



Judicial Restorative Justice and Domestic Violence in Brazil: Setting Problems and Challenges from the Field

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Abstract

The solution of conflicts, cases of violence and harmful offences through alternatives to the penal system has been encouraged by Brazil's Conselho Nacional de Justiça/National Justice Council (CNJ) since 2010. However, empirical studies that assess the impact of restorative practices when applied to domestic violence cases are sparse because most of them tend to highlight the retributive model's insufficiency compared to the restorative model. In attempt to break away from that logic, the article analyses the insertion of practices of restorative justice regarding domestic violence by examining empirical studies carried out at the Rio Grande do Sul's Justice Court, a pioneer in the employment of restorative justice. The study shows that restorative practices for domestic violence are residual, do not disrupt the traditional model and are not understood as restorative by women. Therefore, a broad and serious discussion about the model being implemented in Brazil is needed.

Keywords

Domestic violence; restorative justice; peacemaking circles; judicial power.

Please cite this article as:

Campos CH and Oliveira CR (2021) Judicial restorative justice and domestic violence in Brazil: Setting problems and challenges from the field. *International Journal for Crime, Justice and Social Democracy*. 10(4): 146-157. <https://doi.org/10.5204/ijcisd.2015>

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ISSN: 2202-8005



Introduction

Domestic and family violence is a concrete experience in the lives of women. In Latin America, violence against women is a serious social problem. According to a comparative study conducted by the World Health Organization (Bott et al. 2012: 6), 'in all 12 Latin American and Caribbean countries, large percentages of women ever married or in union reported ever experiencing physical or sexual violence by an intimate partner, ranging from 17.0% in the Dominican Republic 2007 to slightly more than half (53.3%) in Bolivia 2003'.

Femicide also has high rates in Latin America. In a group of 83 countries among the five with the highest female homicide rates, four of them are from the region (El Salvador, Colombia, Guatemala, Russia and Brazil). Brazil is the fifth one. That means 48 times more female homicides than the United Kingdom, 24 times more female homicides than Ireland or Denmark and 16 times more female homicides than Japan or Scotland (Waiselfisz 2015: 27).

Brazil has high rates of violence against women, especially domestic and family violence and femicide. In 2018, 4519 women were murdered in Brazil, Black women making 68% of that total. This means that one woman is murdered every two hours (Instituto de Pesquisa Econômica Aplicada 2020). In 2019, 1326 were victims of femicide, most of them Black women (66.6%), aged 20–39 (56.2%), who were killed by their partners or former partners (89.9%).

These figures show that structural racism is the prevailing factor in the victimisation of Black women in the country. Besides that, in 2019, there were 266,310 police records of bodily harm with domestic violence (Fórum Brasileiro de Segurança Pública 2020). In general, these domestic violence records generate requests for urgent protective measures in compliance with the law (Maria da Penha Law) to protect women against violence. However, Brazil's judicial system only has 130 exclusive courts of domestic violence (National Justice Council [CNJ] 2020: 198), while 69% of cases are processed in non-exclusive courts (CNJ 2020: 199). In 2017, 236,641 protective measures were issued by the judicial power (CNJ 2018: 11), a sizeable figure. On the other hand, there is no information regarding the number of convictions for domestic violence.

The high number of protective measures reveals a high processual volume in non-exclusive courts. This indicates that the judicial power does not give due attention to domestic violence in Brazil because it does not create the courts as the law dictates. Further, the congestion rate—that is, the difference between the number of closed cases and those in transit—is 57% (CNJ 2020: 203). This means more cases are being filed than reach closure. This represents a loss for women in terms of observing the legal deadlines for judging protective measures, scheduling hearings and dropping cases.

Besides failing to create exclusive courts, the CNJ, the branch of the judicial power whose mission is to improve Brazil's judicial system concerning control and administrative and procedural transparency, has been encouraging the adoption of measures such as mediation, conciliation and restorative justice and other methodologies (e.g., system constellations) to resolve conflicts, without the proper critique and assessment of domestic violence crimes.

