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The challenge of a face-to-face meeting: when offenders meet their victims during mediation

Anna Meléndez

Anna Meléndez is a Post-Doctoral researcher and lecturer in Criminology at Universitat Autònoma de Barcelona, Faculty of Law (Spain). Anna.melendez@uab.cat

Abstract

Meeting the other face-to-face can be a challenging experience for both, victim and offender. This article focuses on the analysis of the mediation process in order to evaluate three of the effectiveness indicators of restorative practices-, such meeting face to face, participation and communication between the parties. Quantitative and qualitative methodology have been used, consisting in non-participant observation of the face-to-face and indirect meetings (12)[1]; post-test questionnaires (40) completed by the offenders after mediation, and finally, a post-mediation interview (12) six months later. From the results, it was possible to acknowledge how they felt and what meeting their victims had meant for them, as well as it was possible to evaluate participation and communication between parties during and after their meeting. One of the aims was to find out whether offenders were able to understand the impact of the offence on the victims after having listened to them. Another aim was to identify a positive movement or mutual understanding between victims and offenders. Finally, another purpose was rating and analysing levels of participation and quality of communication. The outcomes can be globally seen as somewhat positive because almost half of the sample were able to understand their victims after having spoken with them.

Keywords

Restorative justice, Victim-Offender Mediation, face-to-face meeting, participation, communication

Resumen

Un encuentro cara a cara puede resultar ser un reto para ambos, víctima e infractor.

Este artículo se centra en el análisis del proceso de mediación con el fin de evaluar tres indicadores relativos a la efectividad de las prácticas restaurativas: el encuentro

1 40 observations were undertaken, however for the purpose of this article are only presented 12 of them, corresponiding with the 12 interviews also commented.

entre las partes, la participación de las mismas y el proceso de comunicación entre ellas. Para llevarlo a cabo se ha utilizado metodología cualitativa y cuantitativa, consistente en: observaciones de los encuentros de mediación directa/indirecta (12); cuestionarios post-test completados por los infractores después de la mediación (40); y entrevistas realizadas seis meses después de la mediación (12). De los resultados, fue posible conocer como se sintieron los infractores después de encontrarse con sus víctimas y qué significó encontrarse con ellas. Así mismo, fue posible evaluar la participación y comunicación entre las partes durante y después del encuentro. Uno de los objetivos era comprobar si los infractores habían sido capaces de comprender el impacto del delito después de escuchar a sus víctimas. Otro de los objetivos consistió en graduar y analizar los niveles de participación y la calidad de comunicación de las partes. Los resultados pueden ser interpretados de forma positiva en su globalidad, pues casi la mitad de los infractores fueron capaces de comprender a sus víctimas después de haber hablado con ellas.

Palabras clave

Justicia restaurativa, Mediación Penal, encuentros cara a cara, participación, comunicación.

1. Introduction. The restorative process

A restorative process is defined for the purposes of this article as any process in which the victim and the offender affected by an offence participate together actively in the resolution of matters arising from the offending behaviour, with the help of an impartial and trained mediator. The impartiality of the facilitators is intrinsic to restorative justice (Shapland et al., 2011). Restorative justice is an umbrella term to describe several programmes whose view of crime and the response to crime are based on four fundamental ideals: individualisation, reparation, reintegration and participation (Gerkin, 2009; Roche, 2003). Moreover Van Camp (2017) add some other important elements emerging from a restorative experience, such as the fact of creating a positive attitude towards human beings; strengthen the self; sharing sings of remorse and improve fairness perception.

The present research focuses on a mediation programme for adults in Catalonia and on non-serious offences. Mediation is a problem-solving intervention that emphasises the dialogue between victim and offender in order to work out a solution that can redress and repair the harm caused with the help of a mediator (Aertsen & Peters, 1998). Bazemore and Umbreit (2001) have listed the aims of victim-offender mediation and included three basic elements: first, supporting victims by guaranteeing voluntary participation and safety; second, enabling offenders to learn about the impact of their antisocial behaviour in order to accept accountability and finally, to provide the parties –victim and offender– with the possibility of devising a plan to repair the damage caused. In victim-offender mediation parties establish a dialogue with the help of a neutral mediator (Aertsen, Mackay, Pilikan, Willemsens, & Wright, 2004).

Restorative programmes use restorative processes to achieve restorative outcomes. Therefore, they focus on accountability, obligations and the needs of all parties through their active participation and through the use of dialogue, the main concern of which is to repair the damage (Dandurand & Griffiths, 2006; UNODC, 2020).

