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The implementation of community justice in the province of Buenos Aires

La implementación de la justicia comunitaria en la Provincia de Buenos Aires

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Abstract

Crime rates in Buenos Aires will be analyzed, their relationship with the criminal law and with the existence of alternative justice methods. The change of the paradigm of the ideal criminal law, rises as an alternative to the increasing costs in the retributive judicial branch. The implementation of community restorative justice in Buenos Aires State presents itself as an option for the treatment of the least serious criminal acts (infractions) and a way to maximize the available resources for the investigation and punishment of the most serious crimes (felony).

Paradigm, Mediation, Infractions, Community restorative justice, Retribution.

Resumen

Se analizarán los índices de criminalidad en Buenos Aires, su relación con el derecho penal y con la existencia de métodos alternativos de justicia. El cambio de paradigma del derecho penal ideal, se plantea como una alternativa a los costos crecientes en el poder judicial retributivo. La implementación de la justicia restaurativa comunitaria en el Estado bonaerense se presenta como una opción para el tratamiento de los hechos delictivos menos graves (infracciones) y una forma de maximizar los recursos disponibles para la investigación y sanción de los delitos más graves (delitos graves).

Paradigma, Mediación, Infracciones, Justicia restaurativa comunitaria, Retribución

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Introduction

The growth of crime rates in Argentina is one of the issues of greatest concern to the civilian population. The relationship between this situation and the criminal legal system is a subject that has aroused the most diverse and opposing opinions in the academic and political spheres: from those actors who demand - in the face of criminal conduct - the imposition of stricter penalties, to those who delegitimise judicial action, to intellectuals and jurists who maintain that criminal law is the last resort and is not the appropriate mechanism for resolving the problem of crime.

Thus, in this context of violence and strong questioning of the role of criminal law, the analysis of crime statistics, as well as the study and review of the paradigms on which the current criminal justice system is based, can provide valuable contributions to understanding the spirit of the punitive norms in force. In this sense, the study of the penal system in the province of Buenos Aires - the main national region with 39% of the country's total population - will allow us to understand the worldviews that underlie the current punitive procedure, shedding light on the principles that govern it. In this way, its foundations will be questioned and alternative justice systems to the current model will be analysed.

It will analyse "community justice" or also known as restorative justice, which, guided by principles of reparation, conciliation and forgiveness, constitutes a viable alternative for the resolution of existing criminal conflicts.

In the sections below, we will describe the current state of affairs in the Province of Buenos Aires, analyse the current regulations in criminal matters, reflect on the existing paradigms of justice, and explain how, in relation to the rates of violence registered, the application of "restorative" methods would result in the humanisation of the system, in the real and effective resolution of conflicts caused by minor crimes, and in the maximisation of the resources available for the prosecution and punishment of the most serious offences (homicides, sexual abuse, drug trafficking, etc.), which are the most serious.), which are of greatest concern to civil society.

Justice in the province of Buenos Aires

The Province of Buenos Aires

The Argentine Republic adopts a federal system for its government1 that recognizes the right of the provinces to administer justice2. The State is divided into twenty-three (23) provinces - plus the Autonomous City of Buenos Aires (CABA) - of which the province of Buenos Aires has the largest population: more than 15,5000,000 inhabitants live in the territory of Buenos Aires (Dirección Provincial de Estadística, 2010, p. 16) and therefore it is home to 39% of the total population of the country3.

The province of Buenos Aires, in terms of its administration of justice, is organised into nineteen (19) Judicial Departments4 which bring together different territorial units of the province: the municipalities. In criminal matters, these administrative units of justice are circumscribed by the criminal policy implemented by the Governor's Office of the Province of Buenos Aires, which in turn depends, to a large extent, on the Presidency of the Nation.

Thus, in order to understand the state of affairs of criminal justice in the province of Buenos Aires, it is necessary to analyse not only the local situation, but also the national context.