Therefore, this article discusses the risks and possibilities to apply restorative justice in domestic violence cases, dialoguing with studies that have carried out an empirical analysis of their application and the possible results within the Brazilian context. We are aware that, as Tonche and Mello (2020: 17) have written, the immersion in those methodologies still is 'an opaque and closed space', especially for law operators, and sets a limit to deeper observations of the subject.

Restorative Justice and Domestic Violence: An Open Debate

Although the application of restorative justice in Brazil can be considered recent, the debate on it as a replacement for the traditional retributive legal paradigm through a restorative prism can be traced back

to the 1970s, in the writing of authors such as Nils Christie (1977), Albert Eglash (1977) and Howard Zehr (1990/2008)¹ among others. Although there isn't a single concept of restorative justice, one can see that the model proposes a shift in focus in how we conceptualise crime. It shows it does not have an ontological nature and pushes aside a normative perspective (crime as a violation of the law) to treat it as a behaviour type that hurts the relationship between subjects in a given community (Zehr 1990/2008). Therefore, as an alternative paradigm to the prevailing penal model, it claims the transmutation of the punitive language (Hulsman 1993) by returning conflict to the involved parties (Christie 1977) so that, through participative dialogue, they can define the best responses to the needs of reparation of the harm caused (Parker 2005). The concept of 'restorative' can be sourced to Albert Eglash in 1977. Walgrave (2008: 11) characterises it as 'an unfinished product', an 'unfinished term' (Achutti 2014: 57), as well as an open and complex concept that is still in transformation (Johnstone and Van Ness 2007: 8). The elements of what constitutes restorative justice are contested and subject to constant adjustment due to a 'plurality of various, changing practices' (Santos 2014: 297).

If, by and large, a great deal of confusion regarding the constitutive elements of restorative justice persists regarding its application in domestic violence cases, it suggests that the debate is even more recent than assumed. This makes an even stronger case for a deeper study of its aims and results.

Countries with successful experiences in restorative practices such as New Zealand, where the movement originated in the 'Maori community's discontent with the way their youth was treated by social agencies and the criminal justice system' (Marshall, Boyack and Bowen 2005: 267), spawning, in 1989, a new approach to cases of juvenile criminal offences, did not include domestic violence and sexual acts of violence in its scope of application until 2005 (Maxwell 2005: 287).

Austria, in turn, had its pilot back in the 1990s and still successfully uses a victim-offender mediation method in instances of partnership violence. It lists as some of its direct effects the empowering of participants and a decrease in violence rates. However, it is worth highlighting that the model is supported by comprehensive evaluations and monitoring of results collected during decades of experimentation (Pelikan 2002, 2010)² to reduce and correct the risks and dangers that this practice could present to its stakeholders, especially the victim.

In Canada, there is a kaleidoscope of restorative practices in practice. Since the 1990s, the 'Family Group Decision Making Project' has reduced family violence (Hopkings, Koss and Bachar 2004: 307). Additionally, sentencing circles implemented with the formal judicial system (as influenced by magistrate Barry Stuart's leadership) have empirically been shown as broadly feasible regarding gender-related cases. Nevertheless, they pose risks to practitioners working in this field (Cameron 2006).

On the other hand, restorative models in Portugal did not bring successful results, and there is very little research on why that is the case. Law No. 112/2009 of 16 September said that 'the judicial regime is applicable to the prevention of domestic violence and the protection and assistance to the victims' (Art 1), making the restorative meeting possible during a provisional suspension of the case or during serving time. The practice would be used to restore social peace, taking into account the interests of the victim, as long as safety conditions are in place and an accredited penal mediator is present for that purpose (Law n.º 112/2009, Art 39). However, especially in the face of the absence of sessions carried out in the scope of those conflicts and the danger of revictimisation for the involved parties, the possibility established by the articles was revoked by Law No. 129/2015 of 3 September (Oliveira 2020).

We do not intend to undertake a comparative study of the aforementioned practices with the trajectory followed by restorative justice in domestic violence cases in Brazil. Our intent was to briefly illustrate that the different results and the forms of construction of restorative models are important to attest to the complexity of the matter and issue a note of caution during the implementation and replication of such initiatives.

