

The recovery of the offender for society¹

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Abstract:

In October 2011, the terrorist organization ETA announced a definitive cease of fire. Just a few months before that, restorative justice experiences had started between imprisoned former ETA members and victims of terrorism along with co-existence workshops in the Nanclares prison, trying to heal wounds in the aftermath of political violence. Although they are mainly private and personal experiences, with emotional effects on the participants in the encounters, they may also facilitate projects of wider social reconciliation. This article points out the lessons we have learned during these experiences as far as ex-ETA militants are concerned and the potentiality of these restorative justice practices for active responsibility, individual healing, and reintegration in the community.

Keywords: Restorative justice, terrorism, Basque Country, reconciliation, recovery of the offender, mediation

I. Introduction: Our experience in the Basque country

This article shares the reflections and learnings from four different restorative practices we have had the privilege to develop since 2011. First, the experiences of individual restorative encounters between former members of the terrorist group ETA (Euskadi Ta Askatasuna; Basque Country and Freedom) or similar terrorist groups and victims of these terrorist organizations (Pascual, 2013) (Olalde, 2014). Second, the co-existence workshops that took place inside the Nanclares prison (Álava, Spain) in October and November of 2011 (Etxebarria, 2013). Third, in 2021 and 2022 with prisoners of the penitentiary facilities of Burgos and Logroño and victims of terrorism; and, currently, with restorative group panels with groups of victims and groups of offenders of political violence. We have participated in four different experiences, with many similarities, but also different difficulties, methodologies, and learnings.

After the encounters from 2011-2014 took place, we conducted an evaluation of the process from the point of view of both victimizers and victims. Some of them answered a simple questionnaire, some shortly and others more extensively. These answers and our observations and reflections allow us to extract the ideas expressed in this paper.

An extensive explanation of the experiences of 2011 and the following years can be found in the collective book *Los ojos del otro* (Pascual, 2013). These individual restorative encounters were conducted based on the principles of restorative justice, such as the

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principal and priority attention to the harm suffered by the victim, the responsibility for that harm, and the actions that must follow that responsibility to repair it (Zehr, 2002).

But there are important particularities. First, we are talking about severe crimes, mostly terrorist murders, bombings, or attempts to murder with very severe wounds. Second, the crimes were committed belonging to an organization that practiced violence motivated by political reasons with relevant support from a significant portion of society and political agents of the Basque Country. Third, the participating offenders had been convicted of severe prison sentences and had already served a very important part of the sentence. For the victims, it is also important to note that the victimization had occurred many years before.

Terrorism is here defined as “criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes” (*Resolution 73/211*, adopted by the General Assembly on 20 December 2018). In terrorist crimes collective implications can be found that cannot be found in the usual micro-level territory of restorative justice.

These special characteristics have important consequences for the methodology, the significance of the process, and the outcomes of the restorative process. On one hand, for example, this organizational characteristic has allowed the offenders to assume responsibility for all the crimes committed by the whole organization. Linked with this, it has given great meaning to encounters held by victims of the organization with former members with whom they were not directly related as victims or keen of the victim murdered. And, on the other hand, this has made it possible that the restorative outcomes of the process transcend into a transforming response in a collective instance, beyond the private dimensions of crime (Zernova, 2017), without, of course, devaluating the private, personal, and emotional positive outcomes of an individual restorative encounter.

It is also our experience that restorative-focused tools help reintegrate former radicalized individuals into the community, and that more generally, these tools contribute to the restoration of the community and wider society in the deradicalization context. Research and practice show that restorative justice is also successful in complex and serious violent crimes (Biffi, 2021).

ETA was an armed Basque Marxist separatist organization in the Basque Country. Euskadi Ta Askatasuna (ETA), founded on 31 July 1959. It was set up by Basque students working on *Ekin* magazine, who were tired of the passive attitude of the leaders of the traditional nationalism embodied by the Basque Nationalist Party (PNV). From mid-sixties, it evolved into a paramilitary group engaged in a violent campaign of bombing, assassinations, and kidnappings throughout the Spanish territory and especially in the Southern Basque Country. Its goal was to gain independence for the Basque Country and install a Marxist socialist state.