The state of affairs in the administration of justice

One of the major concerns currently afflicting Argentinean society happens to be that of insecurity (ABC.es, 2014). The increase in rates of violence - and consequently crime - in the country's main urban centres has generated various social reactions (Ortelli, 2014). At the same time, it has placed the role of criminal law and the agencies in charge of administering justice in relation to the alarming rates of violence at the centre of political and academic debate (idem). Thus, the position of the current Justice of the Supreme Court of Justice of the Nation, Eugenio R. Zaffaroni, who considers criminal law to be a "barrier to contain punitive power", that is, a tool to guarantee the rights of citizens against the power of the state (Página 12, 2012), is criticised by other civil society actors who demand the implementation of a "hard hand", that is, the legislative sanctioning of stricter penalties (Ortelli, loc. cit.).

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The escalation of violence and the social insecurity it produces has generated different social reactions: the delegitimisation of the judiciary; the urgent demand for penal reforms; the implementation of new preventive policies; social resentment towards "the delinquent"; and the appearance of lynchings, that is, the implementation of methods of private vengeance (ABC.es, 2014; BBC, 2014; El Mundo, 2014; Infonews, 2014).

- Art. 1 National Constitution (CN): "The Argentine Nation adopts for its government the federal republican representative form, as established in this Constitution".

- Art. 5 CN: "Each province shall adopt for itself a Constitution under the republican representative system, in accordance with the principles, declarations and guarantees of the National Constitution and which ensures its administration of justice, its municipal system and primary education. Under these conditions, the Federal Government shall guarantee each province the enjoyment and exercise of its institutions".

- According to the last national census (2010) there are 40,091,359 people living in Argentina.

- For further reference see http://www.scba.gov.ar/guia/default.asp

For these reasons, and because criminal law is the special jurisdiction of the positive legal order that regulates the social conflict produced by the commission of crimes, this branch of law has been the object of study and discussion, to the extent that doctrinarians consider that its rules can solve, help to diminish or favour the breaking of the law.

Positive criminal law in the Province of Buenos Aires

The criminal legal system of the Province of Buenos Aires is, in the first place, subject to the declarations, principles and guarantees of the National Constitution (art. 5). Then, considering the legal structure designed by the Austrian jurist Hans Kelsen (Kelsen, 2009, pp. 118-120), there is the Argentine Criminal Code5 (CP), also known as substantive criminal law.

At the provincial level, the Criminal Procedure Code (CPP) - adjective criminal law - and complementary laws that have not been codified, such as the Criminal Enforcement and Mediation Law, among others, of the Province of Buenos Aires (Laws nr. 12.256 and 13.433, respectively.).

The Buenos Aires justice system in figures

The Attorney General's Office of the Province of Buenos Aires, a body that is part of the structure of the Judiciary, which is in charge of the Public Prosecutor's Office, has carried out various statistical studies during 2013 - through the Public Prosecutor's Office Computer System (SIMP) - in order to count the number of criminal proceedings initiated during 2013; the crimes that were reported in each case; and their percentage in order of the Judicial Department involved.

Thus, it was determined that during 2013, 694,246 criminal proceedings were initiated in the Province of Buenos Aires, of which only 26,599 individuals were brought to trial (i.e. formal prosecution) in accordance with art. 308 of the CPP. In the remaining investigations (IPP), the accused were either unknown perpetrators or were not being prosecuted (Procuración General, 2014b).

Likewise, with regard to the type of crime reported in each of the IPPs initiated, the results obtained were as follows: of the total number of cases processed, more than 50.05% were minor or petty crimes; that is, minor injuries (10.67%), culpable injuries (7.25%), threats (14.26%), damages (3.07%), theft (5.42%) and simple robbery (9.38%), among others (Procuración General, 2014a).

The judicial dynamics of criminal proceedings

Another important aspect to consider when analysing the role of criminal law is the relationship between the criminal laws in force (positive legislation) and the degree of criminalisation of conduct, which results in the processing of excessive criminal proceedings.

- Art. 75, inc. 12: “Son atribuciones del Congreso […] Dictar los Códigos Civil, Comercial, Penal, de Minería…”.