'Brazilian Restorativism': The Protagonism of the Judicial System in the Institutionalisation of Restorative Practices

Brazilian restorative justice is judicial because it is located within the judicial system, given that it is financed and implemented by it. This perspective is a departure from the original ethos of the restorative justice that cropped up from grassroots movements (Aertsen 2007: 96), took place in community spaces 'without the weight and the solemnity of judicial architectural settings' (Pinto 2005: 20).

Restorative justice officially started in Brazil in 2005 with the implementation of pilot projects in the cities of São Caetano do Sul (São Paulo state), Porto Alegre (Rio Grande do Sul state) and Brasília (capital of Brazil). It is a consequence of a cooperation agreement sealed between the Ministry of Justice and the United Nations Development Programme, which was the crucial step towards creating Projeto BRA/05/009— 'Promoting Restorative Practices in the Brazilian Judicial System' (CNJ 2019).

Such actions stood out regarding the methodology employed and target audiences in the restorative circles in the two former cities (i.e., São Caetano do Sul, Porto Alegre) and victim-offender mediation in Brasília, reflecting imported models (with influence from New Zealand). At the time, Pinto (2005: 19) warned that 'we cannot copy foreign models naively and unselfconsciously, especially from countries whose judicial tradition is different from ours, as are common law countries'.

In 2010, with the arrival of Kay Pranis in Brazil, a shift occurred in this model, and it started to dominate its application in peacemaking circles, 'a strand of the application of restorative practices inspired by U.S. and Canada Indigenous people that would be a watershed' (Brancher 2011: 9). From 2010 onwards, the CNJ, through its resolutions, started to encourage the creation of diversified mechanisms for the solution of conflicts.

The first of these, the 'National Judicial Policy for the suitable treatment of conflicts of interest in the Judicial Power' (Resolution No. 125/2010), encouraged adopting mechanisms of conciliation and mediation in civil, treasury, social security and family areas. It similarly established the Permanent Centres of Consensual Methods of Conflict Resolution and the training of conciliation mediators by the judicial system.

In 2016, the same council launched the 'National Policy of Restorative Justice in the Judicial Power' (Resolution No. 225/2016) and regulated restorative justice in the courts. Among others, the resolution defines restorative justice as a 'set or ordered and systemic principles, methods and activities aiming at raising awareness of the relational, institutional and social factors that trigger conflict and violence' (Art 1). It defines 'restorative practice' as a differentiated way to treat conflict, violence and damage situations (I). 'Restorative procedure' is defined as a set of activities and steps to be taken towards conflict composition (II). 'Case' means any situation presented for a solution through restorative practices (III); 'restorative session' is defined as any encounter, including preparatory and monitoring ones, between people directly involved in the conflict (IV); and 'restorative focus' is defined as a differentiated approach to conflict and violent situations or their contexts (V).

The restorative approach entails the following elements: a) participation of the involved parties, families and community; b) attention to the legitimate needs of the victim and offender; c) repair of harm done; and d) sharing responsibilities and obligations among the offender, victim, families and community to overcome the causes and consequences of what occurred.

Resolution No. 225/2016 also stipulates that the principles that guide restorative justice are co-responsibility, compensation for damage caused, meeting the needs of all parties involved, informality, willingness, impartiality, participation, empowerment, consensuality, confidentiality, speed and civility. It also establishes that the restorative procedure can take place as an alternative option or in conjunction with the conventional procedure before or after judicialisation. In contrast, the cases and procedures can be forwarded to the restorative model at any point of processing of the judge's office or by request of

prosecutors, lawyers and public defenders or psychology and social service technicians, or even suggested by a police authority.

It also establishes its universal nature (it can be done with all users interested in solving their conflicts through restorative approaches); that it is systemic (it works towards an integration of family, community and public policy networks); interinstitutional (it seeks cooperation from related institutions, either academic or civil); interdisciplinary (it seeks to aggregate multiple bodies of knowledge to solve conflicts); intersectoral (it brings together public policies of assistance, safety, education and health, in particular); formative (it involves training multipliers and facilitators of restorative justice) and supportive (it includes monitoring, research, assessment mechanisms and building a databank). Moreover, it creates a management committee to put judicial policies into effect.