From the restorative justice perspective, an effective process for the resolution of conflicts and the reparation of harm should be egalitarian, meaning that everyone should have an equal voice, and that participation in it should be voluntary. Furthermore, it should involve all the interested parties and be safe for participants. It is also desirable that it be clear and understandable, with achievable aims, condemn the offending behaviour, produce behavioural changes, focus on repair of the harm and provide opportunities for reintegration and learning. It also needs to use consensus-based decision making and include the monitoring of agreements and the evaluation of outcomes (Johnstone and Van Ness, 2007a). The measures cited in the literature regarding effectiveness are the following: satisfaction of the participants, reaching agreements, reduction of recidivism, community involvement, participation rates, individual change, the restorative capacity of the programme, and the cost of the process (Daly, 2000; Dandurand & Griffiths, 2006; Dignan, 2005; Kirkward, 2010; Latimer et al., 2005; Maxwell, et al., 2004; Miers, 2004; Presser & Van Voorhis, 2002; Roberts 2010; Shapland et al., 2007; Sherman et al., 2000; Soria et al., 2007; Varona, 2008). Most of the previous indicators have been evaluated in the research where the results presented in this article belong to, which focuses on offender follow-up (Meléndez, 2015). For this reason, those indicators focusing only on victims are not included. Research results have shown that restorative justice can help victims to heal, reduce anger and fear, and increase sympathy for the offender (Kenney & Clairmont, 2009; Bolívar, 2010; Tamarit, 2013; Van Camp & Wemmer, 2013; Van Camp, 2017). According to Van Camp (2017), victims not only cared about themselves, but also about the other: did take part in the process to deal with their own personal needs, as well as they showed some interest in offenders rehabilitation, which included prosocial purposes. Meeting the other face to face can be a challenging experience for both victim and offender. The post-test questionnaires completed by the offenders after mediation included some questions about feelings, attitudes and perceptions related to meeting the person they had injured. It was possible to analyse how they felt and what meeting their victims had meant for them.

This article focuses on the analysis of the mediation process in order to evaluate three effectiveness indicators of restorative practices-, such meeting face to face, participation and communication between the parties.

Firstly, face-to-face meetings in restorative justice involves direct deliberation between those affected by a conflict (Sherman & Strang, 2007). Achieving the full potential of restorative justice includes facilitating communication,

enabling offenders to think about their criminogenic needs and focus on the future. All these elements are more easily achieved in a face-to-face meeting than through indirect mediation. The results of an evaluation in England and Wales (Meléndez, 2015; Shapland et al., 2007) showed that in direct mediation communication was reported to be an important factor and that the skills of mediators were rated highly. While the same evaluation reported a positive view of indirect mediation in terms of the process itself and the helpfulness of the mediators, it also showed that this type of mediation involved far less communication due to the absence of the face-to-face meeting. This fact may have left the participants rather unsure as to what was happening. Moreover, indirect mediation makes it difficult to include future-orientated matters and sometimes makes it harder to reach outcome agreements. Although we cannot state categorically that direct mediation is superior to indirect mediation, research (Shapland et al., 2007) has found that almost none of those who had experienced direct mediation regretted it. It has also been found that indirect mediation is associated with a lower level of satisfaction on the part of victims, but this has not been evaluated in this study.

Secondly, according to Gerkin (2009) participation can be classified in three different levels– high, medium and low – based on the contributions of the parties observed during the interaction between them at the meetings. Participation is linked to the idea of requiring offenders to share their experiences with others, which might deter them from engaging in the same behaviour in the future (Karp, 2001; Karp, Sweet, Kirshenbaum, & Bazemore, 2004). Moreover, a restorative justice process let victims obtain restoration, redress and closure according to many academics (Bolívar, 2010; Daly, 2002; Umbreit, 2001; Umbreit et al., 2001); as well as it would allow them to recover from the consequences of the offence, as the process may help to cover their needs (Zehr, 2005). It must be said that low levels of participation make it difficult to achieve the aims of empowering, recognising, repairing the harm, meeting needs and reintegrating the participants (Gerkin, 2009).

Finally, communication is one of the most frequently cited goals in a direct mediation process. Shapland and colleagues (2011) have identified some elements that should be present in fair communication, such as being able to express one's own point of view, feeling that one is listened to and understanding what the other party has said. Research in restorative justice (Daly, 2003; Shapland, et al., 2007; Sherman, et al., 2000) has found that offenders in general had the feeling that they had said everything they needed to. In his study, Tamarit (2013) found that victims expressed their opinions, felt listened to, and added that communication made them active participants in the management of their own conflicts. It has also been stated that when facilitators were perceived as more dominant, as was usual in the case of young people, offenders tend-

ed to participate less than when they were seen only as impartial moderators (Shapland, et al., 2011). Communication also has to do with the idea of having adequate information as well as with feeling respected and treated fairly by the other parties (Shapland, 2011; Tamarit, 2013).

2. Methodology

Research Design

The design of the research -the contents of this article belongs to wider research- uses a model inspired in restorative justice (Shapland et al., 2007) and desistance research (Cid & Marti, 2012). It is developed in three phases and include qualitative and quantitative research methods. The first phase occurs at the beginning of the process (pre-questionnaire-118-), which is not included in this article; the second involves monitoring the process from beginning to end. During direct mediation (when victim and offender met together with a mediator) non-participant observation -40- [2]was carried out, in which victim and offender met together with one mediator; and the third requires a post-analysis of the process (post-questionnaire-40-), which includes a narrative interview (12) occurring six months later[3] with the offenders who had been observed during the direct mediation.

Sample

The cases were selected on the basis of the general conditions for taking part in the first stage of the research and the sample was non-representative. The main requirement was having started the Catalan Mediation Programme. Data for the study were collected from mediations held in some of the Catalan Justice Department criminal courts in the province of Barcelona, where the mediation programme was developed

Participant description

Participants were adult men and women between the ages of 18 and 70,. The offences involved were non-serious offences of violence, shoplifting, public order offences and property offences involving personal victims or companies such as stores.