After 60 years of violence for an independent socialist Basque country, *ETA militar* (Military ETA; the branch that defended violent methods) was dissolved on 3 May 2018. Although it was officially founded in 1959, nine years (1968) passed before ETA murdered for the first time. The victim was the armed Spanish policeman (*guardia civil*) José Antonio Pardines. In these six decades, ETA caused more than 800 fatalities

(Lafasye and Brochard, 2021), and thousands were wounded. The last murder perpetrated by ETA was the assassination of the French policeman Jean-Serge Sérin. Some studies talk about 829 killed; according to others, the number of victims is estimated at 856.

ETA was classified as a terrorist group. ETA was not the only terrorist organization; there were others as *Comandos Autónomos Anticapitalistas*, *Iraultza* or *Iparretarrak*, and within ETA there were factions, like “ETA militar” or “ETA político-militar”. Also, on the other side, there were also opposed terrorist extreme right-wing organizations like *Batallón Vasco Español*, *Triple A (Alianza Apostólica Anticomunista)* or the *Grupos Antiterroristas de Liberación (GAL)*. The last ones were parapolic groups, organized by the socialist government of Felipe González, that fought against separatist terrorism through a “dirty war” waged on both sides of the Spanish French border between 1983 y 1987.

There have been other restorative processes in the field of political violence, as the ones explained in “The encounter of encounters”; an idea brought up in 2019 after the International Criminal Justice Summer Course of the Criminal Justice Platform (Martín, A. – Rodríguez, M.P., 2019), (Varona, 2021) and (Biffi, 2021). Also, the experience narrated in “Caminares restaurativos en victimización grave” (Restorative walks in severe victimization) (Olalde, 2020).

II. THE INDIVIDUAL RESTORATIVE ENCOUNTERS

On October 20th, 2011, the last terrorist organization of the Basque Country, “ETA militar” announced a definitive cease of fire. Just a couple of years before that, the General Secretariat of Penitentiary Institutions (Secretaría General de Instituciones Penitenciarias) had started a different penitentiary policy regarding ETA prisoners (circa 700 at the time) called the “vía Nanclares”. Since 1989, Spanish governments pursued the policy of dispersal of ETA prisoners: inmates were spread around Spanish prisons². In 2009-2010 the socialist government of José Luis Rodríguez Zapatero reallocated the prisoners who had broken away from ETA to prisons nearer to the Basque Country. The most significant dissident members were allocated in the prison of Nanclares de Oca, thus the name *vía Naclares*. The so-called Nanclares group defined themselves as a “group of prisoners committed to the irreversible peace process”. They were around twenty prisoners who had distanced themselves from ETA, its ‘environment’, and criminal means, and who renounced the organization and violence publicly, wrote a letter expressing repudiation of their past terrorist activity, and some of them asking their victims for forgiveness, and accepted the responsibility to pay them civil compensation (Zernova 2017).

As narrated in *Los ojos del otro*, in 2010 some of these Nanclares inmates asked the Basque government’s Directorate for the Attention to Victims of Terrorism for an opportunity to meet their victims and ask for forgiveness. As a response to the petition, a

² This dispersion is going to end this year 2023. Only 5 prisoners are nowadays in prisons out of Euskadi (País Vasco, Basque Country) and Navarre. Around 164 prisoners are held in Basque Country and Navarre prisons. The 13 Prisoners in France are held mostly in Lannemezan, Departament Hautes-Pyrénées. <http://forosoziala.eus/files/posts/2023/44607c605a2bf2552cb58069bb30d657behatokia-2023-monografikoa-6-1-compressedpdf.pdf> .

Victim Offender Mediation Program was proposed to them, called Individual Restorative Encounters. Some of them accepted the program, and in 2011 eight individual restorative encounters took place conducted by the facilitator Esther Pascual, four before the summer and four after the summer. Others were carried out with the intervention of other facilitators of the team; some of them finished in 2012 and others could not end with an individual encounter after the new Spanish Government decided to not continue with these restorative experiences.

