

“Heal Not Harm”: Prison Violence and Restorative Justice

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ABSTRACT

If the judicial system and its penitentiary counterpart are often seen as actors in the sole punishment of convicted criminals, it must be noted that this punitive dimension alone does not fully satisfy the aspirations for justice of their victims. The concept of restorative justice seems to allow us to better respond to these aspirations: What is it about? How does restorative justice work? What are its mechanisms, how is it implemented, and for what results? Robert Cario invites us to consider the interest of restorative justice from the point of view of both victims and perpetrators.

Keywords: Crime, victims, perpetrator, restorative justice, justice system, prisons, mediation, violence

“Heal not Harm”: Violencia en prisión y justicia restaurativa

RESUMEN

Si el sistema judicial y su contraparte penitenciaria son a menudo vistos como actores en el castigo único de los delincuentes condenados, debe señalarse que esta dimensión punitiva por sí sola no satisface plenamente las aspiraciones de justicia de sus víctimas. El concepto de justicia restaurativa parece permitirnos responder mejor a estas aspiraciones: ¿De qué se trata? ¿Cómo funciona la justicia restaurativa? ¿Cuáles son sus mecanismos, cómo se implementa y con qué resultados? Robert Cario nos invita a considerar el interés de la justicia restaurativa desde el punto de vista tanto de las víctimas como de los victimarios.

Palabras clave: Crimen, víctimas, perpetrador, justicia restaurativa, sistema de justicia, prisiones, mediación, violencia

“治愈而不是伤害”：监狱暴力与恢复性司法

摘要

如果司法系统及其监狱部门经常被视为对已定罪罪犯进行单独惩罚的行为者，那么必须指出的是，仅靠这一惩罚并不能完全满足受害者伸张正义的愿望。恢复性司法的概念似乎让我们能够更好地响应这些愿望：它是关于什么的？恢复性司法如何运作？它的机制是什么，它是如何实施的，结果是什么？Robert Cario邀请我们从受害者和肇事者的角度考量恢复性司法的利益。

关键词：犯罪，受害者，肇事者，恢复性司法，司法系统，监狱，调解，暴力

As part of the 6th International Days of Research in Prisons coordinated by the Research Department of ENAP, the organizers showed participants a short excerpt from the documentary “Heal not harm” produced by the *Incarceration Nations Network* (posted on YouTube in September 2022).

Restore, not hurt. Starting from the fact that when a crime is committed, the traditional justice system always asks the same nagging questions: “What laws were broken? Who is the perpetrator? How should he be punished?” “Is this really what [the victims and perpetrators] want or need?” and what “would happen if there was another way?” The content of this documentary, which is just over 38 minutes long, gives voice to victims who have met the offender who caused their suffering. The interviewees were very satisfied. The program presented, which is very similar to post-sentence restorative mediation, is implemented by the Prosecutor to avoid victims having to wait for the trial. However, the criminal procedure does not stop its usual course. The voluntary participation of the offender is likely to influence the nature and the quantum of the sentence and/or its individualization through particular arrangements.

In addition, the documentary reports on a statistical study (not referenced) conducted in 2016 with 800 people who were victims of crime. The results are particularly compelling: 73% of them would prefer investments in education, mental health, substance abuse treatment, and job creation in prisons. Similarly, 80% of crime survivors who were given a choice between a restorative justice measure or a custodial sentence chose the former.

Restorative justice. This explicit reference to restorative justice programs has led to the question of whether they are/will be likely to reduce violence in prison? The

answer, scientifically demonstrated, is undoubtedly positive ... but not under any conditions. The integration of restorative encounters between convicted persons and victims (in closed and open environments) is not new and many of them have their origins in the ancestral practices of the First Nations, almost everywhere in the world. Since the Economic and Social Council (ECOSOC) resolution of 1982, the incentives to consider restorative programs have grown exponentially, both internationally (United Nations Declaration, 1985) and regionally (Council of Europe Recommendations (87–21, 88–6, 99–119) for the most part. The Council of Europe Recommendation of October 5, 2018 (merely inciting nonetheless) goes much further still by inviting member states to take into consideration the restorative justice measure implemented “as part of the sanction imposed” and/or when individualizing sentences (Rec. (18)8). Even more recently, a Declaration of the Committee of Ministers of Justice on sexual offences (Rec. (21)6 of 21 October 2021), the CM/Rec. (2023)2 of 15 March 2023 on Rights, services and support for victims of crime and the Venice Declaration on the role of restorative justice in criminal matters (14–15 December 2021) underlined the growing development of restorative justice, which should be considered as an important element of the global process of sustainable development in order to promote the advent of just, peaceful and inclusive societies, mainly favoring the reintegration of offenders and the recovery of victims.