2 For the purose of this ariticle only 12 observations have been inluded, which are the same participants interviewed.

3 Sample varies due to difficulties to have access to the participants, being very reduced in the last part (interview). However, a wide variety of results have been found.

Data collection and analysis

The data collection and analysis is both qualitative and quantitative. The quantitative component focuses on the descriptive results of the 40 post-questionnaires that the offenders answered after mediation. The qualitative component focuses on the observation of forty different mediation sessions of the Catalan victim-offender mediation programme. From these forty cases, twelve observations were analysed, according to the twelve offenders that were interviewed once the mediation had ended and the interviews were subsequently analysed. The observation script, post-questionnaires and interviews included a specific section focusing in effectiveness of restorative justice - including some of the most relevant indicators described above; and also included participation and communication questions or observational elements, such level of parties participation, based on (Gerkin.2009)[4].

3. Results

Results are presented in two parts- when data is available-: firstly every variable are analised separately, offenders' (40) perceptions after mediation. This part is named 'general data'; and finally, results along the process of the case studies are compared, using observation results and offenders narratives expressed during the interview. This part can be identified as 'case studies'.

For the purpose of this article results are presented according to the three indicators analysed. Firstly, the results from the face-to-face meetings; secondly, those obtained for participation; and finally results showing the results from communication processes.

3.1. Meeting the other face to face

3.1.1. General Data

This section includes those concerned with analysing first of all whether the victims were effective in describing the offence and its impact, taking into account the indicators of restorativeness established in the literature. A second aim was to find out whether the offenders were able to understand the impact of the offence on the victims after having listened to them; the final aim was to identify a pos-

4 For more information about the instruments of data collections see (Meléndez, 2015), as they are included in the annexes.

itive movement or mutual understanding between victims and offenders. With regard to understanding – being able to understand how the other parties felt after having dialogued with them – some were not able to comprehend, while others were able, after having interacted with the victim, to understand how they felt after having been harmed. These outcomes can be seen as somewhat positive because almost half of the sample were able to understand their victims after having spoken with them. However, there were still some who were doubtful and others unable to comprehend how the other party felt.

Table 1: Understanding each other.

	Frequency	Percent
Strongly disagree	10	25.0
Disagree	5	12.5
Neither agree nor disagree	6	15.0
Agree	15	37.5
Strongly agree	4	10.0
Total	**40**	**100.0**

Finally, the offenders were asked to guess whether the victims, after having met them, had changed the opinion they held before the mediation. Of course, it was only the offenders' perceptions, but the literature has highlighted the importance of this perception with regard to its impact on offenders' future behaviour. Forty-five percent of the offenders did not think their victims had changed their opinions either way. However, some had the impression, after having exchanged thoughts, opinion and feelings, that the victims might have changed their views. International evaluation has already highlighted the importance of face-to-face meetings for a positive outcome with regard to change perceptions. This might depend on how the communication between the parties had gone and, in general, what kind of interaction they were able to have. These results show that only a small proportion of the offenders were convinced that the interaction had helped to change the victim's perceptions of them.

Table 2: Victims changed opinion about offenders.

	Frequency	Percent
Strongly disagree	9	22.5
Disagree	9	22.5
Neither agree nor disagree	13	32.5
Agree	8	20.0
Strongly agree	1	2.5
Total	**40**	**100.0**

The results of this research differ somewhat from those obtained in other studies on this topic, which were more positive (Shapland et al., 2011). The first thing that needs to be pointed out is that in some of the cases in the sample, victim and offender knew each other because they were family, friends or neighbours. In those cases they already had a previous image of the offender, which may have been more based on reality than stereotyped. Victim and offender in such cases belonged to the same environment, in which the conflicts between them had existed for a long time.

However, this does not mean that in these cases the parties did not find it very difficult to talk to each other or that they did not have a stereotyped image of the other at all. Both aspects –the lasting conflict and the image of the other party– make it more difficult for the parties to be able to change their perceptions than in cases of mediation among unknown parties.

Nonetheless, it has to be mentioned that in some cases even when the parties knew each other before and the conflict had already previously developed, they were able to understand each other and even to change the way they saw each other. A recent study carried out in Catalonia (Tamarit, 2013) shows that victims were very predisposed to mediation when the conflicts were between relatives or people they knew; however, they found it more difficult to proceed because they were more affected psychologically and emotionally.

3.1.2. Case Studies

Having dealt with some of the questions related to changing perceptions using the 40 cases, I turn now to a further examination through the case studies of the actual reactions of the parties while interacting with each other.

a) Understanding and perception between known parties

In 8 cases the offenders had a previous relationship with the other parties. Some of these showed understanding towards their victims, while others did not change their perception of the injured parties. Moreover, the observations did bear out the idea that victims changed their opinions about the offenders when they previously knew each other: this was not the case. Two of the cases involved indirect mediations and it was not possible to meet the victims and see how they reacted in front of their offenders. However, in the 5 remaining cases where the parties met face to face, the results were no more positive: all the victims sounded very sceptical when talking about their offenders. Principally, they tended to refer to their common background as full of problems that had never been solved in the past.

Offenders showing understanding

Jose was both offender and victim and was one of those who already knew the other party, Pau; it was not the first time the two of them had got into trouble. Jose appeared to be empathic and understanding towards the other party. He highlighted the importance that listening to the other party had had during the mediation, as well as for his future. He was able to listen to and understand the other and he said that it had helped him to act in an understanding way in his daily life. He admitted having a somewhat changed perception of Pau.

