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Extrajuridic criminal mediation as a possibility and a crossing: sociological and (non) legal effects

Abstract

This article proposes an approach to the legal and sociological effects of extrajudicial criminal mediation, considering the risks, restorative justice principles, and the real interests and needs of the parties. It consists of an empirical-theoretical reflection based on fieldwork and the analysis of interviews with mediators from the Belgian institution "Médiante." The goal was to understand the functioning and evaluation of extrajudicial criminal mediation, using a semiotic approach and grounded theory as a methodology. From this analysis, it was found that the mediation process evokes various feelings related to how each party perceives the conflict and themselves, which can result in a shift in perspective toward the other (alterity) and oneself (empowerment). However, risks are identified, including secondary victimization and the instrumentalization of the process. The criminal justice system exerts a particular influence on the parties and on the outcome of the mediation. It is observed, however, that the mediator's ethical supervision of the process enhances the success of the intervention in addressing the parties' real demands and needs. In this context, extrajudicial criminal mediation presents a dual utilitarian dimension: objective and subjective. However, it is not intended to be a substitute for retributive justice, which is also necessary in specific situations.

Keywords: Criminal mediation, extrajuridic criminal mediation, restorative justice, conflict resolution

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Introduction

In a context where those who interact with the penal system—including offenders, victims, professionals, and specialists—consider it to be in crisis, many are criticizing it and demanding changes regarding its practices as well as its conceptual and principled concerns. Gradually, Western societies are rediscovering democratic and horizontal modes of social regulation and are investing in restorative practices and actions, such as criminal mediation.

This article is a theoretical-empirical reflection based on an extrajudicial mediation experience implemented in Belgium and is part of a broader discussion and evaluation of restorative justice and traditional retributive justice practices. It should be noted that judicial and extrajudicial criminal mediation are two of several existing practices within the scope of restorative justice that have been developing and spreading around the world. The type of mediation in question (extrajudicial criminal) is certified by the Belgian Ministry of Justice, and in 2005 it was regulated by law under the name "mediation in criminal matters." It is carried out by the institutions Médiante and Suggnome, which have offices in several cities across the country (Belgium), in both the Flemish and Walloon regions, and, of course, also in Brussels.

Among the main differences between the two types of criminal mediation (judicial and extrajudicial) existing in Belgium, we can highlight the following characteristics regarding:

I. The third party who conducts the mediation;

II. The authority of the one who proposes the mediation;

III. The timing of the mediation's proposal;

IV. The functions of mediation in relation to the judicial process;

V. The objectives of mediation;

VI. The seriousness of the crime and the (im)possibility of mediation regarding it;

VII. The binding nature of the mediation agreement;

VIII. The people who can enter a mediation process.

When it comes to judicial criminal mediation, or mediation parquet, the following characteristics stand out: the third party who conducts the mediation is a justice assistant; that is, the mediation is carried out by the parquet, and its proposal is the responsibility of the King's Prosecutor, who must do so before the start of the proceedings, as judicial criminal mediation serves as an alternative to criminal prosecution.

The main objectives of this type of mediation are the extinction of the public action and non-reoffending (as it prevents the initiation of legal proceedings). This, in turn, can only be proposed in cases where the maximum abstract penalty does not exceed two years of imprisonment. The agreement plays a crucial role in this type of mediation, as it is essential to its success. If the mediation does not result in a formal agreement, the mediation is concluded, and the criminal action may proceed. Finally, the participants in this type of mediation must be the victims directly involved in the case, provided they are of legal age.[1]

Extrajudicial criminal mediations, on the other hand, are facilitated by a trained mediator, who may be a jurist, psychologist, social worker, criminologist, sociologist, or another equivalent professional. These types of mediations can be proposed by either the victim or the perpetrator, and it is also possible for a support service to help the parties by facilitating initial contact with the mediation service through referrals. Extrajudicial criminal mediation can be proposed at any time—before, during, or after the serving of a sentence (in the case of an imprisoned offender)—and does not have a diversionary/alternative function in relation to the judicial process.