A survey carried out by the CNJ (2019) identified that among 31 courts that answered the survey, there is some type of restorative justice initiative at different stages of development in 25 of them (96%), be it as a program, project or action. The survey found 44 initiatives. However, in general, the courts only have one program/project/action (CNJ 2019: 10), which is regulated in 76% of cases and has the judicial system in charge in 93% of them (CNJ 2019:11). In addition, 97.1% of programs do not have their own restorative justice budget (CNJ 2019: 13).

The courts that develop initiatives in restorative justice consider that those practices contribute to strengthening the networked work and granting rights (88.6%). In comparison, the majority of the initiatives is related to the children and teenagers theme (75%), violence against women (48%) and 27% in other areas of protection, such as the prison system, criminal justice and schools, among others (CNJ 2019: 14).

It is interesting to note that any behaviour considered harmful can be the object of restorative justice; that is, any crime can be the object of a restorative procedure. If we take into account the high rates of incarceration in Brazil select subjects who commit crimes against property (50.96%) and drug trafficking (20.28%) (Departamento Penitenciário Nacional 2019), it is difficult to understand why such crimes are not prioritised for restorative procedures given that only 22.7% of the programs deal with issues related to narcotics and 15.9% deal with serious crimes (CNJ 2019: 14).

Risks and Challenges in the Application of Restorative Justice in Cases of Domestic Violence

Considering the national restorative movement is located within the judicial system, boosting experiences and types of conflicts projected in the realm of domestic violence also springs from the political options adopted by those protagonists. Backed by Resolution No. 225/2016, the CNJ in 2017, through the then-Minister and President of the Supreme Court/CNJ, Carmen Lúcia, in the third edition of 'Justice for Peace at Home' rightly defended the 'employment of techniques of restorative justice in the recomposition of families that undergo the drama of domestic violence in their daily lives'.³ The intention would have been to adopt restorative tools as an instrument to reduce violence to support families and pacify communities. With the insertion of the topic in the 'XI Law Maria da Penha Conference',⁴ recommendations for adopting the model in cases of domestic violence were made (Santos 2020: 106). This segued into a call for a public audience called 'Domestic Violence and Restorative Justice: A Possible Dialogue' so that technicians and professionals working in this field could list and pore over the risks and challenges faced by restorative practice in this field—this resulted in the report 'Between Retributive and Reparative Practices. Maria da Penha Law and Advancements in the Judicial System' (2018) as ordered by the CNJ.

The report writers interviewed magistrates and multidisciplinary teams. They highlighted that interviewed professionals (magistrates and members of interdisciplinary teams), although they had already heard of restorative justice, had limited understanding of what restorative practice is. In general, victims had never heard of the restorative possibility. A concern with the fact that restorative justice could be a top-down imposition was common among interviewees (CNJ 2018). Despite that, the report highlights

possibilities for applying restorative justice in cases of violence and recommends caution, particularly within the orbit of the Maria da Penha Law (CNJ 2018).

On the other hand, an empirical analysis aimed at understanding the role of the agents responsible for the processes of institutionalisation of Brazilian restorative justice (Oliveira 2020) found that the protagonism of the judiciary and the resulting insertion '*locus*' of those practices in traditional models of conflict resolution resulted in the emergence of a field that comes close to, or perhaps even dovetails with, the structural conditioners of the modern punitive penal rationality. In other words, the dependency (economic and institutional/managerial) of restorative justice on elements that make up the criminal system calls for a cautious assessment of how the effects that stem from this proximity can affect the subjects/communities involved in conflicts, particularly those related to issues of gender.

It is important to highlight that the construction of projects or programs that do not focus on the real and concrete needs of the victims who have undergone experiences of violation, in specific and unique contexts, enables the adoption of abstractions and ideal models of instrumental victims (Christie 1986) as replicated by the official system. When we build this model, we reinforce stereotypes that inform the results of restorative practices, weakening their empowering and emancipatory effects (Rosenblatt and Mello 2015: 104).

