafficking*, 49 SANTA CLARA L. REV. 605, 607 (2009) (describing the “Self/Other dichotomy” as fostering the “conception of a virtuous ‘Self’ and a lesser ‘Other’”).

25. Bruce G. Link & Jo Phelan, *Stigma Power*, 103 SOC. SCI. & MED. 24, 24 (2014).

26. *See id.* at 24–25 (describing two of the aims of stigma as “keeping people down” and “keeping people away”).

27. *See, e.g.*, MINISTRY OF JUSTICE, *supra* note 14, at 33.

28. *See, e.g.*, CORR. SERV. CAN., *supra* note 17.

29. *See supra* Subpart I.A.

30. In addition to studies cited earlier in this essay, see Guillaume Thierry, *Neurolinguistic Relativity: How Language Flexes Human Perception and Cognition*, 66 LANGUAGE LEARNING 690, 694 (2016).

31. Adam Alter, *Why It’s Dangerous to Label People*, PSYCHOL. TODAY (May 17, 2010), <https://www.psychologytoday.com/us/blog/alternative-truths/201005/why-its-dangerous-label-people>.

and welcomed into classrooms, workplaces, sports, and elsewhere were they still called, as they once were, “imbeciles” and “retards.”<sup>32</sup>

I shared my view, born of experience and buttressed by research, about the power of words when speaking with one of the persons mentioned earlier who has a criminal conviction about what it feels like to be called “offender.” His concurring response captured that power: “We can’t change systems without changing our language.”

The proponents of restorative practices, of which I am one, profess that we are striving to create a “new reality,”<sup>33</sup> one no longer marked by fractured relationships, unrepaired harm, and barriers that divide and injure us all. We are seeking, in short, nothing less than systemic and cultural change. If we and others who decide to join in this endeavor are serious about effectuating this change and not just posturing, the words we use will, as has occurred when referring to people with disabilities, need to match our vision.

## II. RATIONALES FOR THE LABEL “OFFENDER”

One of the reasons why the use of the term “offender” remains so prevalent in the field of restorative practices, as well as within criminal-justice systems and in general conversations, is that it has become an entrenched practice – a norm. As the International Institute for Restorative Practices noted when explaining why its books and training materials are replete with references to “offender,” the term “offender” is “simply the language that has been traditionally used in restorative justice.”<sup>34</sup> That is true. But, of course, that leaves open the question of why those who subscribe to restorative precepts continue to follow this tradition. The “this is the way we have always done it” argument for continuing to employ anti-restorative language seems incongruent for those on the frontlines of working to uproot the status quo in criminal-justice systems through the importation of restorative practices into them.

So behind the citation to tradition as the reason for continuing to call people “offenders” must lurk some other explanation for the reticence to abandon what many consider a disparaging term. One reason asserted for utilizing the word “offender” as a descriptor in the criminal-justice context is the ease of using that term.<sup>35</sup> Personal convenience, though, is hardly the end-all of linguistic practices. Thus, in other instances, the ease of attaching a certain label to a category of individuals has given way to the transcendent values

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32. *Words Can Hurt*, GLOBAL DOWN SYNDROME FOUND., <https://www.globaldownsyndrome.org/about-down-syndrome/words-can-hurt> (last visited Aug. 14, 2019).

33. See TED WACHTEL, DREAMING OF A NEW REALITY 3–5 (2013).

34. Int’l Institute for Restorative Practices, IIRP Training Script: 2-Day Facilitating Restorative Conferences, Day 1, at 15 (Mar. 4, 2019) (on file with author).

35. See, e.g., ZEHR, *supra* note 2, at 12 (describing the label as “simple” to use).

served when declining to call people a name they consider debasing. “African American” and “person of color” are, for example, more unwieldy terms than “Negro,” yet they have largely supplanted this simpler term considered offensive by many.