Therefore, extrajudicial criminal mediation does not serve as an alternative to criminal prosecution. When we talk about "Médiante mediation," unlike "mediation parquet," we don't talk about predefined objectives. Mediators prefer to say that this type of mediation allows for the exchange of information and/or negotiations; personal commitments that are likely to bring clarification and personal appeasement; as well as being useful in negotiating a form of material repair or compensation and also allowing for the expression of emotions from both parties.[2]

Having outlined the main points that distinguish these two types of mediation, we can analyze the theoretical and epistemological bases that underpin the extrajudicial criminal mediation model, evaluating its legal and sociological effects, as well as the risks, advantages, and influences exerted by the penal system on this mediation practice.

Theoretical-conceptual contributions to restorative justice and mediation

The retributive model of criminal justice has been facing various criticisms regarding its social, economic, political, and human costs. Increasingly, highly rigorous research is disproving theories of punishment, methods of action, prevention, and treatment of delinquency, and highlighting the ineffectiveness of their results, which are often contradictory to their objectives. The main criticism leveled at the penal system is related to imprisonment, particularly concerning its functions and unrealized goals. We can highlight three types of arguments used to justify imprisonment: I) those centered on moral functions, based on retribution and punishment; II) those that address the utilitarian functions of punishment, where the imaginary of general and specific prevention should guarantee social defense; and III) those that expect a rehabilitative function from punishment.[3]

Among these arguments, on one hand, we have those dealing with the rehabilitative function, which seems to have never gained credibility in the history of punishment; and the arguments dealing with general prevention functions, which, in turn, are progressively losing applicability as we observe the growing increase in criminality, even with a corresponding inflation in repressive legislation and prison construction projects that are already planned to open at overcapacity. On the other hand, we have arguments that invest in the idea of specific prevention, which is based on the hypothesis of segregating the convicted person so that, physically unable to contact society, they would be incapacitated from committing crimes. This is also questioned today, given the organization and coordination of crimes that happen even inside prisons. Finally, the only arguments that remain are the moral ones, based on retribution and punishment, which, contradictorily, are the only ones that hold up, given their purely vindictive nature.

Faced with the crises of the classical penal system, the criticisms directed at its retributive nature, and the development of differentiated theories and practices that attempt to remedy its imperfections, many authors believe in the emergence of a new justice paradigm. Among them, Howard Zehr stands out as one of the foremost proponents of restorative justice. According to Zehr[4], the main models of justice known to the West (especially retributive justice) have pragmatic limitations of an instrumental nature and result in high economic, relational, political, and social costs, in addition to significant social dissatisfaction stemming from the fundamental conception of justice itself.

The literature points to several advantages regarding the differences between the restorative and the classical retributive paradigms. Zehr[4] highlights, among others, the following comparative characteristics: for retributive justice, the offense is defined as an attack on the State, and emphasis is placed on the guilt of the offender, who must be punished for what they did, with their suffering serving as a deterrent and preventative element, and the victim is often ignored in the process. Whereas, for restorative justice, the offense is defined as an attack on one person committed by another person. The emphasis is placed on problem-solving, based on dialogue and negotiation, and a form of repair is sought for both parties, with the offender being able to help the victim in this reparation process by understanding the impact of their act. In this case, the victim's rights and needs are recognized, and the offender is encouraged to take responsibility.

