

CONFLICTS OF INTEREST: A HISTORICAL ANALYSIS OF PUNISHMENT AND MEDIATION PRACTICES

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SUMMARY

This article investigated the historical evolution of punishment and mediation practices, focusing on the Brazilian reality. Based on the premise that conflict resolution must go beyond punishment, it seeks to explore alternatives that promote reparation and the reintegration of offenders into society. The importance of human dignity, as discussed by Guedes (2018), is considered a central principle in justice practices, highlighting the criticism of the traditional punitive system, as analyzed by Foucault (2013). Contemporary examples of mediation, such as peace circles and restorative justice programs implemented in Brazil, are discussed in light of the contributions of Lima (2017) and the relevant legislation. The study concludes that the implementation of restorative practices represents a viable path to building a more inclusive and humane justice system, capable of promoting social peace and respect for the dignity of all those involved.

Keywords: Conflicts of interest; Punishment practices; Restorative justice; Human dignity; Mediation; Justice system.

1. INTRODUCTION

Historical analysis of conflict resolution methods is essential to understanding the evolution of punishment and mediation practices over time, especially in the Brazilian context. From ancient societies, where justice was often exercised informally and directly, to contemporary penitentiary systems, which reflect a more institutionalized approach, the way society deals with conflicts and transgressions has changed significantly. This article aims to investigate how these practices were consolidated and what implications they have for human dignity and social justice.

Based on the premise that conflict resolution should not be restricted to punishment, but rather include alternatives that promote reparation and reintegration of offenders,

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The research will address central concepts, such as human dignity, and analyze restorative justice models that emerge as responses to a traditional punitive system. The critical perspective of thinkers such as Michel Foucault (2013) and Guedes (2018) will be fundamental to support this analysis, allowing for a deep reflection on the ethical and social implications of punishment practices.

In addition, the article will explore contemporary cases of mediation and restorative justice, both in Brazil and in other countries, highlighting their importance in building a more humane and inclusive justice system. In the end, we hope to contribute to the debate on the need to rethink punishment and consider mediation as an effective means of conflict resolution that respects the dignity of all involved.

2. THEORETICAL FRAMEWORK

The theoretical framework of this article is based on a variety of authors and works that discuss the historical evolution of conflict resolution methods and the formation of the Brazilian penal system.

We are fundamentally guided by Michel Foucault (2013), in his work "Discipline and Punish". He analyzes the transformation of punishment throughout history, highlighting the emergence of prison as a mechanism of social control. He argues that prison serves not only to punish, but also to discipline and regulate the lives of individuals. This work is fundamental to understanding the logic that permeates contemporary penal institutions and the relationship between power, knowledge and control.

We used Rafael Damaceno de Assis (2017) because he presents his analysis of the reality of the Brazilian prison system. Assis discusses the structural problems and flaws of the system, such as overcrowding and lack of access to basic rights. His research offers a critical view of the current context, in addition to serving as a starting point for understanding the urgency of reforms in the prison system.

Bruno André Blume (2017), when comparing prison systems in different countries, presents alternatives that can be considered for the reform of the Brazilian penal system. His work highlights the importance of models that promote the rehabilitation and resocialization of inmates, contrasting with the traditional punitive approach.

Paloma Siqueira Fonseca (2017) examines the transition from punitive practices of slavery to penal servitude during the Joanine period, providing a historical analysis that contextualizes the formation of the penal system in Brazil. Her research highlights the continuity of oppressive practices and the need to reevaluate punishment methods.

Néviton Guedes (2018) defends the importance of human dignity, even for those who have committed crimes, and emphasizes the need to explore rehabilitation methods in the penal system. His humanistic perspective is crucial to the discussion of alternatives to punishment as a means of conflict resolution.

Júlio Fabrinni Mirabete and Renato N. Fabrinni (2014) in "Penal Execution: Comments on Law 7210/84", the authors discuss Brazilian legislation on penal execution, emphasizing the importance of a system that prioritizes the dignity of prisoners and promotes social reintegration.

Maria Celina Bodin de Moraes (2018) in her work on the concept of human dignity, discusses the axiological substrate and normative content that underpin fundamental rights, including the treatment of individuals in conflict with the law. Her analysis is essential to understanding the relationship between human rights and the penal system.

The Universal Declaration of Human Rights (1948), adopted by the UN, establishes universal principles of human rights that must be respected, including the treatment of prisoners. Its application in Brazil is a central aspect in the discussion on dignity and rights in the prison context.

This theoretical framework serves as a basis for the critical analysis of conflict resolution methods and criminal practices in Brazil, providing a deep understanding of the historical evolution and contemporary challenges faced by the justice system.