These perspectives produce faulty narratives from various perspectives. On the one hand, they reinforce images of subordinated and disempowered female actors, with very little autonomy in terms of possibilities to voice their desires and needs. On the other hand, they insert the profile of a middle-class woman, capable of a dialogue on equal terms in the restorative sphere because her social status requires little from the state, a paternal intervention that conditions her performance. For that reason, when we criticise those universalisms and generalisations, we must reflect during a restorative meeting on 'who can speak and on behalf of whom? Who is listening and why? How does one represent oneself and others?' (Chakravorty cited in Bahri 2013: 661).

Some (romanticised discourses) about the benefits of victim participation in restorative justice must not fudge the hard and complex questions that permeate the routine of its practices. For that reason, one must question *what?* is meant to be restored in the scope of domestic violence in awareness that forgiveness, reconciliation (or, to be more clear, the search for peace at home) are not the prime objectives to be pursued through the restorative perspective.

Following this line of thinking, one interesting position to highlight is that presented by Pemberton (2019: 15) in criticising restoration as the field's key element. He argues it is impossible for the subjects to return to *their way of being in the world* as it was before the endured offence. That is, one must not propose the restoration of violent and traumatic relationships to which the involved parties can be subjugated. He purports that a *re-storying* (Pemberton 2019: 15) option is more worthwhile, as is reconstructive justice supported by Garapon (2001: 250), whereby involved parties strive towards constructing narratives in which the consequences of the damage done are linked to personal history (not deleted from it), turning these into positive experiences that reinvent subjects based on their real demands and needs.

For things to turn out this way, it is urgent to assume that victims are subjectivities with plural historicities and to, thus, establish heterogeneous forms of relationship with their offender. In the face of such complexity, we must demand from the operators of restorative justice, at the moment when a meeting takes place, greater sensitivity to understand, listen and enable their demands, free from social pressures that reproduce the deeply rooted sexist and patriarchal structures in communities (Strang 2002: 57).

However, the instantaneous and superficial models that are offered to the operators of restorative justice (who, in general, work on a voluntary basis) are not enough to spark this type of critique and alertness. Therefore, it is urgent to rethink the efficacy and usefulness of those generic methodologies that are being used to training people across the country and do not properly reflect the specificities and contingencies of the spaces/facts where they will be implemented.

One must also question the effects of self-reference by the judicial in the production, implementation and (intended) evaluation of the restorative practices. For that reason, Resolution No. 225/2016 was cobbled together behind closed doors by the working group of 13 judges (only four were women).⁵ Braithwaite and Daly (1998: 151) have, for a long time, questioned possible alternatives to a seemingly closed system, where masculinities and androcentric structures are both the cause and putative cure of violence.⁶

Obviously, one must not overlook the fact that the judicial field is also structured on asymmetries of gender and race, quite often replicated and legitimised by law. In this context, the absence of democratic space in the active and qualified hearing of concrete victims and the social movements where they belong results in an even more restricted dialogue channel between the official system and the community.

The recent qualitative research published by Tonche and Possas (2020: 2) reveals that there are antagonistic positions in the use of restorative justice by professionals working in this field. According to the authors, on the one hand, it is possible to recognise 'the advancements brought about by Maria da Penha Law (11340/2006), which represented a gain for organized feminist sectors who are concerned with the protection of women while they also underline the limits of a penal response given the complexity of domestic violence'.

They go on to highlight four lines of thinking that are contrary to the use of restorative practices: '1. Uncertainty regarding the practices, 2. Possibility of a return to the previous situation when those cases were handled by Special Criminal Courts; 3. Possibility to abandon Maria da Penha Law and, finally, 4. Spawning social devaluation of violence against women' (Tonche and Possas 2020: 2).

To the concerns already listed, one can add others relating to the need to question *how* (and *if*) restorative practices are capable of ensuring an ambience of physical and emotional safety to victims of violence (Oliveira 2016)—before, during and after the setting of the restorative meeting—and, as a consequence, how much violence has been banalised⁷ by discourses that prioritise, above all, the multiplication of models ordered to reach numerical goals, without the necessary maturity to do so.