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The principle of legality

In this sense, the principle of legality, enshrined in articles 716 and 274 7 of the PC, is an essential provision for understanding the functions and powers of the bodies responsible for initiating criminal proceedings:

"With the exception of crimes of private action and certain conditions laid down for the so-called dependents of private instance, [public] criminal actions must be carried out, initiated, exercised and developed by the corresponding bodies (judges, prosecutors, etc., as the case may be), and their promotion cannot be avoided or stopped by any criterion of convenience or opportunity" (De Luca, 2010, p. 1).

According to the aforementioned author, the idea underlying this principle is that when a crime is committed, the competent judicial body has the obligation to prosecute, regardless of the legal right that has been affected, or the intensity or amount of the offence.

However, the principle of legality, notwithstanding the above, has an exception: the principle of opportunity. This legal institute establishes that public judicial bodies can dispense with criminal prosecution even "in the presence of news of a punishable act or even in the face of more or less complete proof of its perpetration" (Maier apaud Yon Ruesta, 1992, p. 139).

This means that through this rule the competent judicial agencies (e.g. the Public Prosecutors in the case of the province of Buenos Aires) can dispense with initiating cases - or take the decision to close them - based on criteria of opportunity. In which cases would this principle be applied? For example, when the intensity of the offence in question is minor; when the legal right involved is slightly affected; when there are other more effective alternative methods than the imposition of a criminal conviction to process the case, etc.

However, the Argentine Criminal Code does not regulate this valuable institute, which is why the competent bodies of the judiciary are obliged (art. 274 of the Criminal Code) to respect the principle of legality, and to instigate and carry out public action in cases where crimes are reported or are brought to their attention.

Therefore, the lack of regulation considerably explains the high rate of criminalisation of reported conduct, i.e. the excessive number of cases that are processed each year due to the lack of legal power of prosecutors to dispense with the investigation of certain offences.

Art. 71 del CP: “Deberán iniciarse de oficio todas las acciones penales, con excepción de las siguientes: 1º. Las que dependieren de instancia privada; 2º. Las acciones privadas.”

Art. 274 del CP: “El funcionario público que, faltando a la obligación de su cargo, dejare de promover la persecución y represión de los delincuentes, será reprimido con inhabilitación absoluta de seis meses a dos años, a menos que pruebe que su omisión provino de un inconveniente insuperable”.

Alternative methods to judicial investigation and sentencing

With regard to current penal institutes which admit alternative methods of conflict (probation - Art. 76 bis of the CP - would not fall into this category), which could be used to decongest the administration of justice, we find Provincial Law no. 13.433. The aims of this institute are set out in its Art. 2,8 and it aims to implement restorative justice. However, despite the objectives of this law, there are two contradictory aspects: firstly, the limitation that the legislator establishes in Article 6 with regard to PPIs that are not susceptible to mediation. In this sense, paragraph "c" of the aforementioned rule excludes the crime of robbery, overlooking the fact that 9.38% of the complaints made during 2013 correspond to this type of criminal offence, including completed and attempted cases. Therefore, this exclusion by the legislator limits the power of the prosecutor and the procedural victim to apply mediation when, notwithstanding the legal right affected, the circumstances and nature of the act suggest that it is appropriate to apply the aforementioned institute.

In another vein, we find that Article 8 of the Mediation Law leaves the decision to refer the case to the Office of Alternative Dispute Resolution to the discretion of the Public Prosecutor, thus limiting the will of the injured party.

Ergo, even if the defendant's defence lawyer and the victim consent to the application of this system, considering that it is a suitable way to repair the damage caused or to re-establish the broken order, the mere refusal of the prosecutor is sufficient to prevent its implementation.

Paradigms of justice

What has been analysed so far has given an account of the situation of the administration of justice in the province of Buenos Aires and the regulations in force. The increase in crime and the lack of response from judicial agencies have led to a discrediting of the bodies responsible for the administration of justice and has placed the role and functions of criminal law and its relationship with governmental criminal policy at the centre of the debate. Furthermore, statistics show that there is a high rate of criminalisation of the conduct of private individuals, and a disproportionate rate of prosecutions due to ex officio interventions and complaints lodged by the victims of crime. Therefore, if there is a considerable over-criminalisation of criminal conflicts and, despite this, crime persists and the inefficiency of the system leads to arbitrariness and the collapse of the administration of justice (De Luca, op. cit., p. 3; Yon Ruesta, op. cit., p. 139), it is worth questioning whether the paradigm of justice under which the current penal system is governed needs to be rethought.