In France, the Law of August 15, 2014, on the individualization of sentences and reinforcing the effectiveness of criminal sanctions, introduced, following the imperative provisions of the EU Directive of October 25, 2012, the possibility of resorting to it, in any criminal procedure, at all stages of the procedure (Art. 10-1 of the French Penal Procedure Code). At this stage of its deployment in France, participation in a restorative meeting does not bring any benefit, neither to the victim (additional damages, for example), nor to the convicted person (no consecutive sentence adjustments). This right to restorative justice is now open not only to victims and perpetrators, but also to their relatives and, more generally, to any person who feels concerned by the offence (see *Guide méthodologique*, Ministry of Justice, 2021, p. 15, 3). Very late after the entry into force of article 10-1, applicable to adults as well as minors from 1 October 2014, the recent Code of Criminal Justice for Minors has enshrined in its article L 13-4 the use of restorative justice ... by explicitly referring to article 10-1, as of 20 September 2011.

According to these new legislative and regulatory provisions, symbolically installed at the heart of the general principles of criminal procedure, the right to participate in a restorative workshop may be considered by victims and perpetrators of criminal offences (regardless of their respective status) throughout the criminal process. It is also a right for the victim during the execution of sentences (Penal Proc. Code, art. 707-IV, 2°). All offences are concerned, although scientific evaluation shows that the more serious the offences, the greater the progress to-

wards appeasement for each participant. As well as the restorative efficiency of the only “process,” independently of the “result” (the meeting, as long as it is desired), the participants always having the possibility to end it. The Circular of March 15, 2017 has pertinently clarified that the use of a restorative measure is not a procedural act and, therefore, is not subject to the principles governing criminal procedure. It is also autonomous in relation to the course of the criminal trial. Decrees have been issued to reinforce the implementation of restorative measures in 2020 (art. D. 1^{er} -1-1, the right to be offered a restorative measure by the competent magistrates within the criminal trial and during the execution of the sentence) and in 2021 (art. D. 1^{er} -1-1-1, recourse to such measures when the public prosecution cannot be initiated, cannot be maintained or has been extinguished).

With great relevance and clarity, the Penitentiary Code resulting from the Ordinance of March 30, 2022, which came into force on May 1, 2022, enshrines restorative justice in its preliminary title. Indeed, the Public Prison Service [...] “shall assist in the implementation of restorative measures” [...] (art. L. 1, 3rd paragraph).

Restorative measures thus provide an unprecedented and particularly secure space for speech and dialogue. Identifying and expressing the suffering suffered by each person, promoting mutual understanding of what happened (Why? Why me? What did I do or should I have done to prevent the violence from happening? Why you? How can I regain my self-esteem? How can I stop impacting my family and friends with my unhappiness? How can I resume my daily life: work, relationships, cultural activities? How can I regain confidence in society? In particular), leads much more effectively to the most complete restoration of people.

Participants are considered competent to regulate their own affairs, in the presence and with the support of trained professionals (in the broadest sense). Identifying and expressing the suffering experienced by each person, fostering mutual understanding of what has happened, and searching together for available solutions to remedy it, leads much more effectively to the fullest restoration of people. Hearing the offender fully assume his or her responsibility is, for example, essential for the victim and/or his or her family to escape from the strong psychological guilt that is so prevalent in many criminal situations. Ensuring that the offender commits to respecting their freedom and safety at the end of the sentence being served is also likely to appease the victimized persons.