The Pioneering Experience of *Restorative Justice for the 21st Century* and the Inclusion of Domestic Violence in Rio Grande do Sul State

The first experiences with applying restorative practices in Rio Grande do Sul state took place on 4 July 2002 in the Third Regional Court of Childhood and Youth in Porto Alegre (3rd JIJ). Herein we must stress that it took place before developing the program financed by the Brazilian Ministry of Justice, in which it was subsequently incorporated. After five years of application (2009), the state's Court of Justice institutionalised those practices and introduced the first Central Office of Restorative Practices in Porto Alegre's Regional Court of Childhood and Youth (CPR-JIJ). The office had a mission to carry out restorative procedures at any stage of a case involving a teenager charged with an offence.

As a result, restorative justice was officially institutionalised within the organisation on 29 January 2010—its permanence conditioned to presenting reports showing quantitative and qualitative data of the ongoing practices. Later in 2012, restorative justice was upgraded to one of the action lines and strategic objective whose goal was to 'implement new judicial, pre-judicial and administrative forms to meet justice demand for solutions, especially in group actions' (Tribunal de Justiça do Rio Grande do Sul [TJRS] 2016: 20).

Emboldened by the repercussion of the case, in 2012, the Permanent Unit of Consensual Methods of Conflict Resolution (NUPEMEC) of the court approved the inclusion of restorative practices in the directory of services provided by the Judicial Centre for Conflict Resolution and Citizenship (CEJUSC). It appointed Caxias do Sul's CEJUSC to headquarter the experimental implementation. In 2014, the 'Program of Restorative Justice for the 21st Century' was created. Its goal was to expand the model to other counties within the state and its topical range of application.

The program was divided into stages.⁸ In March 2015, magistrates volunteered as leaders to develop and implement Executive Project No. 1 – Pilot Stage,⁹ emphasising training facilitators of restorative justice. At the end of that year, to meet the goal to ‘develop expertise on the application of restorative practices in unexplored areas, particularly domestic violence, special criminal courts and criminal execution’ (Flores 2019: 41), the first 12 Jurisdictional and Administrative Units were created by Rio de Grande do Sul’s court. Among these are the First Court of Domestic and Family Violence Against Women in Porto Alegre and the Court of Domestic Violence in Novo Hamburgo (TJRS 2016).

The program is currently regarded as the pioneer in this field, and it ranks among the most successful within the judicial system. For this reason, its practices were implemented across several other jurisdictions (totalling 34 in 2018) (Flores 2019: 44). Investigators focused on attempting to analyse their reach and results based on data and content evaluation—even though such information is hard to access¹⁰ (Alves 2020; CNJ 2018: 273; Oliveira 2020; Silva 2019) and, as a rule, contact with involved parties must be banned to respect privacy and secrecy.¹¹ Due to these limitations, we do not intend to dwell on a specific jurisdictional unit but highlight impressions from several critical pieces that can be found on actions related to domestic violence.

The programs offered by the court have different possibilities of participation in restorative practices. The ongoing research by Thaís Alves with São Leopoldo’s Court of Domestic and Family Violence identified three mainly circular restorative tools inspired by Kay Pranis: ‘the peacemaking circle carried out with women who have suffered or are faced with violence; the Service for Men Who Commit Acts of Violence and, finally, Narrative Circles featuring couples’ (Alves 2020: 3). The latter is aimed at those ‘who do not wish to split up and look for a “fix” for their love-affective relationship’ (Alves 2020: 1).

On the procedure adopted to implement the program, the author was concerned with the direct participation of the magistrate in selecting cases and the types of circles offered to those involved in conflicts. This could lead to a lack of freedom and willingness by participants to adhere to the model and their outcomes (Alves 2020: 8). Campos and Padão (2020) echo the same concerns when they emphasise:

the referral to the circle is decided upon by the judge and done through an invitation during the welcome hearing when a decision will be made whether protective measures will be kept and a suit against the offender will be filed. In general, the invitation is extended to women as a request for reconciliation. On the other hand, it can also be argued that the invitation can be seen as a subpoena because a woman trapped in a situation of violence, and therefore, in a vulnerable state, is not likely to turn down the invitation. (Campos and Padão 2020: 304)