Art. 2º Ley 13.433. "El Ministerio Público utilizará dentro de los mecanismos de resolución de conflictos, la mediación y la conciliación a los fines de pacificar el conflicto, procurar la reconciliación entre las partes, posibilitar la reparación voluntaria del daño causado, evitar la revictimización, promover la autocomposición en un marco jurisdiccional y con pleno respeto de las garantías constitucionales, neutralizando a su vez, los prejuicios derivados del proceso penal"

The current paradigm of the criminal justice system: retribution

Today, national and provincial substantive and adjective criminal law, respectively, are regulated under the paradigm of retributive justice.

This system, when a crime is committed, is based on the retribution of one evil for another evil through the imposition of a punishment: the deprivation of liberty (Cárdenas, 2007, p. 204) for the harm caused to the victim. In other words, if a criminal rule is infringed, it is then appropriate to retribute to the offender a wrong for the conduct he or she has carried out. In this kind of justice, the crime (conflict) is a problem between the state and the offender without "the victim, his family or the community being able to participate actively even though they may be interested in the search for the solution generated by the crime" (idem).

Master Zaffaroni describes in clear and concise terms the logic of the retributive model:

> "In the punitive model there are not two parties as in the reparative or restitutive model [...] because... the state... usurped or confiscated the victim's right. In the criminal process the state says that it is the injured party, and the victim, no matter how much he proves that the injury is suffered in his body, or that the robbery is suffered in his patrimony, is ignored. He is only taken into account as a datum, but not as a hierarchy of parties [...]. The rule is that his right is confiscated as an injured party, that it is completely usurped by the state, even against his express will. Therefore, the punitive model...is not a model of conflict resolution, but only of conflict suspension. It is an act of vertical state power that suspends (or suspends) the conflict [...]. The penal system...is limited to imposing a penalty...with the argument that it should re-socialise, scare those who have never [committed crimes] into not doing so, or reaffirm public confidence in the state itself, or all of these together [...]. Not only is punitive power not a model of dispute resolution (it is merely a model of vertical power), but it is also a hindrance to effective conflict resolution. The more conflicts a society subjects to punitive power, the less able it is to resolve them. Excessive punitive power is a confession of the state's inability to resolve its social conflicts" (Zaffaroni, Slokar, & Alagia, 2010, pp. 7-8).

An alternative to the paradigm of retribution: restoration

Contrary to the retributive worldview, there are other alternative means of resolving criminal conflicts. In this sense, the paradigms of "community justice" are a true example of this. Thus, different authors have dedicated their studies to indigenous judicial practices (Regalada, 2012, p. 63) and have affirmed that the resolution of social conflicts in these peoples rests on the "search for a real, effective and lasting solution, and on the reestablishment of the unity of the community, which has been broken by social conflict, based on the principle of equity and collectivity, whose basis is the indigenous worldview" (ibid, p. 63).

In this sense, the studies carried out by Josef Esterman on the worldviews of the indigenous peoples that inhabit the Andean region indicate that the philosophy of life practised by these societies is governed by principles of integrality, relationality and mutuality. In other words, by a holistic vision of life (2006, p. 236). This is how he puts it:

"The human being is before being an "I", a "we"...an integrated member of a collectivity [...]. Social and cosmic relationality is a conditio sine qua non of the physical and psychic integrity of the human being [...]. As a member of a network of relationships, the individual can never establish his own law... but has to insert himself into the great cosmic law of correspondence, complementarity and reciprocity" (ibid., p. 234).

Ergo, these worldviews tend, first and foremost, to the restoration of the balance distorted by the "condemned" or the offender of the cosmic order. In such situations, the aim of punishment turns out to be the restoration of things to their state prior to the commission of the "crime" through the reparation of the damage caused, the re-establishment of the offending individual in the community and the recovery of harmony in the community (Regalada, op. cit., p. 98). Therefore, it is stated that the spirit of punishment is oriented towards the future, to restore the deteriorated order (ibid., p. 100).