The encounters were celebrated between victims who were survivors of terrorist attacks or relatives of people murdered by ETA (or other similar organizations that are usually referred to with the inaccurate but generic accepted name of ETA) and these inmates (most of them inmates of the Nanclares prison, but there were also another imprisoned in Asturias and one on parole). The offenders in question were convicted and serving long prison sentences (up to 30 years) for assassinations, attempted assassinations, and kidnapping. Most of them had already spent at least twenty years in prison. Most of them had already expressed publicly their dissent to ETA.

Some of these encounters brought together victims and offenders from the same terrorist act³, but most of them were “indirect” because they involved meetings between victims and offenders from different attacks.

By restorative encounters we understand the dynamics of face-to-face interpersonal communication between the ex-ETA member and the direct or indirect victim, in a physically and emotionally safe environment, aided by a professional in restorative justice.

The principal tools are dialogue (the spoken word, and listening), and the necessary attitudes for it to be effective: empathy, respect, compassion, and humanity.

As said, the initiative started from the prisoners in the Nanclares prisoners, who asked to talk with victims of ETA, and the same happened ten years later, in the experience we carried out in Spanish prisons. In this case, the offenders participating were dissident convicted prisoners with long time served, the Victim-Offender Mediation Program had Governmental support (Basque and Spanish), and the political context was one of lack of violence. Their formal criminal Justice resolutions had already been given (convictions were being served), and they took place in a consolidated Democratic State, with very significant social and public acknowledgment to victims of ETA.

It is important to point out the specific characteristics of terrorist crimes in Euskadi. Such specificity makes it possible that “indirect encounters” (those that involve meetings between victims and offenders from different attacks) have a significant personal meaning. Also, that the individual restorative encounters, beyond the private dimensions, reach out to a social, collective, transformative outcome⁴. It is organized crime. It has a peculiarly public nature, in which the attack on the direct victims is intended to influence a (far) larger group of so-called vicarious victims (Pemberton, 2014). The criminal

³ It is publicly known that Maixabel Lasa met with two of the three ETA members that murdered her husband Juan María Jauregui. These cases are narrated in the film *Maixabel* (2021, directed by Iciar Bollain) and in the documentary *Zubiak* (Movistar 2019, directed by Jon Sistiaga and Alfonso Cortés-Cavanillas).

⁴ Zernova (2017) thinks otherwise, in my opinion mistakenly.

activities of ETA and other similar organizations received important social and political support from a very significant part of society and of the political agents; the social support to left-wing radical separatist political parties reached up to 20% in some elections. This leads to a collective responsibility: each member of the organization might probably acknowledge as own all the victims of the organization although they weren't the consequence of their own direct actions. For the victim, it is also meaningful to sit in front of a member of the organization which caused them so much harm, even if he was not the one that directly did the bombing or the murder⁵.

A common understanding of the existence of different truths of the same story is important in cases of violent extremism, as personal stories are influenced by additional sources such as the organized group, media, and politics (Biffi, 2021). Different truths are not excluded; they are accepted by victims as long as there is no ethical justification of the politically motivated victimization. On the contrary, they lead toward a new mutual understanding.

Of course, the encounter between a former member of ETA and a victim of ETA needs thorough and paused preparation (see Pascual Rodríguez, 2013). To ensure the success of the restorative justice process, good practice principles are required: voluntariness, preparation, and safety, among others. When based on these principles, restorative justice promises many opportunities for future application in P/CVE, in offender rehabilitation and in victims support (BIFI, 2021). Once the parties agree to participate in a restorative justice process, much time is dedicated to preparing them, understanding their needs, and clarifying expectations.

III. The offenders before the encounters

Why would a former member of a terrorist group want to dialogue with one of their victims or a victim of the organization? What would the victimizer expect to obtain from that encounter? What could motivate the offender to sit in front of a person that probably hates them? What fears will they have to face before the encounter?

Their reasons for taking part in restorative encounters were largely altruistic and included helping victims, asking for forgiveness, serving as an example for others, and contributing towards the construction of peace in the Basque country (Pascual Rodríguez, 2013).

It was mentioned by them during the preparation that they sought to contribute to peace after the political violence ceased, to be able to give answers to what they needed, and to be able to make reparations to some extent; some of them expressed a personal need stemming from remorse and guilt.