3. ORIGIN OF JUSTICE SYSTEMS AND CONFLICT IN HISTORY

Early societies developed punitive and conflict resolution practices with the aim of maintaining social order and reducing the impact of internal disputes. In ancient times, many civilizations structured their rules of coexistence and sanctions based on customs, traditions and religion. Such practices were present in societies such as the Greeks, Romans and Egyptians, where justice was applied directly, aiming for a quick and often severe solution, which served as an example for the community.

In the Portuguese context, the Ordenações Filipinas, created in 1603, represented a milestone in the codification of punitive practices and in the consolidation of a formal legal structure, which would profoundly influence the Brazilian colonial system. This set of laws covered several areas of law and established sanctions for crimes, with a focus on discipline and the submission of individuals to state authority. In colonial Brazil, the Ordenações were widely applied, becoming one of the main references for the understanding of justice, where corporal punishment and capital punishment were common practices and legitimized by the current power.

Fonseca (2017) provides a detailed analysis of this period, addressing the transition from the slavery system to penal servitude during the Joanine period. According to Fonseca, with the arrival of the Portuguese court in Brazil in 1808, there was a change in the treatment of slaves and in the concepts of punishment, highlighting the introduction of the galley, a form of penal servitude imposed on convicts, which consisted of forced labor, especially in maritime transport. This transition represents a time when Brazil began to structure its own penal system, inspired by colonial practices, but already with modern influences of social control and state punishment.

This colonial period and the use of the Philippine Ordinances marked the beginning of a trajectory that would result in a formal penal system in Brazil, guided by rigidity and a focus on control and discipline, bases that, even after independence, continued to be influential in Brazilian legislation and judicial practices.

4. CONSOLIDATION OF THE PRISON SYSTEM AND PENALTY IN IMPERIAL BRAZIL

The consolidation of the prison system in Imperial Brazil was deeply linked to the establishment of formal criminal norms and the definition of the role of the State in imposing punishments. Two fundamental documents for this structuring were the Political Constitution of the Empire of 1824 and the Criminal Code of 1830.

The Constitution of 1824 laid the foundations for the development of a centralized and normative justice system, determining the rights and duties of citizens and outlining the state's power to legislate and punish. With the enactment of the Criminal Code of 1830, Brazil implemented its first codified system of penalties, including imprisonment as a formal penalty for the first time. This code represented an attempt to discipline and moralize the

society, establishing specific penalties for crimes and determining the role of the State in the imprisonment process.

According to Motta (2016), the creation of prisons as punishment during the imperial period served not only as a response to crime, but as a mechanism of social control and discipline, inspired by European models of justice and imprisonment. In Brazil, imprisonment was incorporated into the legal system as a measure that, in addition to sanctioning individuals, sought to subordinate and standardize the popular classes, guaranteeing the exercise of imperial power.

This context is crucial to understanding the legacy of the penal system in Brazil, where prison was consolidated as a form of punishment that went beyond mere retribution and also sought to shape and control the behavior of citizens.

5. REFORM AND CRITICISM OF THE PUNITIVE SYSTEM THROUGHOUT THE 20TH CENTURY

From the 20th century onwards, Brazil experienced important reforms in the punitive system, driven by a demand for humanization and modernization of penal practices. The 1934 Constitution stood out as a milestone in this process, introducing fundamental rights and guarantees that aimed at human dignity, proposing a less punitive approach and more focused on the rehabilitation of the individual in society. This constitution represented a step forward towards a more humanized penal system, based on the defense of essential rights and the reformulation of the role of the State in conflict management.

Nader (2017) offers a perspective on the social function of law, stating that it should serve as an instrument for pacification and conflict resolution in a fair and balanced manner. The social function of law, as pointed out by Nader, is based on the idea that punishments should fulfill a re-education and reintegration function, aiming at the construction of a more just and cohesive society.

Continuing this progress, the 1984 Penal Enforcement Act, analyzed by Mirabete (2014), reinforced this vision by establishing principles and guidelines for the execution of sentences, focusing on the resocialization and reeducation of inmates. This legislation sought to correct the structural deficiencies of the Brazilian prison system, establishing rights and duties for inmates and regulating the conditions of imprisonment to ensure a more dignified and effective criminal execution.

This period was marked by a significant evolution in the perspective of the punitive system, which began to incorporate values of dignity and social justice. The humanization of punishments and the valorization of social reintegration were central themes in the penal reforms of the 20th century, despite the ongoing challenges regarding overcrowding and conditions in prisons in Brazil.

