



## Book Review

# André R. Giamberardino (2023). *Penal Abolitionism and Transformative Justice in Brazil*. Routledge

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**ISBN: 9781032314273**

*Penal Abolitionism and Transformative Justice in Brazil* is an essential source for understanding the complex relationship between justice and punishment, and for opening avenues for new perspectives on this topic. With a focus on the development of transformative justice, Giamberardino divides his book into five chapters, each of which discusses concepts of justice, punishment, and different forms of criminal accountability.

In the first chapter, *There is No Rationale for Punishment*, Giamberardino argues that theories justifying punishment do not provide a rational or moral basis in European-continental legal thought, especially when applied to Latin American criminal justice systems. The author considers that, historically, retributive justifications for punishment, as ends in themselves, do not find support in unequal socioeconomic contexts, such as Brazil, where the law does not apply to—and does not protect—everyone in the same way. Giamberardino contends that from empirical, ethical, and axiological points of view, justifications with preventive purposes, such as deterrence, rehabilitation, and incapacitation, fail to achieve their utilitarian purposes. Giamberardino insists that in modern times, punishment lacks moral or rational justifications; instead, it has an essentially political character, functioning as a strategy of power. It is thus a mistake, Giamberardino concludes, to assume that penal systems have evolved throughout history—especially when they focus on punishment and marginalize the rights of the victim, since, for victims, punishment is not a prerequisite for symbolic reparation.

In the second chapter, *From Restorative to Transformative Justice: Abolitionist Tenets and Criteria*, Giamberardino employs the principles of penal abolitionism to assert that existing restorative justice practices are not committed to social transformation. As such, Giamberardino emphasizes, it is necessary to build justice practices that transform the social reality of Brazil—a country marked by inequalities and structural oppression.

Giamberardino explains that restorative justice practices are merely “reformist” and “complementary to” the criminal justice system—in part, because they share the same objectives and normative concepts. “Transformative justice”, on the other hand, develops community strategies to deal with violence, aiming to replace criminal law and its punitive practices through changes in social, political, and economic relations in a broad sense because interpersonal violence occurs within structurally violent contexts.



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To build transformative justice, we must abandon the traditional language of criminal justice, adopting a community-based and decentralized system of conflict resolution, and expanding personal conflict to structural issues. As a way forward, Giamberardino argues for “penal minimalism”—a criminal policy perspective of contraction of penal systems as a means towards abolition.<sup>1</sup> More specifically, Giamberardino calls for dismantling policing practices and other forms of oppression that perpetuate the systemic violence such as the ones caused by capitalism, colonialism, racism, and sexism.

At this point, *Penal Abolitionism and Transformative Justice in Brazil* could have benefited from a more concrete proposal. For example, Giamberardino could have developed a model of justice in the way that Sergio São Bernardo (2018) develops about the construction of Afro-Brazilian justice in Ubuntu Libertarian Community Justice.<sup>2</sup> In *Kalunga and the Law*, São Bernardo presents a proposal for a legal instrument for resolving controversies and conflicts carried out through creative rituals that are specific to the community and characterized by the social and community concept of crime, by the primacy of the parties involved, by collective responsibility, and by the exhaustive exercise of shared values, such as non-exclusion and tolerance. These are principles and practices that, in our view, converge with the transformative justice proposed by Giamberardino, that is, a justice that seeks to transform the circumstances of human life that gave rise to conflicts.

Regarding gender-based violence, Giamberardino believes that transformative justice can provide a way to attend to the concerns of “carceral feminism”—the critical perspective on feminism that demands greater or better policing, prosecution and imprisonment in conflicts involving gender or sex-based violence. If we assume that we should respond to crime by tackling their root causes, we must recognize that gendered and racial conflicts often stem from, *inter alia*, the lack of capital. Ubuntu libertarian community justice, for example, would recognise that the community in which a man committed violence against a woman would have numerous future community problems, and would seek to address them in ways that exceed the penal goals of the State (Akotirene, 2023).

In the third chapter, *I Just Want Justice to be Done*, the author explores interviews from psychosocial studies with victims, relatives, and defendants involved in homicides and attempted homicides during the second phase of the Tribunal of the Jury in Curitiba, Brazil, which took place from 2007 to 2012. In his research for the book, Giamberardino analyzed 373 cases, noting some evidence of transformative justice. His main finding was that many of the victims and relatives asserted that justice was not necessarily synonymous with punishment.

For Giamberardino, “the impossibility of a universal concept of justice emerges from the trial interviews analyzed in Chapter 3” (p. 153). This is not all that surprising because one might be hard-pressed to find instances or examples of a single and universal conception of justice. Giamberardino’s point, however, is to highlight the disassociation of punishment and justice in most of the interviews. He also explores the concept of victimization and proposes that it be broadened to include the families of defendants, who suffer due to the defendants’ incarceration. In so doing, he attempts to build bridges between victims and defendants by reporting cases in which victims or their relatives do not desire punishment.