It is important to remark that usually victimizers feel and express a “debt” to the victims and to society. They are aware of the harm caused to individuals, individual victims, but also to the whole society, to the community. It is remarkable how they feel and express that they owe something to the victim with whom they will meet and dialogue in the

⁵ Izco and Matanzas (2022), on the contrary, think that these would be an instrumental use of the victim for the purpose of rehabilitating the incarcerated offender.

immediate future. They hold a debt of sincerity. They are prepared and willing to answer any questions posed by the victim. Maybe they cannot understand fully why a victim might want to dialogue with them about their victimization; maybe they cannot understand completely the reason behind some of the requested information, but they feel obliged to answer as sincerely as possible.

Another important issue before the encounter, during the preparation, is to know what the offender thinks about their past violent activity. Responsibility and understanding the harm done and one's own responsibility is a dynamic process that will evolve. But at least from the beginning, there must be some kind of ethical sense of responsibility in the offender. Here emerges the concept of repentance, regret, and remorse. This last one is a difficult word, a difficult concept. It can evoke positive emotions, but also negative ones. Some participants reject the word due to some of its implications. It must not be an obstacle to continue to walk the restorative path undertaken. On the horizon the words "I wish wouldn't have happened; I wish I hadn't done this" will be healing ones for the victim and for the offender.

It is clear that their past criminal actions are linked to an explanation to why they entered ETA knowing for sure that someday they would have to kill or die, but the thin border between explanation and justification must be observed. Trespassing this line could result in revictimization and new harm to the victims.

Attitudes also change. In 2011 the offenders who participated in restorative encounters parted from a critical position regarding their own past actions: they were dissidents and had abandoned and been expelled from the organization. They were free of some bonds and were free from the pressure of the group of other prisoners still loyal to ETA. In 2021 and nowadays, the situation is different. The restorative path is being offered to all prisoners who are former members of ETA (ETA has not existed since 2018 when it dissolved itself). We must work in a new way, but some kind of ethical sense of responsibility in the offender is unwavering.

Another important issue at the beginning of the process is the assumption that no direct prison benefits would be granted for participation in the restorative encounters. This was strongly pursued by the victims, as an assurance that the motivations of the victimizers weren't only or principally to obtain prison benefits.

The question of whether former terrorists should receive prison benefits for participating in these programs is a complex and controversial issue. While some people argue that providing benefits such as early release, reduced sentences, or other incentives can encourage terrorists to renounce violence and participate in rehabilitation programs, others argue that providing benefits can send the wrong message and undermine the principle of justice and accountability.

On one hand, some experts argue that offering prison benefits can provide an incentive for former terrorists to participate in rehabilitation programs and renounce violence. Such programs may include counseling, education, job training, and other interventions that can help individuals reintegrate into society and avoid reoffending. The prospect of early release or reduced sentences can provide a powerful incentive for individuals to engage in these programs and take steps toward rehabilitation and reintegration.

On the other hand, critics argue that offering benefits to former terrorists can send the wrong message and undermine the principle of justice and accountability. Some argue that terrorism is a serious crime that requires punishment and deterrence and that providing benefits can send the message that terrorists can escape justice by simply renouncing violence. Others argue that providing benefits can create resentment and mistrust among victims and their families, who may feel that the offenders are receiving special treatment or are being rewarded for their crimes.

Ultimately, any decision to grant benefits should be made not directly to reward participation, but to respond as commanded by the law to the personal evolution of the convict regarding the lawful requirements set up by the law to enjoy prison benefits (see Maculan, 2021 and Gil, 2021).

IV. Potential benefits for the offenders

Acquiring real knowledge about the victimization, the harm, that a victim has suffered is maybe the most significant outcome of the restorative encounter. Probably the offender can imagine it, maybe they have read something or heard something, but, in my personal experience, hearing it face to face, looking in the victim's eyes, seeing the expressions on the face, learning about the personal suffering, the families' hurt directly expressed "in the first person", is the most transforming input from the encounter.

There are many consequences of a terrorist action that one cannot imagine. For the wounded and the relatives of the murdered person the harm is deep and extensive; for the victimizer hearing it is a transforming experience. From there, a new bond of empathy and respect is born.