In order to ensure that the work of justice is carried out with respect for human rights, Article 10-1 of the Code of Criminal Procedure imposes a series of guarantees that condition the use of a restorative justice measure. The requirement of recognition “of the essential facts of the case” (Dir. n° 2012/29, art. 12) by all is formal. And the earlier the recognition of the offender’s guilt, the more the victim feels that he or she has been listened to, heard, believed and understood. Logically, full information about the proposed measure should be given to potential participants: how the process will work and the safeguards available to them; possible

outcomes and the limits of their participation in relation to their expectations. The express consent of the participants to the chosen restorative measure, which is essential to its proper implementation, is the guarantee of their active participation. It is constant throughout the measure and can be revoked at any time. Therefore, participation in a restorative workshop is voluntary and disinterested. It cannot, under any circumstances, be imposed by the judicial authority which, during the control to which it is subject by the text, only ensures the conformity of the measure chosen by the parties to the conflict with regard to the conditions provided for by the Law and, under no circumstances, the appropriateness of this choice. The respect of such non-negotiable conditions requires that they be collected by an independent and impartial third party trained for this purpose. Such training cannot be improvised. Facilitators (in the broadest sense) must complete their basic training with knowledge specific to restorative processes (justiceresaurative.org). The relational approach is particularly promising in that it favors attentive listening, which is very different from the active listening used by professionals in the penal system. Focusing only on the expectations of the potential participants, it favors the in-depth exploration of each person's expectations, the scripting of the eventual meeting (whatever its form), and the open questions inviting exchange. The relational posture of the facilitators leads them to consider themselves as incompetent in relation to the unique experience of the people they accompany, and especially not as an expert and biased towards all the people involved. The control of the judicial authority or, at the request of the latter, of the prison administration, consists in verifying the respect of the conditions set out in article 10-1 of the code of penal procedure and not on the progress of the measure, with regard to the confidentiality that surrounds it. It is therefore a simple but essential control of compliance

Restorative meetings in prisons

The objective of reducing violence in prison can be achieved through three main modalities of encounters, among other remarkable prison programs. **Restorative mediation** can be implemented for the benefit of people (offenders, victims or relatives) involved in the same criminal case. However, there is no obligation to meet face-to-face; the exchange of letters and videoconferencing, in particular, are frequently chosen by the persons concerned. Restorative mediation is founded on the scientifically verified postulate that dialogue and mutual understanding have restorative effects inherent to the process itself.

The Restorative Conference pursues the same objectives as Restorative Mediation but brings together a more diverse number of participants around the offender, the victim and the mediator(s). It is more specifically designed to deal with offences committed by minors, within the community, but it is also applicable to those who, having been sentenced to a custodial sentence, have reached the age of ma-

majority after the offence, as well as to convicted adults. They are joined by all persons or institutions having an interest in the regulation of the conflict, in a position of benevolent support: friends, persons in whom each of the protagonists has a particular trust, referents of one or other of the parties, representatives of judicial, health or social institutions. Many practitioners consider that the restorative conference offered to minors in a situation of delinquency, including when they are incarcerated, constitutes the most successful restorative justice measure.

The Inmate-Victim Encounters (IVE) involve offenders and victims who, although they do not know each other, have committed or suffered acts of a similar nature. Both during the individual preparation workshops and during the five weekly three-hour plenary meetings, the participants share emotions, feelings, and questions that are likely to provoke, in a way that is unequalled by the current system, the “liberation” of the persons concerned (convicted prisoners, victims and/or their relatives if the latter did not survive the crime), who are trapped in postures of incomprehension, guilt, hatred, devaluation, emotional and social isolation, and finally, of suffering. During the plenary meetings, specially trained members of the community, “Mr. and Mrs. Everybody,” accompany the exchanges in a posture of unconditional benevolence towards all the participants. Their role is to listen attentively to the dialogues that are taking place, to hear and understand what the participants are experiencing during the exchanges, and to encourage them to persevere in this excessively courageous process of potential progress towards a horizon of appeasement.

The first experimentation of RDVs took place at the “Maison Centrale” de Poissy, followed by a few others, notably in the Yvelines; the first RCV took place in an open environment in 2014 in the Oise. It is only since 2017 that restorative programs have experienced a remarkable development, thanks to the integrated training of facilitators set up within the framework of a tripartite agreement between ENAP, IFJR and France-victims. More than 2,500 mediators/facilitators have been trained in this way (in metropolitan France and overseas): prison staff (DPIP, CPIP, guards, in particular), victim assistance professionals, PJJ educators, some magistrates, lawyers, and members of civil society. At the same time, community members (nearly 400) have also been trained to accompany the RDV/RCV. To date, nearly 300 programs have been carried out, benefiting more than 1,200 offenders and victims.