> Quote 1[5]
>
> "(...) Offender: I liked it because it was an option that they allowed you to, you know, you ain´t going straight to trial, first let's see if we can fix it. I liked it quite a lot.
>
> Interviewer: You liked that idea?
>
> Offender: Yeah, I liked it a lot, seriously! And in the end I got to understand the guy! That's what I liked the most. This is something that should be done more often.
>
> **Interviewer: And, did you understand…once you listened to the guy, did you understand how he felt?**
>
> Offender: Yeah, I also learned to listen to others.
>
> **Interviewer: You learned how to listen?**
>
> Offender: Yeah, because I´m the type of person who just listens to himself, and I have to go first, and me! And no, you also have to listen to others!
>
> **Interviewer: And you learned this in mediation?**
>
> Offender: Yeah, yeah, yeah! Since then I´m listening more to other people! (...)".
>
> Jose (C6). Interview six months later (victim-offender)

Pau was empathic towards Jose, but **he** did not change his perception of him. In his decision to choose mediation as the way to resolve their conflict, he had taken into account the friendship they used to share as well as the other party's personal and family situation. He understood Jose's previous situation even if he did not change the previous image he held of Jose's personality. From

5 In all the quotes offenders will be identified as "participants". The quotes try to keep oral conversation as it was during the interviews or during the observation. Therefore they will not be written in standard english, but keeping the slang when they use it. They were originally in Spanish or Catalan and they have been translated into English.

the interview, it can be said that in this case it was more the previous friendship they had that enabled Pau to be understanding rather than the interaction with Jose during the mediation itself.

> Quote 2
>
> **"(…) Interviewer: But you could have thrown a chair against him…?**
>
> Participant: Yeah, and beat him up...and...
>
> **Interviewer: But you didn´t do it!**
>
> Participant: No
>
> **Interviewer: Why not?**
>
> Participant: Because I've known him all my life, he's a friend, even if you do not like it...you cannot go that far!
>
> **Interviewer: You say cannot go that far, however, you ended up in Court!**
>
> Participant: Yeah, due to my frustration of not being able to hit him. Anger, mostly. I started mediation because I realised that it was not worth it, otherwise, I would have gone ahead!
>
> Interviewer: Tell me a bit more about this: what is it that motivates you to go to mediation?
>
> (...)
>
> Participant: That we were friends and this shouldn't have ended like this because of a few punches, that's it, really! Well, I do not know, that...and so he would withdraw his statement, right? That's basically why we went to mediation and that. Well, and the fact of being friends and all, I felt bad, they are also low on cash and if it would have been a fine for both we both end up losing out, and if only he gets fined than he loses out, you know? Then there are grudges and resentment...and it's not worth it!
>
> Interviewer: Do you think that mediation does not lead to grudges?
>
> Participant: A few, but not that many, you know? Now if we see each other on the street we say 'hey' and that's all, whereas if he had been fined perhaps he sees me on the street and again an argument (...)".
>
> Pau (C3). Interview six months later (victim-offender)

Offender did not change perception

Juan showed in the interview that nothing had changed since his meeting with his ex-wife, the actual victim, and he especially insisted on the victim's continuing addiction to alcohol. Juan described the conflict as something stuck in the past which had not changed over the last three years. Even though he had some

hope at the start of the mediation, in the following interview he only stressed how disappointed he was.

Quote 3

"(…) Interviewer: So tell me about this conflict between you and your ex wife.

Participant: Well, she has an alcohol problem, she's always had it and we've got to the point that both of us have said 'enough, I cannot put up with you'. We separated, did everything legally, but from then on she started to sue me and I started to do the same 'cause that was not normal.

Interviewer: How long have you been suing each other?

Participant: Well, she has been suing me since 2010, three years (...)".

Juan (C11). Interview six months later

Rosa reported that she had not felt comfortable during the meeting with her ex-husband, who was the injured party in this case. She explained what had happened during other meetings and said that she had been expecting the same negative attitude this time; his attitude indeed remained unchanged both during the meeting and after the mediation. Rosa emphasised how difficult it had been to resolve conflicts with the other party and she was very sceptical about the ability of mediation to deal with such long-standing problems.

Quote 4

"(…) Interviewer: The day that you had the joint meeting, you had to speak to your ex partner. What was your experience?

Participant: Well, I did not like it! The first thing I said to the mediator was that I had come for my children, ok? If he is gonna ask me whether I'm with someone, I'm getting up and leaving. I knew that for sure! (...) I'm here to talk about my children, whatever he does with his life is none of my business. I could care less! I said the exact same thing to the mediator in the first interview.

Interviewer: How was it when you two met up?

Participant: Bad, but I did not care because I did not even look at him!

Interviewer: Do you think it has helped in any way? Of what was said, do you think it has helped at all?

Participant: No! No. One thing is that they help us see the best way, but then, If I, for example, ask you for a favour and you do not give it to me, then we have not solved nothing. And the day he asks me for one, I will not give it to him either. It's a vicious circle! But listen, if we have not solved this in 22 years, you think that we are gonna solve it with a mediator? I'm just saying! But anyways, we're trying! (...)

Interviewer: Do you want to end with this dispute? Do you see yourself capable?