Those inured to the term “offender” have also remonstrated that the word is not intended as “a label” and that they would never call someone “offender” to his or her face.<sup>36</sup> Why this latter argument could have any force eludes me. If the convention today was still to follow the opprobrious past practice of referring to people with intellectual disabilities as – it gives me pause to even utter this word – “retards,” the damaging effects of this terminology would not hinge on whether we called people “retards” to their faces or behind their backs. Regardless of to whom we uttered this disparaging word, referring to people as “retards” would harm both we, the speakers, and our audience, detracting from the ability of all of us to recognize, respect, and embrace the full humanity of the people we have typecast in such a derogatory way. And if, as occurs with the word “offender,” our writings, speeches, media interviews, and conversations were littered with the denigrating descriptor “retard,” we would be deluding ourselves in pretending that those who are the object of our derogatory label are unaware of, and not harmed by, it.

A final reason, shared with me by a fellow graduate student, for continuing to refer to someone who caused harm or committed a crime as the “offender” is that this label is “accurate.”<sup>37</sup> However, one of the credos of restorative practices belies the verity of this point. Those who work in the field of restorative practices underscore that it is important to “separate the deed from the doer.”<sup>38</sup> This maxim reflects the conviction that while our actions at times warrant condemnation, we remain human beings, albeit imperfect ones. Contrary to the aspersions cast by the label “offender,” we remain more – much more – than just the sum of our misdeeds.

### III. REPLACEMENT TERMS FOR THE LABEL “OFFENDER”

Abandoning the pejorative label “offender” leaves unresolved what the replacement term or terms would be. One formerly incarcerated person, Eddie Ellis, has entreated us to call individuals like him what they are – people: “[W]e are asking everyone to stop using these negative terms and to simply refer to us as **PEOPLE**. **PEOPLE** currently or formerly incarcerated, **PEOPLE** on parole, **PEOPLE** recently released from prison, **PEOPLE** in prison,

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36. See, e.g., Int'l Institute for Restorative Practices, *supra* note 34, at 15 (cautioning that the word “offender” should not be used when meeting with people who may participate in a restorative-justice conference and should only be used “to identify,” “not label.”).

37. See Lynn S. Branham, *Changing My Vocabulary: The Word “Offender” and Its Infliction of Harm* 7 (Mar. 28, 2016) (unpublished M.S. course paper, International Institute for Restorative Practices) (on file with author).

38. MARIAN LIEBMANN, *RESTORATIVE JUSTICE: HOW IT WORKS* 326 (2007).

**PEOPLE** with criminal convictions, but **PEOPLE**.”<sup>39</sup> Other variants with a personhood focus abound, such as, on the aggregate level, “people who caused the harm” and, on the individual level, “the person who caused the harm.”

I once thought that it was incumbent on me to find “the term” to recommend for infusion into restorative practices, criminal-justice systems, and everyday parlance. But I have since realized that there is not just a single suitable replacement term for the label “offender.” As Ellis’s fervent plea illustrates, a replacement term may be, or need to be, contextually based. When referencing a restorative-justice conference, the “person who caused the harm” might be most apropos. When discussing the challenges faced when returning to a community after confinement in prison, on the other hand, the appropriate phraseology might be a “person formerly incarcerated,” “returning citizen,”<sup>40</sup> or some other term that does not, unlike the words “offender” or “ex-offender,” deprecate or abnegate someone’s humanness. And when discussing the loss of voting and other rights triggered by a criminal conviction, the discussion might center on the curtailment of the rights of “people convicted of a crime.”

There remains, though, the anticipated objection that all these replacement terms are more cumbersome than the pat term “offender” or its derivative “ex-offender.” One rejoinder, mentioned earlier, to this objection is that the lure of simplicity, while understandable, should not usurp more fundamental interests and needs, such as the need to avoid inflicting harm through one’s words.