Prison violence and restorative justice

As violence can be defined as the most degraded form of language, its gestualization is frequent in the prison environment insofar as the people there are characterized by a restricted psycho-socio-linguistic code. In case of conflict, access to its symbolization remains much more exceptional. This is also true for victimized people. It is extremely difficult to obtain precise figures on violence between fellow

inmates as well as that directed towards prison staff. Moreover, not all of them are recorded, only those that have been the subject of disciplinary or criminal proceedings are listed. The fact remains that an increase in internal violence (between fellow inmates) and external violence (against guards) has been reported by all observers. The national plan to combat violence, published in November 2022, reports nearly 10,000 cases of violence between fellow inmates and a little over 4,000 against guards in one year. And this is only the tip of the iceberg, as no comprehensive criminological study has been undertaken in this regard. Not to mention all the invisible violence such as suicide attempts (119 in 2020, i.e., 6 times more than in the general population), self-mutilation (10 times more frequent among women prisoners), hunger strikes, violence against other prison staff or those involved in outside activities, violence in the open environment, especially against prison integration and probation counsellors, and structural violence, among others.

Such violence in no way prevents the inmates concerned and their victims from participating in restorative encounters. Of course, the benefits observed in restorative meetings are not the result of a magical practice. Forgiveness and therapy are by no means the objectives. A steering committee and project group, specific training according to the restorative measures (mediators, facilitators, members of the community), rigorous protocols developed with the concerned fields, and supervision by the IFJR are more likely to guarantee the provision of a safe and secure space for dialogue, respectful of the dignity that characterizes every person, without judgement, and always benevolent towards each participant. It is therefore not at all surprising that the person deprived of liberty, as well as the victim and/or his or her relatives, frequently state that the only person who can hear the repercussions of the crime, even if they are unbearable, is the one who is at the origin of the acts committed or who has suffered them, as much in restorative mediation measures as in the anonymous groups of VOE or VOE. Emotions are likely to arise, as in any human being: fear, joy, sadness, or anger are often exacerbated during restorative meetings. They are perfectly legitimate as long as they do not violate the dignity of one or more participants. The members of the community and, failing that, the facilitators, are specifically trained to welcome them and to invite the person concerned to share them with the other participants. Nothing would be more counterproductive than to ignore them, at the risk of aggravating them, or even leading to leaving the restorative program.

It is essential to be able to express one's emotions, which have been held back for too long or which are impossible to share in detention, including with the people in charge of monitoring them. Throughout the preparation workshops, they emerged. This learning of emotional management is a powerful vector of responsibility, which will be effective in detention in case of conflict between fellow inmates or between inmates and prison administration personnel: supervisors, CPIP, health personnel, and teachers, in particular.

Being able to tell their stories in a dedicated space, with mutual respect, without judgment, in complete confidentiality, after preparatory interviews with trained, independent and impartial facilitators, allowed all participants to speak freely. According to one offender, “The meetings allowed for a real liberation of speech. I was able to say what I was feeling and tell them that an offence like this can have repercussions [...] From the first meeting, it had an impact on me, I was able to speak up and say what I had to say, it was very emotional and it was good, I had the opportunity to pour out the excess that I had.” Becoming an actor, telling one’s story in resonance with the other was also noted. “I feel better, the fact that I spoke about the things I did, it did me good to empty myself, I understood why my daughter didn’t want to see me anymore.” “I was able to say things that I had never said before, things came out naturally, I felt good about myself.” The dedicated dialogue space allows people to be heard and understood. This is the case for victims: “Feeling less alone, having people who understand you, who say ‘get over it,’ you take it in your stride [...] There is an understanding that you don’t have elsewhere [...]. You come out of it liberated.”