In analysing the Narrative Circles and Circles for the Strengthening of Women offered by Novo Hamburgo’s Court of Domestic and Family Violence and outlining the adopted procedure flow (from conflict to practice), Clara Florentino e Silva (2019)¹² stresses the need to establish filters through which conflict can or cannot be referred to restorative justice (Silva 2019: 127). It is also a matter of concern that support materials adopted during restorative activities seem to point to:

a possible normalizing management of family and revictimization of women due to a reinforcement of gender standards in situations of naturalized oppressions. The problematizing of the structural reasons underlying domestic violence was missing as was a more careful consideration of the intersection of issues of gender, race and class. The analysis of those materials also brought up a discussion about *secularism* and restorative practices. That is because, even with texts by followers of different religions, the content presents a critique of religion (in comparison with spirituality), making a difference between those who are and those who aren’t spiritualized. And that can reproduce social and power position asymmetries. (Silva 2019: 127)

In addition, the religious component highlighted by Silva also relates to a type of spirituality translated into a ‘mythical and mystical cosmivision, of North-American indigenous ancestors’ (Campos and Padão

2020: 298) that the circle structure is fashioned after, which, it must be stressed, is a principle bearing no relation to 'Latin American and Brazilian history, thus reproducing, thoughtlessly, mystical rituals and ceremonies' (Campos and Padão 2020: 312).

Padão (2019) also reports that the circle was essential to promoting individual processes of the participants' cure in a perspective associated with therapeutic models designed to help couples reconcile and consequently keep the family unit. Here, it is right to criticise the fact that restorative justice is associated with a need to keep 'ideal' families (therefore, heteronormative) while risking the revictimisation of 'unsuitable' women. Such a narrative serves no purpose in deconstructing the punitive and selective logic that informs the penal system.

Along similar lines, Michelle K Santos (2020) points out that, by and large, restorative practices are not an alternative to the current penal model, given that her research carried out in jurisdictional units related to domestic violence in Rio Grande do Sul:

found there is no 'pure model' of restorative justice centred on cases. By including elements of the restorative paradigm (the possibility of meeting, damage repair and restoring a broken relationship), the goal was not to exclude the punitive paradigm element, but to assert it. This way, to permeate and modify the system of penal justice in a gradual way, advocating for restorative justice as an autonomous alternative (a minimalist model) without State interference (JACCOUD 2005, p. 172) is not the scenario found when one notices the implementation of the Programmes in the sphere of domestic violence. (Santos 2020: 190)

Moreover, restorative justice is interpreted by women as therapy and reconciliation and does not promote accountability and damage reparation. Therefore, it strays far from restorative values (Campos and Padão 2020).

Through the investigations brought into the debate, we can note that the complexity of the intersection between the themes (restorative justice and domestic violence) presents practical difficulties that justify an (urgent) critical debate comprising *theory and action* to conceive the implementation of democratic practices suitable to restorative values and principles. In this sense, it does not seem advisable to incorporate those practices into domestic violence without a broad discussion on their impact during the implementation of domestic violence law and the possible reification of a model that does not promote damage reparation and offender accountability.

Final Considerations

Despite being institutionalised since 2010, restorative justice in Brazil is still residual with little understanding of what it is (and what it is not). Besides the theoretical and methodological shortcomings, it is self-referenced, which explains the protagonism of the judge and not the parties involved.

When applied to domestic violence, the few existing studies reveal this theoretical deficiency, given that restorative practices cannot break away from the traditional model, and there is little understanding that what is employed is restorative justice. Besides, the restorative model in Brazil being out of context, since it uses non-autochthonous cultural references, it does not promote damage reparation while reproducing a family-centred model of peace maintenance at home.

'Brazilian Restorativism' applied to domestic violence is problematic because it is not based on evidence or solid analyses about what has been applied in the Brazilian judiciary. While the empirical research analysed underlines its fragility, we make a case for a broad discussion involving various sectors, including social movements and the women who participate in them. Only then will it be possible to build a democratic model compatible with current legislation on domestic violence.