A second counterpoint to this objection is that the concern that replacement terms for “offender” are too long, unwieldy, and impractical is exaggerated. One of the touted replacement terms, “person who caused harm,” has, for example, only two more syllables than the word “offender.” Those two syllables are, in the words of a fellow law professor with expertise in restorative practices, “worth it.”<sup>41</sup>

For me personally, though, the most persuasive refutation of the verity of the assertion that using a word other than “offender” will unduly cramp our writings and conversations has been my own experience. After beginning to be dogged several years ago by concerns about the dissonance between, on the one hand, the objectives of, and values underlying, restorative practices and, on the other, adherence to the tradition of calling a person the “offender,” I decided to purge this word from my speeches, conversations, and

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39. McGregor Smyth, *Holistic is Not a Bad Word: A Criminal Defense Attorney’s Guide to Using Invisible Punishments as an Advocacy Strategy*, 36 U. TOLEDO L. REV. 479, 479 n.1 (2005) (quoting Eddie Ellis).

40. Michael J. Newman & Matthew C. Moschella, *The Benefits and Operations of Federal Reentry Courts*, 64 FED. LAW., Dec. 2017, at 26, 27. Judge Newman is a magistrate judge in the Southern District of Ohio.

41. See Branham, *supra* note 37, at 18 (quoting Prof. Emily Scivoletto). Professor Scivoletto is also Senior Assistant Dean for Student Affairs at UC-Davis School of Law.

writings, including the most recent edition of two of my books.<sup>42</sup> What I discovered, as have others who have striven to desist from using the “o-word,”<sup>43</sup> is that using replacement terms for “offender” is quite doable.<sup>44</sup>

#### IV. LEADING THE WAY: EMERGING SUPPORT FOR ABANDONING THE LABEL “OFFENDER”

I am not the only one discomfited by the practice of alluding to someone as the or an “offender.” In 2016, the U.S. Department of Justice’s Office of Justice Programs announced a new policy: to dispense with what Assistant Attorney General Karol Mason described as “useless and demeaning labels,” like “offender” and “felon,” that “freeze people in a single moment of time,” “drain their sense of self-worth,” and “perpetuate a cycle of crime.”<sup>45</sup> Under this policy, phrases like “person who committed a crime” and “individual who was incarcerated” have supplanted the repudiated terminology.

The state of Washington’s Department of Corrections has followed suit, announcing its plan to phase out the word “offender” and instead refer to “individuals” or, depending on the context, “students,” “patients,” or other names that avoid shackling a person to a past misdeed.<sup>46</sup> Secretary John Wetzel, the head of Pennsylvania’s Department of Corrections, has also issued a statewide directive to eliminate the word “offender” from agency discourse.<sup>47</sup> In his view, the adoption of new vocabulary when referring to people convicted of crimes is a “value shift” without which “corrections reform will always come up short.”<sup>48</sup> Secretary Wetzel explained: “Words count. . . They count when we say ‘You’re a failure’

42. See LYNN S. BRANHAM, *THE LAW AND POLICY OF SENTENCING* (10th ed. 2018); LYNN S. BRANHAM, *THE LAW AND POLICY OF SENTENCING AND CORRECTIONS IN A NUTSHELL* (10th ed. 2017).

43. Nancy G. La Vigne, *People First: Changing the Way We Talk About Those Touched by the Criminal Justice System*, URBAN WIRE: CRIME AND JUST. (Apr. 4, 2016), <https://www.urban.org/urban-wire/people-first-changing-way-we-talk-about-those-touched-criminal-justice-system>.

44. See *id.* (reporting that writing a research brief for the Urban Institute’s Justice Policy Center and the report of the Charles Colson Task Force on Federal Corrections revealed that eliminating the word “offender” from discourse is feasible); Willis, *supra* note 13, at 736 (reporting that writing and talking without using denigrating labels like “offender” has become “habitual and effortless”).

45. Karol Mason, *Guest Post: Justice Dept. Agency to Alter Its Terminology for Released Convicts, to Ease Reentry*, WASH. POST (May 4, 2016), <https://www.washingtonpost.com/news/true-crime/wp/2016/05/04/guest-post-justice-dept-to-alter-its-terminology-for-released-convicts-to-ease-reentry/>.