Participant: Yeah, but there are two of us. If I try from my side, but he puts obstacles then we ain't going nowhere!

Interviewer: Who could help you achieve this?

Participant: I do not know (...)".

Rosa (C7). Interview six months later

Fatima did not meet the other party; their mediation was indirect. During the last session with the mediator, Fatima predicted that the other party's future behaviour was based on her previous knowledge of her, without considering the possibility that she might adopt another attitude. This could be because they did not choose to meet each other face to face, which worked against a change of perception.

Quote 5

"(...) Mediator: Why do you think the other party reacted badly after seeing you at the market the day of the offence?

Participant: I do not know, but it's clear that she will deny that she provoked us. She will lie and will also decide.

Mediator: Do you think she may feel hurt?

Participant: No way! Maybe before the separation she may have felt this way, but not since three years ago!

Mediator: Not knowing the reasons why she reacted this way may cause that you have another conflict, perhaps?

Participant: The day of the trial, when it was suggested to go to mediation, she denied having any problem with us! (...)".

Fatima (C5). Observation last session with the mediator (indirect mediation)

Victim did not change opinion when the parties knew each other

In the case of Maria, both parties thought, after having met each other, that they felt better than before. However, the victim was doubtful about the words uttered by the offender because some important issues had not been dealt with and because the offender's attitude was not very convincing. Maria's victim did not change his opinion of her victim in the course of the meeting nor was he understanding towards her (victim). In fact, Maria was one of those offenders who attempted to turn the tables by claiming the victim was really the problem, which aroused the victim's anger and hostility.

Quote 6

"(...) Mediator: How did you feel? What was your experience?

Participant: I feel positive, wanting to work things out. We can talk things through. I think it's easy because we want to do this! I'm hopeful and I feel much more calm.

Victim: Before I was scared. Now working, much calmer. But you also need to acknowledge besides talking things through. I felt uneasy listening to her. However, I was able to listen which is something that we had never done before (…). I see and hear that Maria wants to work things out, but I think that that we have not touched on everything and this will not be solved until we discuss everything.

Mediator: What are you feeling?

Victim: I feel that this will not be resolved. This woman has put rubbish inside my mailbox; she messes up my doorstep; she threw a corrosive liquid to my door, wall and doormat. They throw oil and water on my side. I've got videos as proof. I think there are a few topics of conflict that need to be resolved. Plus, she is making up some stories in relation to assault, harassment, and threats to kill.

Mediator: Those are thoughts.

Victim: I feel disbelief, distrust. I'm not sure how this is going to end. I think, what does this have to do with me?

Mediator: But it does… (…)".

Maria (C4). Observation direct mediation

One of the ideas emerging from these results relates to the difficulty of changing perceptions when the parties knew each other as well as of dealing with long-standing problems in such cases. While it was easier to be understanding than to change perceptions, this was still difficult. What these outcomes suggest is that for people to be understanding and change their perceptions when they already know each other is a very challenging goal that requires time and good will on the part of both parties.

b) Understanding and changing perceptions when the parties were strangers

In the two cases where the victim was a stranger, the parties were able to adjust their images after the interaction. By gaining a better understanding of what had happened and the context surrounding the events at that time they were able to become more engaged with each other. In those two cases both offenders recognised having exhibited antisocial behaviour in the past, even though they did not really define themselves as offenders. Neither of them had a previous prison record.

Offender being empathic towards his victim

When Carlos met his victim face to face, he tried to be empathic towards him. The main problem was that he could not remember anything because of the effects of the alcohol that he had consumed. Even though he could not remember the events, he admitted the possibility that he had committed the offence and believed the victim's version.

> Quote 7
>
> **"(...) Mediator: How do you think you would have felt if it would have happened to you?**
>
> Participant: Bad. I would've sued him as well.
>
> Mediator: Now put yourself in his shoes. What would you do with someone that says he cannot remember? Can you imagine what he's thinking?
>
> Participant: Depends on him.
>
> **Mediator: No, it depends on both. Think about what you would need.**
>
> Participant: Well, I guess I would need to know his motive and receive an apology.
>
> **Mediator: Do you think you can tell him your motive?**
>
> Participant: No...I do not know...I guess I was angry! Maybe I thought something was going on which really was not and I jumped in.
>
> **Mediator: Did you rush? Did you jump in to defend someone else?**
>
> Participant: Yeah.
>
> **Mediator: And your apologies?**
>
> Participant: No...well, that I did not mean it...the least I can do is to apologise, the only thing is that I cannot remember (...)".
>
> Carlos (C10). Observation direct mediation

Victim changed opinion

Carlos's victim perceived listening to his offender as something positive because he felt he could better understand the situation as well as sort out some doubts he still had. The meeting allowed him to understand what had happened and why. After having heard that the offender was not able to remember anything that night, the victim could imagine how drunk the offender had been. Nonetheless, he stressed that Carlos had to understand that he was angry because of his violent and uncontrolled behaviour.

Quote 8

"(…) Mediator: Why did you agree to participate in mediation?

Victim: Because I liked what it was, the idea to be able to talk, to sort things out. Now, after hearing what he had to say I can understand more or less how he was. Well, the truth is that having some dude come up to you not knowing what he's doing and completely drunk, well, it's awful! (...)".