6. CURRENT CONTEXT AND CONTEMPORARY CHALLENGES OF THE BRAZILIAN PRISON SYSTEM

The situation of the Brazilian penitentiary system is marked by serious challenges that reflect not only the history of penalization in the country, but also the urgency of structural reforms. According to Assis (2017), prison conditions in Brazil are alarming, with overcrowding, inadequate infrastructure and lack of access to basic services, such as health and education. The National Prison Monitoring Bank (BNMP 2.0), administered by the National Council of Justice (CNJ), provides data that highlight the severity of the prison crisis, such as the high rate of criminal recidivism and the persistence of practices that violate the human rights of inmates.

A comparison of Brazilian prison systems with those of other countries, as analyzed by Blume (2017), reveals alternatives and recovery models that can be adopted. In many prison systems around the world, there is an emphasis on resocializing inmates, offering educational, work, and mental health programs aimed at social reintegration. These models contrast sharply with the Brazilian reality, where prisons often become schools of crime, without adequate opportunities for rehabilitation.

The implementation of the Universal Declaration of Human Rights (1948) in Brazil is another crucial aspect to be considered. Although Brazil has signed and ratified this document, the practice of human rights in prisons remains a constant concern. The CNJ, through policies such as Recommendation 44, seeks to ensure respect for human dignity within the penitentiary system. This recommendation establishes guidelines for the promotion of basic rights of prisoners, such as adequate food, access to health care and the possibility of work, but faces resistance from institutional structures and a lack of resources.

A critical analysis of the Brazilian prison system in light of these references reveals the urgent need for a more humane and effective model, which not only punishes, but

also promotes the reintegration of individuals into society. Transforming the penitentiary system must be a priority for the State, which must ensure that public policies respect human dignity and promote social justice.

7. CRITICISM AND ALTERNATIVES TO PUNISHMENT AS THE ONLY MEANS OF RESOLVING CONFLICTS

The traditional approach of punishment as the only means of resolving conflicts has been the target of increasing criticism, especially regarding the effectiveness and humanization of the penal system. Guedes (2018) argues that the dignity of criminals must be preserved, even in the face of unlawful acts. This perspective proposes a reflection on the treatment given to offenders and suggests that mere punishment is not enough to guarantee security and social peace. Instead, it is crucial to explore rehabilitation methods that aim at the reintegration of the individual into society, recognizing that criminalization is often a reflection of complex social and economic contexts.

In this context, Lima's (2017) analysis highlights innovative recovery models in the Brazilian prison system that challenge the traditional view of punishment. One example is the resocialization programs that have been implemented in some prisons, which include educational activities, professional training workshops, and psychological support. These models not only seek to reduce criminal recidivism, but also offer a viable alternative for the personal and social development of inmates.

These approaches highlight the importance of considering the reintegration of the individual as a fundamental objective of the criminal justice system. Rather than simply isolating and punishing, it is necessary to create opportunities for offenders to rebuild their lives and contribute positively to society. This paradigm shift is essential for a more effective and humane justice system that respects the dignity of individuals and promotes social peace in a sustainable way.

Therefore, criticism of punishment as the only form of conflict resolution and proposals for more inclusive alternatives are fundamental to reassessing and reformulating current penal practices, favoring a model that prioritizes recovery and human dignity.

8. HUMAN DIGNITY AS A CENTRAL POINT IN CONFLICT RESOLUTION

Human dignity, a fundamental concept in human rights, permeates all discussions about justice and conflict resolution. According to Guedes (2018), preserving human dignity should be a priority, even in situations involving serious crimes. This perspective not only humanizes the judicial process, but also supports the search for alternatives to the traditional punitive system, which often proves ineffective and dehumanizing.

Guedes argues that human dignity must be respected regardless of an individual's actions, emphasizing that incarceration is not the only response to crime. Even in cases of serious crimes, a dignity-centered approach allows for a deeper understanding of the motivations and circumstances that lead a person to commit crimes. This approach fosters a dialogue on the need for more effective interventions that prioritize reintegration into society and reparation for the harm caused.

The dehumanization often associated with the penal system is a challenge to be overcome. Incarceration often results in degrading conditions, where the individual is treated as a mere number or an object of punishment, rather than being recognized as a human being with the potential for transformation. Valuing human dignity suggests that each individual, regardless of their past, has the capacity to rehabilitate themselves and contribute positively to society.

The concept of human dignity, when applied to justice, demands the exploration of alternatives to incarceration. Rather than simply punishing, justice should seek ways to repair the harm caused by crime and offer offenders opportunities to rebuild their lives. This may include mediation programs, restorative justice, and social reintegration measures that aim to establish dialogue between the parties involved and repair the harm, rather than an isolated punitive response.