During these encounters, the authors move from fear to confidence: “These victims, despite the fact that we were in prison and all, took us for normal people. I thought they were going to look at us the wrong way.” Another author adds, “At first I was withdrawn and as the meetings went on, I was able to discuss and talk with them better.” The humanity that encompasses these meetings leads to the discovery and sharing of emotions among the participants: “It allows us to understand the perpetrators, to humanize them, when we have had an aggression like that, it dehumanizes the person a bit. As we didn’t find him, I had difficulty materializing this person, I saw him a little like a spectre. It was so violent that I almost had the impression that it had not existed. It allowed me to anchor this situation with faces.” One author adds, “It’s very important. I feel like they understood us and that we’re not monsters. It’s a recognition. I had that feeling especially at the end.”

All of the individuals stated that these meetings were part of a reparation process: “It’s being able to ask the perpetrators all the questions that you ask yourself in these cases, why my house? What were they looking for? Why did they get there? I think what I got the most out of was being able to ask the authors directly.” In the same way, among the perpetrators: “The victims said that they felt more victimized. Yes, I have the feeling that I was able to contribute to their reparation.” “It was a liberation, the relief of a burden to be able to access these meetings because I was able to express myself, to let the victims express themselves and to understand their suffering”; “This respect and empathy were transformed into benevolence [...]. This respect and empathy turned into benevolence [...]. It is something that you remember for the rest of your life, this benevolence.” Victims emphasize in this sense: “The perception of the convicts has evolved, as they have met. They have become aware of the consequences of an offence. They have taken a step. At the beginning, I had the impression that I was talking to a wall, but afterwards we

were able to have more sincere dialogues with the perpetrators”; “We were delighted to see that they improved by seeing us.”

As for the protocol of the measures, the participants are unanimous regarding their organization, both in terms of the preparation and the conduct of the meeting session. “The situation was extremely well organized, so it was calm. I was really comfortable and safe”; “Since it was well organized, it was reassuring. [...] I found it impeccable because there were several preparation meetings, they anticipated our anxieties. [...] At the beginning I found it a bit long but it was quite coherent when I was in the group. It is absolutely necessary because it is much stronger than what you can imagine. It’s intense and after each week you have to be able to take on everything you’ve heard, it’s a lot of work, so you have to prepare for it.” “Finally, at the moment when we feel so much humanity, respect, trust, because the framework is made so that there is this trust that is put in place from the first day. As a result, we give ourselves up much more than we could have imagined.”

For the participants, the facilitators occupy an essential place: “They were fundamental people in my story”; “They were very present while remaining discreet during the meetings. You could see that they were present through their look, their way of being, their speaking up sometimes to redirect the discussion when someone was drifting off course”; “Without them it wouldn’t have had the same dimension. Without their benevolence, their calm, their patience too because it is probably not always obvious, and their professionalism. I find that they were the guarantors of the fact that the meetings went well.” The role of the community members, rarely evident at the beginning of the meetings, was also appreciated: “It was a crutch, a support and I liked the image that it represented, the image of understanding, of being listened to. It seemed to me that it was good that people from outside could hear our story. [...] If they hadn’t been there, something would have been missing. It gives us importance for us victims, for the perpetrators I don’t know but maybe it’s in the sense that people believe in them and in their capacity to change”; “And then what was good was that there were two other people who were with us. [...] Civilians you could say. [...]” And even their reflections on what we said were interesting, with the hindsight of those who have lived a life, we’ll say a normal life in quotation marks.

Dating still offers the opportunity to “meet yourself.” “It made me realize that I thought I was than what I actually was. This is a good thing because I tend to think that everything is fine, to bury it. It’s a realization of my fragility”; “For me, this experience opened my eyes, that I had to learn to speak and express myself and not to be frustrated with myself, to store up this frustration and let it spill over into blows at some point. [...] A work on myself in the end.”

Many aspects have been revealed by this relevant survey, such as : the interest of the psychological “net,” an essential support that is rarely used; the im-

portance of the stick, regulating exchanges; the regaining of self-esteem; the reduction of guilt for not having been able to prevent the facts from happening; the acceptance of not having an answer in the end; the reduction of fear in daily life; the reciprocal empathy, sometimes ambivalent in relation to the relatives; the confidence in the other; a look turned henceforth towards the future; the hope of a non-recurrence, mainly.