Likewise, these means of resolving social conflicts have been used by various indigenous peoples, so they are not methods specific to Andean cultures. Arturo A. Palacios states that the advocates of these methods (restorative justice) consider that their emergence is the result of the experiences of the indigenous peoples of the indigenous cultures of "the United States of America, Australia, New Zealand and...Mexico" (2012, p. 66).

Regarding the particularities of these methods, it is remarkable the effective and real participation of the members of the community, the victim and the accused in the solution of the problems; the implementation of natural means such as mediation and conciliation, considering the affectation of the harmonious relationship with nature and the transcendence of individual wills in the face of the conflict (Valiente Lopez, 2012, p. 72); the social reintegration of individuals into the community rather than their criminalisation (Fernández, 2004, p. 47); the clarification of the facts through listening, silence and confrontation and the restoration of balance (ibid., p. 207); and the search, above all aspects, for the reparation of harm through dialogue and community participation, the exploration of agreements, forgiveness, and punishment as a mechanism for the restoration of individual and social harm (Padilla Rubiano, 2012, p. 80).

Likewise, these conflict resolution systems, in addition to being applied and discussed in regions inhabited by indigenous peoples, are also studied by modern criminal law doctrine. Thus, mention can be made of the work carried out by María T. Del Val who, in relation to the subject in question, states:

"Restorative Justice constitutes a different way of dealing with the conflict, since it will deal with the victim, the offender and the community, only applying the penalty when necessary... taking into account the interests of the victims personally with respect to each one of them, also considering the communities that have been harmed, and with respect to the offender, giving him the opportunity to take responsibility for the act before the victim, repairing the damage caused, recognising his guilt, morally satisfying the victim with a request for an apology [...].

The mediation procedure in criminal matters fits legally into the concept of restorative justice, as it is an opportunity for offender and offended party to recompose their interpersonal relations, achieving social harmonisation, beyond the intervention of the justice system in appropriate cases. It is also a way of avoiding the re-victimisation of the offended parties [...]. The advantages of mediation in criminal matters - restorative justice - is that the self-composed agreement in accordance with the law, including reparation and forgiveness, gives more efficient results than the traditional punitive response which to date has only demonstrated the failure of prison institutions as a space for social rehabilitation. In short, mediation in criminal matters is a restorative justice process, which takes into account crime prevention through mediation" (Del Val, 2006).

Recognition of incompleteness

The analysed paradigms show the existence of alternatives to the indiscriminate criminalisation of behaviour that the penal system normally carries out. However, it is essential, first and foremost, to discuss the cultural incompleteness that the current state of affairs is manifesting in society (see supra 1.2 in relation to the social reactions produced by the increase in violence). In this sense, the thinking of the Portuguese sociologist De Sousa Santos (1998, p. 69) is revealing, analysing the states of dissatisfaction in societies and calling for reflection through intercultural dialogues that allow cultures to be enriched:

"Incompleteness derives from the very fact that there is a plurality of cultures. If every culture were as complete as it claims to be, there would be a single culture. The idea of completeness is at the root of an excess of meaning that seems to plague all cultures. Incompleteness, then, can best be appreciated from the outside, from the perspective of another culture. One of the most crucial tasks in the construction of a multicultural conception of human rights is to raise awareness of cultural incompleteness to its highest possible level".

In other words, the recognition of cultural incompleteness - which, according to what has been analysed so far, translates into dissatisfaction with the current state of affairs produced by the retributive paradigm - is essential in order to be able to implement new legal practices. De Sousa Santos understands that to the extent that the dissatisfaction of the culture itself is recognised (in the case of mention to resolve the social conflicts generated by the commission of crimes), conditions conducive to dialogue, reflection and cultural exchange can be created. Thus, taking into account the existence of other societies (e.g. Andean societies) which apply restorative justice systems for the resolution of their conflicts, intercultural dialogue with them and the application of their methods in the criminal procedure of the province of Buenos Aires would constitute a suitable alternative for the treatment of existing social violence.