Victim (C10). Observation direct mediation

Victim did not change opinion

Jonathan's victim explained very clearly how he felt and what the impact of the offence was. The victim was also angered by the offender's attitude during the meeting because he did not want to give him any information about the other people involved in the fight, who had also caused harm to the victim. He brought up the costs incurred, the inconveniences suffered and the broader social impact of the offence, such as the problems he had getting on with his life.

Quote 9

"(...) Victim: Sorry, I'm really nervous, I feel very uncomfortable.

Mediator: How are you feeling now?

Victim: I still have bruises and injuries, but better.

Mediator: And with regard to your personal life?

Victim: I've gone back to doing some things.

Mediator: But have you lost the ability of doing things?

Victim: On a physical level, yeah, I cannot do many activities.

Participant: Well, (...) I cannot betray a friend.

Victim: The thing is that I reported that I had been assaulted by several people, however I was only able to identify one of them, you (referring to the offender). So how would we proceed? Of course, if you are not willing to give me their names, I'm not sure what this would be legally…a cover-up?

Mediator: Good question! Let me give you the number of Victim Support, or if you want I can check for you (…)".

Victim (C2). Observation direct mediation

In summary, meeting face to face did not have the same effect for all the participants involved in mediation. However, some general outcomes emerged from the analysis of the cases, which are commented on below. It was easier for the parties to understand each other, but it was difficult for them to change the

perception they had of the other. This was especially true of parties who had known each other before the offence because they were family, neighbours or friends.

3.2. Participation

3.2.1. General Data

In this study, I have classified the level of participation into three groups – high, medium and low – based on the contributions of the parties observed during the interaction between them at the meetings. The definitions of these three groups are based on the criteria that Gerkin (2009) used in his research.

A high level of participation was identified when the participants demonstrated conscious participation, focusing on the questions, maintaining eye contact and not only contributing often, but also providing information relevant to the conversation, as well as initiating and introducing topics. Medium level participation involved fewer contributions in terms of the length of the interventions and their content. In this group, the participants intervened more sporadically and tended to answer questions in limited detail. While they were not ready to start conversations, they did try to respond when asked. Finally, offenders identified as having a low level of participation hardly participated at all. They responded to questions with very little information and sometimes could not offer a substantial answer. Their attitude was passive; they tended to look out the window or keep their gaze fixed on the table, showing a lack of interest in the mediation.

Participation is one of the most important aspects evaluated in standardised observations in order to assess how the communicative process has gone. For this research project, the information was recorded on a specially designed schedule in which the level of participation observed was evaluated as high, medium or low according to the criteria described above.

As for the questions on the post-test questionnaire related specifically to participation during the mediation encounter, the offenders were asked whether they thought some of the participants should have participated more or less, Only one answered affirmatively for both and thought that someone should have participated less and let the other party be more active. In general terms, however, offenders felt that everybody had had the opportunity to participate under the same conditions, being all actively involved**.** In this case, the indicator of restorativeness was participation evaluated through active involvement in mediation, according to the offenders' perception**.**

Table 3: Offenders should have participated more.

	Frequency	Percent
Yes	1	2.5
No	39	97.5
Total	**40**	**100.0**

3.3. Communitacion

3.3.1. General Data

Some procedural indicators were identified, such as treatment and respect, as well as neutrality on the part of the mediator. It was possible to identify some indicators of restorativeness included in participation, such as the participants expressing themselves and having their say.

Most of the offenders appeared to have felt listened to and thought they had had their say during the mediation. Only a few had doubts as to whether they had really had the opportunity to express themselves. In some cases as well, the offenders noted that there had been something they had not said.

Table 4: Offender was listened to.

	Frequency	Percent
Neither agree nor disagree	2	5.0
Agree	14	35.0
Strongly agree	24	60.0
Total	**40**	**100.0**

Table 5: Offender had his say.

	Frequency	Percent
Neither agree nor disagree	3	7.5
Agree	14	35.0
Strongly agree	23	57.5
Total	**40**	**100.0**

Table 6: Something offender did not say.

	Frequency	Percent
Yes	8	20.0
No	32	80.0
Total	**40**	**100.0**

In terms of being respectful, all the offenders felt that the mediators had treated them correctly. However, when they were asked if they felt the victim had treated them with respect, the answers were somewhat different. A minority did not feel treated with respect, while the vast majority did. Feeling respected in general was a positive outcome because it is one of the main aims of a restorative justice process.

Table 7: Respected and treated respectfully by the victim.

	Frequency	Percent
Strongly disagree	2	5.0
Disagree	7	17.5
Neither agree nor disagree	4	10.0
Agree	10	25.0
Strongly agree	17	42.5
Total	**40**	**100.0**

Table 8: Respected and treated respectfully by the mediator.

	Frequency	Percent
Agree	11	27.5
Strongly agree	29	72.5
Total	**40**	**100.0**

Table 9: Respectful treatment in general.

	Frequency	Percent
Neither agree nor disagree	4	10.0
Agree	13	32.5
Strongly agree	23	57.5
Total	40	100.0

Table 10: Mediation taught offenders to appreciate other points of view.

	Frequency	Percent
Strongly disagree	4	10.0
Disagree	1	2.5
Neither agree nor disagree	8	20.0
Agree	22	55.0
Strongly agree	5	12.5
Total	**40**	**100.0**

In this study, the vast majority of the cases analysed the participants indicated that they had expressed all they needed to say. All of them felt respected and thought the process was fair.