In the fourth and fifth chapters, “*Social Control and Transformative Justice: A Theoretical Proposal Toward a Foundation for Accountability*” and “*Transformative Justice as a New Political Alphabet for Brazil*”, respectively, Giamberardino proposes a model for resolving conflicts in Brazil, advocating for the construction of transformative justice from the principles of restorative justice and transitional justice. These transformative justice proposals recognize racism and gendered violence as forms of structural violence.

Unfortunately, Giamberardino does not explain what, specifically, these transformations would entail, emphasizing, instead, the importance of recognizing structural violence in Brazil’s current system. Had Giamberardino delved deeper into the features of these transformations, his proposal for transformative justice would have been more convincing and would have helped differentiate it from aspects of restorative justice mentioned elsewhere in the text.

In these fourth and fifth chapters, Giamberardino also examines the role of social movements in creating a new order of justice, by highlighting the importance of the movement *Desencarcera Brasil*, led by Maria Tereza dos Santos, a Black woman from Belo Horizonte, Minas Gerais. Giamberardino states that Brazilian penal abolitionism must be based on inspiring people, such as Maria Teresa dos Santos, as well as Luiz Gama and Lélia Gonzalez—crucial figures for Brazil’s Black struggle and resistance. With respect to Lélia Gonzalez, Giamberardino highlights the importance of the Brazilian philosopher who analyzed racial, gendered, and class disparities in the Brazilian political and cultural context.

For Giamberardino, the “Amefricanity” of Lélia Gonzalez (2021) is fundamental for our understanding of the role of Black women in constructing penal abolitionism’s epistemology. And what should be done to advance Brazilian penal abolitionism in the eyes of Gonzalez and other such thinkers? *Penal Abolitionism and Transformative Justice in Brazil* leaves this question

unanswered, doing little more than calling for increasing the political activity of Black women with respect to penal abolitionism. Giamberardino highlights Maria Tereza's participation, but he does not make clear the broader movement's opposition to the criminalization of drug use and trade, as well as support for the demilitarization of police and society, and for non-violent conflict resolution (Desencarcera Brasil, 2017).

In contemplating the agendas of social movements led by Black women, it is necessary to think principally about the struggle of the mothers of victims of police violence—mostly Black women, who are not satisfied with punishment, alone, for those who hurt their children. These women also seek their places as “researchers” because they feel objectified by the academy, as has been the case with the women involved with Mães de Maio Movement, from São Paulo, Brazil (Assumpção et al., 2024).<sup>3</sup> Above all, these women call for psychological support because of the state's neglect. They demand truth, memory, and justice, and declare that real democracy needs to involve equality of race, gender, and class.

Finally, we would be remiss if we did not note how studies on whiteness and masculinities might contribute to penal abolitionism and transformative justice in Brazil. Both Brazilian critical criminology and Brazilian abolitionist studies, have not included Black thought in their epistemological constructions (Duarte et al., 2023, p. 6). Neither does *Penal Abolitionism and Transformative Justice in Brazil*. Such inclusion would be fundamental to overcoming criminological “white centrism” (Santana Vaz, 2020, p. 11) so as to treat Black people and women not as objects of research, but as intellectual contributors and collaborators.

#### **Author/s Disclosure**

Both authors are PhD students in André Giamberardino's postgraduate programme in Law at the Federal University of Paraná. The book review editors took measures to ensure the accuracy of the statements made in the review so as to avoid any appearance of bias on the part of the authors or influence by Giamberardino.

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<sup>1</sup> Although outside the scope of this review, it is worth noting that ‘penal minimalism’ can be reformist, in the sense that the use of prison should be reduced and limited as a punishment for only a small number of major crimes—with alternative penalties employed for most crimes. On the other hand, ‘penal minimalism’ can also be conceptualized as a *means* to abolition—shrinking the penal system as a short-term strategy for ultimately achieving abolition (Andrade, 2006).

<sup>2</sup> Ubuntu, which comes from the Bantu people, means ‘I am what I am because we are all of us’; it imposes a community responsibility (Arminda, 2024). As an epistemological perspective, Ubuntu suggests that the human being reveals himself/herself to be human only in relationship to other humans. In Brazil, Ubuntu reflects solidarity and resistance manifested in the experiences of colonization, slavery, and racism (Malomalo, 2014; São Bernardo, 2018).

<sup>3</sup> The Mães de Maio Movement, led by Black mothers whose children were killed by São Paulo military police in May 2006 (493 victims, over 400 Black youth), has become a frequent subject of academic research. While researchers have produced numerous studies, movement members criticize how such research often objectifies them as passive research *subjects* rather than as knowledge *producers*. This academic extraction typically benefits researchers’ careers without meaningfully engaging with or benefiting the affected communities, creating a paradox of high academic visibility but continued exclusion from knowledge production about their own experiences. For more information, see Silva and Silva (2023).