46. Loretta Rafay, *Washington’s DOC Ends the Use of the Word “Offender,”* PRISON VOICE WASH. (Nov. 3, 2016), <https://prisonvoicewa.org/washingtions-doc-ends-the-use-of-the-word-offender>.

47. John E. Wetzel, *Pennsylvania Dept. of Corrections to Discard Terms “Offender,” “Felon” in Describing Ex-Prisoners*, WASH. POST (May 25, 2016), <https://www.washingtonpost.com/news/true-crime/wp/2016/05/25/pennsylvania-dept-of-corrections-to-discard-terms-offender-felon-in-describing-ex-prisoners/>.

48. *Id.*

or ‘I love you’ or ‘You are smart’ or ‘You are worthless.’ They also count when we say ‘I respect your humanity, and I believe in your capacity to change.’”<sup>49</sup>

When issuing the name-changing directive, Secretary Wetzel acknowledged that we need not, and should not, ignore the pain a crime has caused. But he challenged those who are wedded to calling people “offenders” to deepen their perspective: “[M]ustn’t we also acknowledge the path to less communal pain is the transformation of these same individuals? If labels don’t further THAT goal, then we have no business using them.”<sup>50</sup>

Other government officials and entities have joined in voicing their opposition to referring to a person as “offender.” For example, the Board of Supervisors for the City and County of San Francisco recently adopted a resolution calling for a halt to this labeling practice.<sup>51</sup> In lieu of what the Board termed “pejorative language” that has “harmful impacts,” the Board endorsed “person-first language,” such as “formerly incarcerated person” or person who was or is “justice involved.”<sup>52</sup>

## V. CONCLUSION

I remember puffing up my chest when I was a child after someone said something hurtful to me. “Sticks and stones can hurt my bones, but words can never hurt me,” I resolutely announced. This statement may have been a valiant effort to muster and display inner strength, but it was a canard, devoid of any truth. Words can and do hurt. Badly.

The label “offender” is one of these words, inflicting injury on those who are denominated, through this appellation, as incorrigible miscreants. Using depreciating and derogatory terms when referring to another human being is also at odds with core values that are the foundation of restorative practices – values such as respect, interconnectedness, hope, and transformation. These values are not the sole province of restorative practices but transcendent values that most people would likely say they endorse and hope to personify.

A third ill effect of the convention of typecasting people as “offenders” is that it helps thwart systemic and cultural change – an alteration in how people who have committed a crime are viewed and treated, both within the criminal-justice system and by society at large. Referring to people in ways that denude them of their humanness makes it difficult, if not impossible, to fuel and foster widespread receptivity to restorative processes that, at their core, are founded on an unflagging commitment to accord respect to every human being.

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49. *Id.*

50. *Id.*

51. S.F., Cal., Res. 336-19 (July 26, 2019), <https://sfbos.org/sites/default/files/r0336-19.pdf>.

52. *Id.* at 1, 3.

So what do we do? And who are “we”?

“We” are each of us. Those of us who tout the value and benefits of restorative practices must commit to becoming better role models. We must recognize and admit the incongruity between, on the one hand, being in a field whose *raison d'être* is, in part, to prevent and remedy harm and, on the other hand, blithely referring to people with a term that causes harm. We must decide, individually (as I have done) as well as collectively, to abandon what has become the rote practice of labelling a person “offender.” We must instead commit to using humanizing language when referring to people who have caused harm, such as opting to call them as much as possible what they are – “people.”

Court and criminal-justice officials, members of the media, academics, and others, many of whom may not yet even be conversant with restorative practices, should likewise embark on a critical examination of the words they employ when describing people who are in, or once were in, the criminal-justice system. A litmus test to apply when conducting this examination is whether a term “offers dignity, humanity as well as hope.”<sup>53</sup> The label “offender” does not meet this test. It never has.

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53. This test emanates from feedback I received during my action-research project from a law-enforcement official regarding my decision to abandon use of the term “offender,” supplanting it as much as possible with references to a “person” (such as “person with a criminal conviction”) or “people” (such as “people confined in jail”). This official commented that the replacement terms “offer dignity, humanity as well as hope.”