3.3.2. Case studies

Observation in the Catalan Victim-Offender Mediation Programme showed that direct mediation sessions tended to be shorter than those evaluated in England and Wales (Shapland, et al., 2007). However, the difference was not great, and the average length of time was approximately 50 minutes.

Victim participation

Previous research (Gerkin, 2009) has shown that victim lecturing is a relevant indicator of the participation between the parties in the mediation. Sometimes this high level of participation can be elicited by mediators through the asking of further questions that encourage them to speak. In the present study, this type of victim can be clearly identified in cases 2 and 10.

There were no victims with a low level of participation. In general the victims were more actively involved than the offenders, who contributed very little and were categorised as having a low level of participation. In those cases, the level of participation of the victims was seen to be between medium and high. According to previous research (Gerkin, 2009), victims tended to show a higher level of participation during the meetings when there was a pre-existing relationship with their offender. This would apply to those cases in which the parties had known each other (and for a long time) before the mediation. However, in this study, having had some form of social relation prior to mediation did not appear to be a source of strong victim participation in all cases.

Offender participation

Most of the 12 offenders analysed here were placed in the medium and low participation category. These offenders tended to limit themselves to answering the questions asked and took very little initiative in starting conversations or changing topics. Some of them initially showed a low level of participation, looking out the window or staring at the table or the floor. However, as the meeting went on and they began to feel more comfortable, they moved up to a medium level. Most of them exhibited this tendency. It must be said that without participation, offenders are less likely to feel empowered and to identify their needs and thus have them addressed. In this sense, some authors would say that the process is not needs based (Gerkin, 2009).

In a few cases offenders were placed in the high participation category, but in those cases both parties were highly involved and had a previous relationship. In one case (C4) this equally and high level of involvement could perhaps be attributed to the technique the facilitators used, which guaranteed equality in all the interventions.

Overall, what can be said is that victims tended to participate more actively than offenders did. This can be seen as positive, as it shows that the victims felt comfortable while dialoguing with the offenders and that they were not frightened. However, the offenders should have been more involved- according to observation-. This disparity in participation did not depend on whether or not the parties were strangers, as the victims spoke more in both cases. One possible explanation for the medium or low level of participation on the part of the offenders could be their age. In some cases, the offenders were in their twenties and they may have had less oral ability and fewer strategies of self-expression, and indeed, they were not sufficiently empowered to participate[35].

In the following extract of a direct mediation between offender and victim, all the parties had their say and were listened to. The level of participation of the two parties was very similar.

Quote 10

"(...) Mediator: What would you ask him?

Victim: Why does he punch me all of a sudden?

Participant: I do not know...I saw two groups of people arguing. If I did all those things that he is saying, I'll probably end up in a bad way next time around. Worse. (The participant does not remember anything of what happened as a result of being highly intoxicated)

Mediator: Do you want to say anything else? [speaking to the participant]

Participant: That I'm sorry, again.

Mediator: And you, do you want to say anything else? Do you need anything else?

[speaking to the victim]

Victim: That he does not do it again because it could've been much worse. I need that he does not speak to me again and does not provoke me.

Mediator: Do you think you can reach this compromise? [referring to the participant]

Participant: Yeah. And let our friends know, as well. There ain't no more grudges(...)

Carlos (C10). Observation direct mediation

Differences between communication and participation

Regarding communication in direct mediation, the results showed that participants had been able to express their own point of view and felt listened to, as well as to understand what the other party had said. Overall, the communicative process was successful.

With respect to participation, even if the degree of participation was not the same in all the meetings or between the parties involved in the same session, all did participate, making comments, suggesting ideas or agreeing and disagreeing with what was going on during the dialogue. Communication between victim and offender was more difficult in indirect than in direct mediation sessions. In these cases the most important role of the facilitator was to pass on the information each party wanted to convey to the other. In these cases it was not possible to evaluate the level of participation.

3.4. Discussion and conclusions

With respect to restorativeness, the results of the Catalan Victim-Offender Mediation Programme for the forty participants were generally positive, but in some cases more so than in others. The indicators discussed in this section are meeting face-to face, participation and communication between the parties.

3.4.1. Meeting face-to-face

In this research the vast majority of the participants who engaged in mediation, direct or indirect, found it to be a good experience on the whole, one that allowed them to solve their problem and to reach a compromise.

Face-to-face encounters can allow parties to change perceptions. In my research, the results in this regard were varied. This aim was not achieved when the parties had a previous relationship that was usually linked to a previous long-term conflict. Knowing each other for a long time can complicate the change of the other party's perception, as he may hold a pre-formed image of the other. When the parties were strangers, a change in perception could be linked to a positive future projection of the other party.

Meeting face to face also allowed offenders to understand the other party better. A pre-existing relationship in this case might help one party to be more understanding of the other because he can take into consideration the other's context and not merely the specific moment of the offence. However, when parties were strangers, it was easier both to be understanding and to change one's perception.

The literature (Giordano et al.,2002, among others) has also found that face-to-face encounters can be also the occasion to confirm one's positive identity and for the offender to change the other party's perception of him. The participants in this research did not develop a criminal identity; there was no secondary deviance and they were therefore not in need of an identity transformation. Mediation provided a space where they reaffirmed their pro-social identity rather than change it from a negative to a positive one. In the terms of Giordano et al. (2002), mediation can be seen as a hook for change, ideal for reinforcing pro-social identity and behaviour for those without a criminal identity.