The implementation of community justice in the Province of Buenos Aires

Benefits of implementing community justice

In view of the ideas put forward by the sociologist De Sousa Santos, and considering the characteristics of community justice, we consider that the implementation of these alternatives constitutes a suitable way to solve the problem of the over-criminalisation of conduct and the current confiscation of conflict in the judicial system of the province of Buenos Aires, which is detrimental to the real reparation and restitution of the broken harmony.

Among the most important aspects and benefits that can be obtained from such an implementation, Cárdenas highlights (op. cit., pp. 203-205) (Palacios, op. cit., p. 59).:

1) Restorative justice starts from the premise that offenders harm the community, the victim and themselves, so that conflict resolution involves more parties than retributive justice. In these terms crime is not an offence against the state, but against the victim and his or her family.

2) The success of a measure rests on the extent of the harm repaired or prevented, rather than on the penalty imposed on the offender;

3) It tends to overcome the paradigm of identifying punishment with revenge and seeks non-repetition and reparation of the harm caused. In these terms, the concept of "doing justice" rests on restoration and not on revenge;

4) The restorative justice approach is integral, in this case, to the holistic vision advocated by Andean philosophy;

5) Its application in current state penal systems results in the more efficient use of limited resources to concentrate them on the most serious crimes, helping to reduce the prison population and thus reduce the costs of prison maintenance;

6) It is more conducive to the re-socialisation of offenders as they remain with their families and continue to pursue their social and professional activities;

7) Restorative justice "humanises" the penal system.

We believe, therefore, that implementing the above principles in the Argentine legal system, and in the province of Buenos Aires, would decompress the work carried out by the judicial bodies, and would maximise the resources available for their use in the most sensitive and serious crimes that are currently registered in the aforementioned territory.

As analysed above (see 1.4), more than 50.05% of all crimes recorded in 2013 in the province of Buenos Aires were minor offences or petty crimes (minor injuries, negligent injuries, threats, damage, theft and simple robbery, among others). Without counting other legal offences that could be included in this category, such as concealment (1.3%) - crimes against public administration - and possession and carrying of firearms (0.78%) - crimes against public security -, since the State is the subject affected in the commission of such crimes, it can be stated without hesitation that more than half of the resources that the public administration allocates to judicial agencies are used for the investigation and punishment of minor offences (as can be seen from the aforementioned statistical data).

Thus, considering that the current priorities of the Argentine State and the Province of Buenos Aires are the investigation, punishment and prevention of serious crimes such as those against life (homicides), against sexual integrity, against freedom (unlawful deprivations) and those related to drug trafficking activities, among others (Clarín, 2014a, 2014b; La Nación, 2013, 2014; United Nations Development Programme, 2013, pp. 47, 49, 75), we consider that the use of greater resources to achieve such objectives (through the creation of new prosecutors' offices, courts and public defenders' offices, all with their corresponding staff and budget) can be replaced by the creation of new alternative dispute resolution offices that absorb all complaints and files initiated from minor offences. In this way, the judicial agencies, being relieved of the burden of having to process only serious cases, could use the resources they currently have available to dedicate themselves exclusively to these cases, achieving greater efficiency and speed in the investigation and resolution of these cases.

Therefore, the application of the restorative paradigm in the criminal justice system of the province of Buenos Aires, through the transfer of greater powers and methods to the Criminal Mediators, would not only allow the resolution of minor conflicts with a holistic, integral, unitary and harmonious vision, through the participation of the injured party, the accused, their respective families and the entire community; It would also create the necessary conditions so that, when serious crimes are committed, ordinary judicial agencies can achieve the clarification of the truth, the application of existing criminal rules and procedures and the recovery of their legitimacy, with greater efficiency and speed, by maximising the available resources.