Valuing the person, even in conflict situations, is an essential principle for a more humane and inclusive justice system. By recognizing the humanity of both the offender and the victim, the justice system can move towards an approach that considers the needs of both sides. This paradigm shift implies a more comprehensive view of

conflicts, which is not limited to law enforcement, but which also considers the social and emotional implications involved.

A justice system that prioritizes human dignity and seeks inclusion tends to be more effective in resolving conflicts. By promoting the active participation of the parties involved, this approach not only facilitates the repair of harm, but also creates a space for dialogue and reconciliation. Furthermore, when justice is seen as a restorative process, there is a greater likelihood that the parties will accept the proposed resolution, thus reducing recidivism and contributing to social peace.

Therefore, the discussion on human dignity as a central point in conflict resolution, as addressed by Guedes (2018), reveals the urgent need to reform a traditional punitive system that fails to meet the needs of contemporary society. Instead of perpetuating cycles of violence and exclusion, it is essential to adopt practices that respect the dignity of all involved, seeking solutions that promote rehabilitation and social inclusion.

9. MODELS OF RESTORATIVE JUSTICE AND MEDIATION IN BRAZIL

In recent years, Brazil has witnessed a growing interest in restorative justice models and mediation practices as alternatives to the traditional punitive system. These approaches have gained ground in the justice system, promoting a philosophy that prioritizes reparation and reconciliation, rather than simply punishing the offender.

One of the most notable initiatives is the implementation of peace circles, which are inspired by indigenous conflict resolution practices. Peace circles are meetings that involve the offender, the victim, family members and community members. During these sessions, everyone has the opportunity to express their perspectives and feelings, fostering an open dialogue that seeks mutual understanding and accountability. These circles not only allow the victim to express their pain, but also give the offender a chance to reflect on their actions and their consequences.

In addition to peace circles, Brazil has developed practices of family and community mediation, which are facilitated by trained professionals and aim to resolve disputes that, if left untreated, could turn into legal conflicts. These mediation processes

seek to create a safe environment where parties can discuss their concerns and work together to find solutions that meet their needs and interests.

Restorative justice and mediation practices in Brazil focus on involving affected parties and the community in the conflict resolution process. This collaborative model highlights the importance of building relationships and promoting dialogue, recognizing that justice is not an end in itself, but rather a means to restore damaged social relationships.

One of the main goals of these practices is to foster an environment where the victim, the offender, and society can collaborate to achieve a more just and lasting solution. By bringing the community into the process, restorative justice practices help to strengthen social bonds and foster a sense of belonging, which can be crucial to preventing future conflicts.

These approaches also seek to restore the dignity of the victim, allowing them to play an active role in the resolution process, while also offering the offender the opportunity for rehabilitation and reintegration into society. This holistic and inclusive view of conflict helps to create a sense of justice that goes beyond mere punishment, promoting empathy and reconciliation.

10. CONTEMPORARY CASES OF MEDIATION AND RESTORATIVE JUSTICE

Restorative justice has emerged as an innovative approach to conflict resolution in Brazil, offering alternatives to the traditional punitive model. This section analyzes contemporary examples of restorative practices in Brazil, such as peace circles and family and community mediation programs, and compares these initiatives with international models, such as restorative circles in New Zealand and the Norwegian open prison system.

Peace circles have emerged as an effective restorative justice practice in Brazil. Inspired by indigenous traditions, these circles involve not only the offender and victim, but also community members, family members, and other stakeholders. During the circle, all participants have the opportunity to express their experiences and feelings, which helps build mutual understanding and fosters a sense of shared responsibility.

These circles focus on repairing the harm caused by the crime, allowing the victim to actively participate in the resolution process, while at the same time offering the offender the opportunity to reflect on his or her actions and seek rehabilitation. Community involvement is essential to the effectiveness of these circles, as it provides the social support needed for the offender's reintegration into society.

In addition to peace circles, family and community mediation programs have also been implemented in several regions of Brazil. These initiatives aim to resolve family or community conflicts peacefully, preventing these disagreements from turning into legal disputes. Mediation allows parties to discuss their concerns in a safe and guided environment, helping to reach agreements that meet their needs.

To better understand the impact and effectiveness of restorative practices in Brazil, it is important to compare these initiatives with international models. In New Zealand, restorative circles are a well-established practice within the juvenile justice system. These circles are based on indigenous Maori principles and seek to promote accountability for offenders while prioritizing reparations for victims. Studies have shown that this approach results in lower recidivism rates among young offenders and promotes greater victim satisfaction.