3.4.2. Participation

As for the questions on the post-test questionnaire related specifically to participation during the mediation encounter, the offenders were asked whether they thought some of the participants should have participated more or less. Only one answered affirmatively for both and thought that someone should have participated less and let the other party be more active. In general terms, however, offenders felt that everybody had had the opportunity to participate under the same conditions, being all actively involved**.** In this case, the indicator of restorativeness was participation evaluated through active involvement in mediation, according to the offenders' perception**.**

However, a low degree of participation cannot account for the group of offenders who thought that dialoguing could solve their conflicts. In general, they had the perception that they had participated a great deal and had been very involved, even if an external observer could not discern a high level of participation. A possible explanation for this result can be that they might not

be used to explaining their thoughts to other people or expressing their feelings in public. Nonetheless, they were able to explain themselves and express feelings in mediation, which may have represented a considerable challenge for them

3.4.3. Communication

Most of the offenders appeared to have felt listened to and thought they had had their say during the mediation. Only a few had doubts as to whether they had really had the opportunity to express themselves. In some cases as well, the offenders noted that there had been something they had not said.

Offenders were asked whether mediation had allowed them to appreciate other points of view, which referred essentially to those explanations and opinions given by their victims during the interaction or through indirect communication. Few offenders felt that it had not and some were unsure, but the vast majority affirm that mediation had indeed allowed them to appreciate other points of view.

An explanation of why some of them did not find that mediation permitted them to appreciate other points of view may lie in their low level of participation in the mediation encounters. It makes sense that someone who is not very active and involved will not be very open to getting other ideas from the other participants.

Overall, offenders claimed to be satisfied with their active participation throughout the process. However, based on the empirical outcomes from my observations, I would point out that it was difficult for participants to take the initiative to start a conversation and to speak on their own behalf. I would define their participation as medium or low in most cases. Offenders had their say, but in general were brief and did not give many details. Research has found that one of the reasons participants find it difficult to participate in mediation is that in modern societies there are social institutions responsible for dealing with the case. There is therefore no social need for parties to find a solution for their conflict (Tränkle, 2007). This traditional way of dealing with conflicts makes it more difficult for the participants to use their social abilities to negotiate, and they sometimes seek the mediator's help in order to participate or take decisions during the meetings.

In informal settings there is likely to be an unequal balance in power between the participants. My data did not show an evident imbalance in the vast majority of the cases, due to the structured dynamic of the sessions. Even though the sessions were informal, they also were highly organised and mediators clearly lay down the rules for the meetings. This leads to the debate on another issue: the directive role of mediators. However, it is also true that from

the observation during the meetings victims tended to show a medium-to-high level of participation and their interventions were longer and contributed more to the discussion, independently of whether they knew the offender or not.

The literature has highlighted the importance of storytelling in restorative justice processes, based on sharing life and offending experiences, as well as emotions and feelings, by dialoguing with the other (Hudson, 2003; Scheff & Retzinger, 1991). However, some studies have found that if there is too much discursive space, meetings can easily get out of hand (Tränkle, 2007). This is especially relevant in relational offences, where family or friends are involved. In my sample, most such cases involved neighbours, friends or family. While the conflicts tended to be more complex than when the parties did not know each other, in general the situation was not uncontrolled. Sometimes parties felt the need to talk about other issues related to the conflict, but not directly linked to the offence. When this occurred, the parties tended to justify their digression by saying it was a key element to understanding how and why they were in the present situation. In general, however, those meetings characterised by a great deal of discursive space did not get out of hand and it helped to set the context of the conflict. Only in one case were the limits overstepped and the main conflict became a secondary element. Generally, then, in this research the role of storytelling in the discursive space was positive, facilitating communication between the parties involved.

3.5. Final remarks and suggestions

The established format of direct mediation sessions guaranteed that parties spoke without interruptions about the conflict. They were able to ask questions and clarify the doubts they had. However, there were some very directive sessions where mediators tended to speak too much. Also, it appeared that victims were more active than offenders during the interaction. Victim participation can be seen as a positive result, but it needs to be more balanced with offenders' interventions in order to guarantee equal participation.

My only suggestions in terms of participation would be to empower and engage offenders more and try to reduce the mediators' interventions, perhaps changing the dynamics of the sessions by following a very general scheme – such as past, present and future – and ensuring that the meetings are not overly structured.

Finally, even if there is a need of engaging offenders, it has to be said that the participation of the victim and his presence matters. I would suggest making greater efforts to enlist the victims' participation – facilitating alternatives, providing them with sufficient and appropriate information and, of

course, ensuring good practices at all time. I would therefore suggest improving and promoting the use of direct mediation whenever warranted by the circumstances of the case and provided that victims' and offenders' needs can be guaranteed.

3.6. Limitations

There is a fundamental problem associated with qualitative research. The cases are reported to illustrate how offenders and victims met face-to-face and maintain a dialogue with each other, but in this study it cannot be determined the significance of any of these interactions. It would be interesting to compare the development and results of these interactions in future and similar researches and studies , in order to complement and diversify results.

Note

This article is part of a Doctoral Thesis posted in the institutional archives of Autonomous University of Barcelona. For further information about the research look at (Meléndez, 2015).

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