This happened also in the Co-existence workshops⁶. In October 2011, in one of the sessions, two sons of men murdered by ETA (or the similar group Comandos Autónomos Anticapitalistas), Jaime Arrese and Iñaki García-Arrizabalaga, spoke in the prison of Nanclares de la Oca to a group of ten former members of ETA, at that time expelled from the organization. A clear personal transformation could be observed in some of the participating prisoners, reinforcing deeply their firm will to repair the harm caused to the victims of ETA.

This way the restorative approach helps the offender to advance in the process to take on responsibility in a deep manner. Restorative justice may facilitate projects of political reconciliation by calling upon wrongdoers to acknowledge the pain and injustice they have caused, offering recognition of victim suffering, and starting the process of building bridges between deeply divided sectors of society (Zernova, 2017). It is not enough just to acknowledge the pain caused, but its injustice must be recognized; without giving the an ethical meaning to the admission, it cannot plant a seed for wider social and political reconciliation.

⁶ See in Etxebarria, 2013. Positively valued by Zernova, 2017.

Some of them have experienced a transition from being heroes to acknowledging themselves as plain murderers⁷. Entering ETA at a young age is lived as taking a step toward what was thought as a very strong commitment to “your country and your people”, with the political aim that inspired the violence, as being a hero for your supporting community. When political legitimation and justification disappear, one discovers oneself as only someone who has inflicted pain and caused irremediable harm. As noted in Etxebarria (2013), the moral issue is the one expressed by Sebastian Castellio which Stefan Zweig (1951) quoted: “To kill a human being is not to defend a doctrine; it is to kill a human being”. It is an uncertain journey that requires courage.

The process of beginning a journey that leads toward the dialogic encounter with a victim of their own actions or of the organization can help recover self-esteem and a sense of dignity and humanity that was broken by the awareness of the futility and the injustice of the crime; that murder was not a fatality, death was not a price to pay for a better future, casualties in war; murder was an unfair decision, a wrong done to a person, but also, in this type of crimes with collective implications, to the whole community.

The offenders through this process can get rid of the “weight on their conscience”, and it can also lead to a transformation of the link between victim and offender. On many occasions, victims (wounded or kin of the murdered) establish a link with the offender: they follow their trials; they seek information about the prison in they are serving their sentences; they want to know about what they think and if they have ethically evolved. Sometimes the link is tainted with hatred, others with hope. Also, it is often observed that some of the offenders often think about their victims during imprisonment (at other times of imprisonment, on the contrary, they try to avoid these thoughts).

A restorative process followed accordingly to the restorative values and principles produces a strong new link, this time unquestionably positive. And many times, this new meaning of the link may lead to even turn the past offender into a peace agent, a peace builder (Mate, 2008)⁸. The restorative justice model focuses on the ability of offenders to make a change and repair the harm done, taking responsibility and being proactive in giving a new purpose to their lives (Biffi, 2021).

Although this happens in private, we believe, and the offenders and victims believe that it is a step toward “starting the process of building bridges between deeply divided sectors of society”⁹.

Even though Zernova concludes that the individual restorative encounters of 2011 contain a danger, that they shift the focus and that social reconciliation is unlikely, we believe that these and other restorative practices have the potential to heal social and political fractures, and the experience of the last 12 years and the current paths opened in the

⁷ Process brilliantly reflected by Albert Camus in the play *Les Justes* of 1950, based on the true story of a group of Russian Socialist-Revolutionaries who assassinated the Grand Duke Sergei Alexandrovich in 1905, and explores the moral issues associated with murder and terrorism.

⁸ About the discourse of peace, and the discourse of reconciliation in Mate, see Gan-Krzywoszynska, K. – Lesniewski, P. (2013)

⁹ As said by Zernova (2017).

Basque penitentiary system in this field show otherwise. In my view, her mistake is to assume a false premise: that we are in a transitional setting where multidirectional violence has been executed. It is true that in the last 60 years in Euskadi and in Spain there have been multiple acts of violence, that there have been different victimizations, that there has been a criminal dictator, torture, police violence, and governmentally patronized terrorism, but she lacks to acknowledge that in 2010 Spain had already had 30 years of democracy and that the only remaining terrorist group in all Europe was ETA.