Proposals for judicial reform

In consideration of what has been set out in the previous sections, we believe that the implementation of the principles analysed should be incorporated into the legal system through the regulation of the following topics:

1) Express incorporation of the principle of opportunity (either through the CP or the CPP, depending on the doctrinal position) so that the Public Prosecutor can decide when to prosecute or desist from prosecution, depending on the nature and circumstances of the case;

2) Establish prior and compulsory submission to criminal mediation for all cases in which the maximum sentence is less than three (3) years;

3) In all other cases, when the offence has a suspended sentence, i.e. a minimum of three (3) years, if there is consent between the victim and the accused, the prosecutor must refer the case to the Criminal Mediation Office without the possibility of opposition (except in cases where the victim's consent has been vitiated);

4) Amend the Criminal Mediation Law with regard to the exclusion of the criminal offence regulated in Chapter II, Title VI of the Criminal Code (robbery). In this sense, to the extent that PPIs initiated for this criminal type meet the conditions stipulated in the previous point, they should be susceptible to being referred to the Mediation Office;

5) The implementation of mediation procedures that include the participation, in addition to the victim and the accused, of the family members of both parties as well as members of the community affected by the offence committed.

Conclusion

The justice system in Buenos Aires has been delegitimised and is the object of intense criticism due to the increase in violence. Social reactions to such an event are manifested in multiple ways, either by questioning the role of the judicial bodies or through the application of private vengeance methods (lynchings). The legal system of the province of Buenos Aires, which is dependent on the national legal system, regulates judicial institutions that facilitate the over-criminalisation of conduct, the confiscation of the conflict, and the removal of the victim from the criminal process, which together lead to the collapse of the system and the inefficiency of the administration of justice.

In this order of ideas, the criminal legal system is imbued, in its different facets, with a paradigm of retributive justice in which the object of the criminal process, beyond the ascertainment of the material truth, is the application of a penalty for the purpose of inflicting a harm on the individual for having caused another harm of the same nature. This, regardless of the amount of legal property affected or the intensity of the offence committed.

However, there are other models of administration of justice that respond to other worldviews of conflict resolution, such as the restorative approach. In this sense, it has been demonstrated that several indigenous peoples (Andean, Oceanian and United States, among others) apply these mechanisms to resolve their social conflicts, obtaining good results as a result. The elements that characterise this type of justice are: reparation of the damage caused; the involvement of the community, the victim and the accused in the resolution of the conflict; the use of dialogue, mediation, conciliation and forgiveness as alternatives to punishment; and the search to re-establish the harmony that has been broken as a result of the crime.

The justice system in the province of Buenos Aires, according to statistics from the Attorney General's Office, allocates more than half of its resources to minor offences, which represent 50.05% of the total number of offences. These offences, due to the characteristics of the legal good affected, are ideal for being submitted to "community" or restorative methods of conflict resolution.

The application of these alternatives to ordinary justice in the province of Buenos Aires would result, beyond the inherent benefits of these methods (reparation, conciliation, restoration of harmony), in the real resolution of minor conflicts and the maximisation of available resources for the processing of cases of considerable seriousness and sensitivity; in the "decongestionamiento judicial"; and in the recovery of the legitimacy of the Buenos Aires judicial system.

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Without prejudice to this, for the application of these methods, it is essential to accept the idea of cultural incompleteness referred to by De Sousa Santos, and to accept the existing social non-conformity in relation to the increase in the rates of violence and its treatment under the aegis of the retributive paradigm. This recognition will then allow for openness and intercultural dialogue and the incorporation into the current legal system of new regulations in the treatment of social conflict, imbued with "communitarian" or restorative principles.

Once this stage has been overcome, and the need for reform has been accepted, the legislative introductions that will be most conducive to the implementation of community mechanisms are, principally, the regulation of the principle of opportunity in the PC, the modification of the provincial Mediation Law so that the range of criminal offences that can be mediated is increased (principally robbery), the obligatory application of the system in certain situations (petty crimes and cases of victim consent) and the incorporation of new mediation modalities that include the participation of the victim, the accused and the community.

These reforms will not only humanise the criminal justice system, achieve real conflict resolution in certain situations and allow the restoration of harmony broken by the commission of crimes, but will also create the necessary conditions so that, in situations where it is not possible to apply restorative methods (serious offences), the competent judicial bodies can maximise their resources for the investigation and punishment of such conduct.

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