Another significant example is the Norwegian open prison system, which emphasizes rehabilitation and social reintegration. In this model, inmates have access to work and education programs, and prisons are designed to resemble normal living environments, minimizing the feeling of punishment. Norway has one of the lowest recidivism rates in the world, which is evidence of the success of a system that prioritizes the dignity and development of the individual.

The examples of peace circles and mediation programs in Brazil, together with international models, highlight the importance of a restorative approach to justice. Restorative practices not only promote reparation and reintegration of the offender, but also help to strengthen the social fabric by fostering an environment of dialogue and collaboration.

Studies have shown that the application of restorative models can result in a significant reduction in recidivism, improving the perception of justice among victims and the

community. Furthermore, these models tend to have a positive impact on the mental health and well-being of both offenders and victims, contributing to a more cohesive and resilient society.

Mediation and restorative justice practices in Brazil, when compared to international models, reveal a promising path towards more humane and effective justice. Reparation of damages, reintegration of the offender and community involvement are key elements that not only help resolve conflicts, but also promote the construction of a more just and supportive social environment.

11. RESTORATIVE JUSTICE AS AN ALTERNATIVE TO INCARCERATION

Restorative justice emerges as a viable alternative to incarceration, offering a model that prioritizes reparation of harm, accountability of the offender, and active participation of victims and the community. This approach distinguishes itself from the traditional punitive system by focusing on the consequences of crime and the restoration of social relationships, promoting justice that goes beyond simple punishment.

Restorative models have proven effective in promoting justice that seeks to repair the harm caused by crime. Rather than simply imposing a sentence on the offender, these practices encourage an open dialogue between the victim, the offender, and the community. This process allows the victim to express their suffering and the consequences of the crime on their life, while the offender has the opportunity to understand the impact of their actions.

Studies indicate that restorative justice not only provides a space for victims to receive emotional and material reparations, but also contributes to greater satisfaction with the judicial process. Involving victims in the resolution process fosters a sense of agency and participation that is often absent in the punitive model.

One of the key aspects of restorative justice is its emphasis on the active participation of victims and the community. By engaging all those affected by the crime, these practices allow for a more comprehensive view of the conflict and its consequences. This not only makes it easier to hold the offender accountable, but also encourages the community to participate in conflict resolution, strengthening social bonds.

Peace circles, for example, are a mechanism that involves the community in the search for solutions. Through these circles, stakeholders discuss what happened, what each person's needs are, and how the offender can repair the damage. This model not only aims to resolve the conflict, but also rebuilds trust and harmony in the community, creating a safer and more supportive environment.

Restorative justice promotes accountability in a way that the punitive system often fails to do. Rather than simply serving a sentence in solitary confinement, offenders are encouraged to understand the consequences of their actions and to take an active part in the process of making amends. This involvement not only benefits the victim, but also gives the offender the opportunity to reflect on their behavior and reintegrate into society in a constructive way.

Furthermore, a focus on reconciliation allows parties to work together to find solutions that benefit everyone. Building mutual understanding and seeking agreements that meet the needs of the victim and the community are essential to fostering social peace. This reduces the need to resort to incarceration as the only solution to conflicts, demonstrating that there are alternative pathways that can be more effective in resolving complex social problems.

12. CONCLUSION

The historical analysis of punishment and mediation practices reveals a complex panorama of the evolution of justice systems, especially in the Brazilian context. This article proposed a critical reflection on the limitations of the traditional punitive system and the urgent need to consider more humane alternatives, such as restorative justice and mediation.

Human dignity emerges as a central principle in this debate, underpinning the search for conflict resolution methods that value reparation and reintegration rather than mere punishment. The traditional view of justice, which often ignores the perspective of both the victim and the offender, needs to be reassessed in light of new practices that promote mutual accountability and active community participation.

The restorative justice models presented, such as peace circles and mediation practices, demonstrate significant potential to transform the justice system,

offering solutions that go beyond incarceration. By focusing on repairing harm and reconciliation, these practices can contribute to reducing recidivism and promoting a more harmonious social environment.

However, the implementation of restorative practices in Brazil faces significant challenges, such as cultural resistance and the structure of the justice system. To overcome these obstacles, it is essential to invest in education, awareness raising and partnerships with civil society, creating a space where restorative justice can flourish as a viable alternative.

In conclusion, the search for a more inclusive and humane justice system is a challenge that requires commitment and collective action. The path to a significant transformation in the Brazilian justice system involves adopting models that prioritize human dignity, reparation, and the reintegration of individuals into society. Only then will it be possible to build a system that effectively meets the needs of all those involved in conflicts and that promotes social peace in a sustainable manner.

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