

BOOK REVIEW

Daniel Achutti, *Justica Restaurativa e Abolicionismo Penal: contribuicoes para um novo modelo de adminstração de conflitos no Brasil* [Restorative justice and penal abolitionism: contributions for a new model of managing conflicts in Brazil], São Paulo: Saraiva, 2014, 292pp., ISBN: 978-85-02-21010-3.

Justica Restaurativa e Abolicionismo Penal: contribuições para um novo modelo de administração de conflitos no Brasil contributes to the discussion of whether current legal-penal justice systems are able to respond to contemporary criminal conflicts. It argues that penal processes are tools to satisfy solely the punitive interest of the State. Finally, it demonstrates that there is more than one way to manage conflict in contemporary society.

Achutti's book – resulting from a PhD project – is divided into four chapters. The first chapter presents restorative justice conceptually, describes the historical context of its insurgence in the 1970s and 1980s, and points to its guiding values and principles. The second chapter elaborates on Louk Hulsman's and Nils Christie's penal abolitionism with the intent of building a critical abolitionist restorative justice model, through the appropriation of restorative justice by the penal justice system. It highlights constraints to the ability of parties to manage their own conflicts. While this section contains some similarities to Christies' argument in *Conflict as property* (1977), Achutti's account, through the theory of abolitionism, offers his readers more detailed explanations as to why restorative justice (practices) should not become a prey to the legal-penal justice system and its formal, punitive and bureaucratic rationality.

The third chapter explains penal abolition theory and discusses reforms of the punitive system, shedding light on legislation passed in the mid-1990s and 2000s in Brazil. Achutti highlights the need to rethink the idea of an instrumental form of rationality, which he calls modern penal rationality. He assesses the reforms of criminal justice system changes that occurred through the bills 9099/95 and 11.340/06, which minimise and informalise the role of the judiciary in the penal system. At the same time, the author presents a feminist critique of the *Juizados Especiais Criminais* (the Special Criminal Courts), especially with regard to the negligence of female victims of domestic violence. Achutti also looks at the Law *Maria da Penha* presenting the reader with a diagnosis of the challenges in the application of this legislation.¹

In the final chapter, the book tries to surpass some of the obstacles presented by the laws mentioned here. It promotes the Belgian example and the possibilities of adoption of restorative justice in Brazil, with an apparent concern to avoid any sociological reductionism (Ramos, 1996). The author argues that there are ways to minimise the chances of a failed legal restorative justice system implementation process in Brazil if the following requirements are taken into consideration: (1) that the new restorative justice system be formalised by law; (2) that the

1 In 2006 the Brazilian government enacted a law under the symbolic name Maria da Penha Law to protect women against domestic and family violence.

restorative justice nuclei gain autonomy from the judiciary through adoption of a new language, decreasing the chances of the colonisation of its ideas; (3) that each case be treated as singular, avoiding legal classifications; (4) that parties benefit from direct participation; (5) that stereotypes be refuted; (6) that meta-judicial professionals are represented alongside judicial agents; (6) that emphasis is given to the satisfaction and needs of the parties involved in the process; and (7) that there is a close tie (of restorative justice) to the traditional criminal justice system. Achutti advocates that by following these requirements, adoption of restorative justice in Brazil may avoid the pitfalls of previous legislation, which he finds deficient.

Achutti's book is an account of the concept of restorative justice in Brazil as it recently appeared in legislative reforms. Although others have assessed restorative justice in that country, the author is one of the first to analyse the new legislative developments from a critical criminological/abolitionist lens. Such focus is important given the complexity of the current Brazilian justice system and its attempt to adopt restorative justice as a new approach (Resolution 225/2016) by the Brazilian National Justice Council, which did not attend to some of the requirements highlighted by the author in this book.

Nevertheless, Achutti's assessment of restorative justice remains limited because of his focus on the legal perspective. In this book, restorative justice is reduced to one of its procedural elements (conflict management), and therefore its relational, ecological and integrative philosophical potentials are not explored. The book starts with the idea of rationality and moves to the complexities of restorative justice practices without taking into consideration many of the cultural nuances and the diversity of Brazil's rich and multidimensional traditions. Restorative justice in Brazil fails to discern between laws made to encourage the institutionalisation of restorative justice practices and laws that foster restorative justice as a paradigm of justice. In effect, Brazilian efforts to incorporate restorative justice within the legal system have reduced restorative justice to an Alternative Dispute Resolution (ADR) practice (which, in the opinion of this reviewer, it is not). In addition, attempts to implement restorative justice in Brazil so far do not support institutionalisation through collaborative strategies. There are few initiatives to work with communities to collaboratively establish strategies to implement restorative justice practices and the process is largely driven by the judiciary. As a result, restorative justice practices tend to be monopolised by the judicial system and to be state owned (Christie, 1977), effectively disempowering communities. Achutti's approach could not sufficiently and clearly address these broad concerns; therefore his legalistic approach to a practice that aims at bringing justice back to the community may further increase this gap.

Achutti's research provides an analysis of the bills 9099/95 and 11.340/06 with an emphasis on restorative justice practices as a mechanism to manage conflict, and subsequent legal comparison to a European framework. As mentioned here, Achutti counts on the notion that the punitive criminal justice system relies on formal/instrumental rationality. While that is appropriate, this focus fails to acknowledge the ethical value-relational form of rationality that is the foundation of restorative justice.

In addition, the author could have given more emphasis on the constraints by the coercive characteristics of formal organisations, such as hierarchy, impersonality and procedures administered by specialised legal, administrative and penal expertise (Ramos, 1981). How, for instance, can more legislation limit the legitimacy of communal practices of restorative justice in Brazil?

Achutti's law-focused assessment did not allow for discussing the roots of restorative justice practices and Brazil's complex cultural context. In addition to considering restorative justice through a legal lens, an examination of the influence and shaping of restorative justice principles and practices by organisational characteristics, especially the judiciary, might have strengthened the author's argument. Current policies in Brazil do not encompass strategies to foster collaboration between communities, the judiciary, schools, the police, religious and non-governmental organisations. Without such collaboration, the implementation of action plans coming out of restorative justice practices have less chance of success due to the lack of broad community involvement or a system of checks and balances. In addition, it is necessary to examine the philosophical underpinnings of restorative justice and the nature of Brazilian Indigenous and Quilombola² Justice. These understandings are fundamental to any effort to institutionalise restorative justice in Brazil. The failure to take them into account will lead to a form of reductionism that will divest communities of their rights and concentrate the ownership of decision-making within the formal justice system.

Achutti delivers an account of alternative justice practices within Brazil's judicial system, providing details of the entire legal process as it evolved over the last two decades. Readers may take advantage of the book's conceptual structure regarding restorative justice, since local academic production in the field is limited. However, as a next step both the deeper rationality and roots of restorative justice and the constraints of formal organisations need to be discussed in ways that prevent the control, suppression and coercion of integrative community based restorative justice practices.

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References

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2 Communities of people descended from Afro-Brazilian slaves who escaped from Slavery.

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