Biffi (2021) says:

As restorative justice aims at bringing together the individuals involved in and harmed by an offense, it was important to focus on the effects of the conflict at the micro-level, while keeping an eye on the bigger picture, including the macro-level aspects of the conflict (p. 20).

To focus on the individuals does not mean that the reality outside is being ignored. It is present in the dialogue between the parties. It is just a decision made by the parties to enable them to face the aspects of the harm done by the victimizer to the victim and to the community.

In the encounter, offender and victim are making memories, bringing the past to the present and giving it a new meaning, which is needed for a fair future. It is precisely the offender the one that can give the strongest message against the legitimization of political violence¹⁰.

The offender can give some answers needed for closure to the mourning that only the perpetrator can provide. In some way, this is perceived as a payment of that debt the victimizer owes to the victims.

The offender can provide a double reparation:

- To personal harm: giving information and truth, helping to heal emotional wounds, helping to “understand” what and why it happened, showing compassion, wishing it would never have happened.
- To political harm: giving new meaning to the murder (wrongfulness), rebuilding the victim’s place in society as a citizen, assuming that using death for a political purpose was wrong, and committing to never let it happen again.

We do not intend to say that these individual encounters may heal all the wounds inflicted in society by a complex phenomenon, but we firmly believe that these individual encounters are likely to contribute to social reconciliation. Other collective restorative practices like the panels that are currently happening in the Basque Country, restorative circles, and other restorative practices will be needed; not only those focused on the

¹⁰ As García-Arrizabalaga, Rodríguez and Ubani (2022) show, this is still very important for our society, specially among the young people, and most of all regarding those who identify themselves as only Basque.

victimization ETA caused, but also, as already done in some of the experiences referred to at the beginning, related to torture or state terrorism.

V. Conclusions

As Galo Bilbao (2019) has written, the possibility of a satisfactory response to the conciliation between the recovery of victims and offenders will only be possible to the extent that the current model of punitive justice is complemented by the paradigm of so-called restorative justice. Therefore, I understand that social reintegration and 'restoration' should constitute one of the key vectors of prison policy in relation to prisoners for terrorist crimes, also as part of a policy for truth, memory, and coexistence.

Restorative justice in the context of terrorist victimization can take several forms. One approach is victim-offender mediation, where victims of terrorism have the opportunity to meet with the offender or their representatives in a safe and controlled environment to discuss the harm caused by the terrorist act and to seek understanding, acknowledgment, and apology. This approach can provide an opportunity for victims to express their feelings and gain a sense of closure, while also giving offenders the opportunity to take responsibility for their actions and to make amends.

Another approach is to involve the wider community in the restorative justice process. This can include community meetings, healing circles, or other forms of group dialogue where community members can come together to share their experiences, express their emotions, and seek support from one another.

Restorative justice in the context of terrorist victimization can be challenging, as it requires balancing the needs of victims with the need for justice and accountability. It is important to ensure that the restorative justice process is voluntary, safe, and respectful and that victims are given the support they need to participate fully in the process. It is also important to ensure that the process does not undermine the rule of law, and that offenders are held accountable for their actions through appropriate legal channels.

Overall, restorative justice can be a valuable approach in addressing the harm caused by terrorist victimization, promoting healing and reconciliation, and strengthening the resilience of affected communities.

The concept of "recovery of the offender for society", coined by Mate (2008), refers to the recovery for the coexistence of a citizen self-excluded from it by himself and subsequently by the legitimate punishment imposed by the State, and to the extent that the convicted person reintegrates; that is, returns to society in conditions of not committing crime, and even more, if he does so with a restorative discourse. If he does so with a self-critical discourse, acknowledging the harm caused and delegitimizing his own past violence and that of the organization to which he belonged, he actively acts to prevent the perpetuation of violence and becomes what Reyes Mate calls an "agent of peace". Therefore, they can contribute decisively to the ethical recovery of coexistence and the establishment of a fair recount of violence.

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