Of course, the survey does not avoid the fact that improvements must be made during the implementation of restorative justice measures, and more specifically during the encounter: better preparation of the participants as to their ability to question themselves; better correspondence between the acts suffered and committed; consideration of a longer duration of the plenary meetings, mainly.

The authenticity of the spaces of speech favors the relational dimension and the opening to the other, consolidating the humanity of each person. The richness of the exchanges and the appeasement that result from them are all the more remarkable, even though some people still consider them to be definitely improbable.

In summary, restorative justice measures do participate in the reduction of violence in prison and, consequently, contribute to the appeasement of interpersonal relations between convicts as well as between those with prison staff, mainly in detention. In this sense, at the end of the second Inmate/Victim Encounter (RDV) conducted within the Poissy Penitentiary in 2014, its director François Goetz stated about the inmates who participated: "...they are much less into 'victimitis.'" That is, they are more accepting of incarceration and therefore of the conditions of incarceration. They have a discourse that takes much more into account, but really, sincerely, the pain and suffering inflicted on victims. This is a powerful accountability tool to promote resilience and reduce recidivism.

However, it would be appropriate to create positions for "restorative justice referents" who would be responsible for providing information on the programs available within their respective departments and, if necessary, for facilitating restorative meetings. The preliminary title of the Penitentiary Code specifies that the public prison service "... shall assist in the implementation of restorative justice measures..." The National Plan to Combat Violence provides for "Building with the IFJR a mediation training for the penal population (Action No. 60)." Such training should be available to both prison staff and inmates in all prisons. A more complete collaboration and harmonization between "restorative mediation" (IFJR) and "mediation in a professional context" would, in this sense, be very relevant. If the voluntarism of the facilitators is simply remarkable, it is also essential to grant them a time dedicated to the restorative activities they carry out. Finally, and most importantly, it is important that restorative encounters be implemented in all detention units and, even more urgently, in women's prisons, so that they are not, once again, left out of the restorative innovations.

The National Plan to Combat Violence appears to be a genuine source of change in the treatment of persons placed in custody. Legitimate and ambitious, it will only really succeed if citizens really get involved, because violence in prisons or in open environments, as in society in general, is everyone’s business. In the same way, if there is not enough funding, this real social issue will remain, once again, a dead letter. Consequently, institutional reforms are necessary. By a massive decriminalization by returning to the original litigation the “offences” of low gravity (more characteristic of deviances or psychosocial or cultural maladjustments) insidiously introduced by the most populist forces of our country. It is also becoming urgent to empty the prisons, which are reaching historical records: nearly 73,000 people are currently detained there, even though serious crimes against the person are constantly decreasing. Such penal overpopulation leads to the violation of Article 3 of the European Convention on Human Rights, despite the repeated recommendations of the Committee for the Prevention of Torture and Inhuman Treatment. The European Court of Human Rights has regularly and very recently (J.M.B. et al. v. France, January 30, 2020) condemned France in this respect, without much effect on the ground, particularly with regard to the individual confinement of both accused and convicted persons. At the same time, and just as urgently, it is essential to no longer deprive of liberty those who have committed offences for which the sentence incurred or the remainder of the sentence to be served is less than three years. The same dynamic must lead to the significant recruitment of prison integration counselors in closed prisons and even more so in open prisons, in line with the ratios observed among other prison staff, so that the number of cases monitored is no more than 50. Fighting against violence in prison also means using restorative justice measures, in all their modalities, for the benefit of all persons who wish to do so, at all stages of the procedure, without distinction between the offences committed, in compliance with the conditions set out in article 10-1 of the CPP and article L13-4 of the CJPM.

In the end, it is a question of restoring the status of penal deprivation of liberty as the *ultima ratio*. Violence in prison is not inevitable. Neither is the construction of new prisons. Solutions do exist to calm interpersonal relations between prison staff (in the broadest sense, including all the partner professions concerned) and prisoners and, in the same sense, between fellow inmates. Without neglecting the better working conditions thus offered to the staff, who all too often suffer burnout or resign. Not to mention the substantial savings that would be made to meet the needs of the open environment, in particular. To paraphrase Seneca, it is not because things are difficult that we do not dare—it is because we do not dare that they are difficult.

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