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- 1 Whose Portuguese language version is dated 2008. See Zehr (1990/2008).
 - 2 Empirical analyses were carried out in 1999 and then repeated in 2010, using qualitative and quantitative methodologies. Around 900 questionnaires were handed out to practice participants, 33 sessions were observed. and 21 qualitative interviews carried out. These are the results highlighted by the author: a) 'the contribution of victim-offender mediation (VOM) to the empowerment of women, we can report the following: Of those that had experienced NO further violence from their (ex-) partner, 80% contended that VOM had contributed to this effect—in 40% of those cases even to a substantial degree; b) 40% of those women whose partnership continued or who had still contact with an ex-partner and who had experienced no further violence' (Pelikan 2010: 62).
 - 3 Cármen Lúcia: *Justiça restaurativa pela paz em casa*. www.cnj.jus.br/carmen-lucia-justica-restaurativa-pela-paz-em-casa/.
 - 4 The IX National Forum of Judges of Domestic and Family Violence Against Women (FONAVID), held on 8–11 November 2017 in Rio Grande do Norte's capital city, Natal, also issued recommendations on the topic. <https://www.amb.com.br/fonavid/conclusoesfonavid.php>.
 - 5 National Justice Council. Ordinance No. 74 of 12/08/2015.
 - 6 '[w]hat alternatives are possible in an apparently closed system, where masculinity and masculinist structures are both the cause and the putative cure of violence?'
 - 7 As it had been, at some point, the legal treatment of this crime as laid down by the Special Criminal Court Law (9099/95): for good reason, the passing of Maria da Penha Law (11340/2006) is considered one of the biggest victories of the feminist movement in Brazil (Tonche and Sinhoretto 2019).
 - 8 Besides the aforementioned, seven Executive Projects (PE) are part of Programa JR21-TRJS. Briefly, these are a) PE No. 02: setting up the Community Committees of Justice and Peace Committees, supported by the dynamics of the Caxias da Paz Program; b) PE No. 03: integrating restorative justice at the CEJUSC—Porto Alegre as the centralising body of practice implementation and their technical and administrative coordination, putting an end to the CPR-JIJ in September 2014 (replaced by CEJUSC—Restorative Practices); c) PE No. 04: management model workshop and integrating semi-open social-educational measures, sentences with restricted rights and alternatives to freedom privation from a restorative point of view; d) PE No. 05: celebrating 10 years of restorative justice in Brazil; e) PE No. 06: expanding restorative justice in the prison system, particularly Porto Alegre's central prison; d) PE No. 07: promoting restorative practices in partnership with the Military Police in Porto Alegre; and e) sealing a cooperation protocol for a state policy of restorative justice and constructing peace in Rio Grande do Sul. For details, please refer to TJRS's Management Report/Relatório de Gestão do TJRS (2016).
 - 9 The second stage refers to the strategic expansion of the topic, relying on partner units with training facilities (therefore, not necessarily in charge of the implementation of restorative practices). The third stage goes back to the Executive, that is, to the forging of partnerships with government to activate the widespread introduction of restorative services in different spheres, include social services, health, safety and education. Finally, the fourth stage, is the creation of 'Community Committees of Restorative Practice', whose aim is to build a network of community-based services integrated with civil society (TJRS 2016: 44–49).
 - 10 This definition was also used as the launchpad for the doctoral degree investigation undertaken in 2014–2020 (Oliveira 2020), when interviews with institutional agents were carried out in Rio Grande do Sul, while conflict victims and offenders were no longer contacted.
 - 11 Here it is worth highlighting one of the current great paradoxes of the national restorative justice: if those models return ownership of the conflict to their real protagonists (victim and offender), would it not it be wise, before managers block investigators from the process, to ask participants directly whether third parties could be allowed to be present? In my personal experience, this possibility did not come into the equation.
 - 12 The objectives of the research were '1) to observe how selected cases are subjected to restorative practice; 2) to analyse materials (texts, videos, music) used in restorative practice; and 3) understand the flow between restorative and conventional justice, identifying any impacts of the restorative process on the judicial procedure and what is removed or kept from the traditional criminal system' (Silva 2019: 17).

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