There are, however, authors among the critics of criminal justice, such as Cario[3], who do not see restorative justice as a paradigm shift or a new philosophy of justice but rather see it, above all, as a "regulatory dynamic of conflicts oriented towards the consensual repair of damage caused by crime".[3] Nevertheless, this dynamic is, for him, promising "insofar as it aims, within the criminal justice system, in the context of a fair process, not only at the resocialization of the convicted person but also at the restoration of the victim and the re-establishment of social peace, thereby attesting to the emergence of a fourth epistemological break in penology: after the vindictive and retributive proportionality of the act, the penal utility of social defense, and the rehabilitation of the individual, the holistic approach to conflict and all its actors relevantly completes its best aspects".[3]

The enthusiasm for restorative justice is growing, and this topic is increasingly present in debates about justice in general. Restorative justice is commonly defined in opposition to retributive or rehabilitative justice, but this is not an absolute truth. It is important to note that just as there are no classic or pure models of retributive justice, there are also no restorative models that claim to be pure or uninfluenced by retributive models. Furthermore, our research findings show that practices stemming from both models can present an innovative, complementary character in the conception and treatment of criminal offenses and their effects.

The growing discussion about restorative justice, however, faces a problem of conceptual definition that spans many theoretical works. Johnstone and Van Ness[5] identify three classic conceptions of restorative justice based respectively on I) the perspective of the encounter; II) the perspective of reparation; and III) its transformative potential. These conceptions, however, are insufficient to define types of interventions based only on the aforementioned categories. Médiante, for example, conducts direct and indirect mediations (with or without meetings), which may or may not be accompanied by reparation, and which can explore their transformative potential in completely different ways.

The absence of a unified theory on the conceptualization of Restorative Justice also results in two doctrinal currents that prefer to consider it, on one hand, based on its outcomes, and on the other, based on its process. This distinction also proves insufficient for defining restorative justice, which can, for example, have undesirable results even when following a proper and restorative process, or, conversely, results considered satisfactory by one of the parties, even if a participant considered the process inadequate.

Regarding mediation specifically, it is important to consider the re-engagement of Western societies with more horizontal and democratic modes of social regulation. Our social, political, and economic context has favored increasing investments not only in the field of mediation but also in arbitration and conciliation. We emphasize that each of these types of intervention has specific characteristics that distinguish them from one another through their methods and also their principles.

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Among the concepts used to define mediation, we opted for the "normative approach" used by Jacques Faget[6], which "bases mediation on the posture of a third party." According to this approach, mediation "is a consensual process for building or repairing social bonds and managing conflicts, in which an impartial, independent, and non-decision-making third party attempts, through organizing exchanges between people or institutions, to help them improve or establish a relationship, that is, to regulate a conflict".[6] The mediation implemented by Médiante fits this normative concept developed by Faget and has peculiarities related primarily to its proximity to the penal system, but still with a certain freedom to deal with more dynamic and creative aspects than, for example, parquet mediation. As we saw earlier, Médiante mediation does not claim to be a substitute for the penal process, but it can exert and be subject to considerable influences throughout its process.

In cases where there is, for example, a simultaneous offer of both types of mediation, it can be said that Médiante mediation has a "suspensive" effect in relation to parquet mediation, with the latter being somewhat conditioned to the results of the Médiante mediation. During the execution of the sentence, for example, the judge can also take the Médiante mediation into account when granting certain rights related to the progression of the regime or approving the inmate's reintegration plan.

These are just some of the many discussions that permeate the Belgian imagination regarding extrajudicial criminal mediation and its effects and risks, especially the risk of this practice being instrumentalized. It is observed, however, that in practice, the theoretical emphasis placed on these issues gives way to other inquiries situated in the social, emotional, and relational dimensions, rather than, for example, the pragmatic or instrumental ones. This does not mean that any of these dimensions are more important than the others, nor that these situations do not need to be analyzed with a methodological and ethical rigor that is verifiable. Having established our theoretical basis for reflection, we can now present our working methodology, which relates to our analytical bases and connects with the subsequent results.

Discourse analysis using a hybrid methodology

Regarding the variety of ways to evaluate the success or failure of a mediation practice, Fiutak lists several possibilities, such as through its outcome, the quality of its process, its experiential value, the number of agreements reached, reconciliation between parties, etc. Given the diversity of evaluation possibilities, the difficulty of conceptual precision regarding the context in which our topic is situated, and the need to evaluate a practice based on empirical research, we chose to conduct open, non-directive interviews to analyze mediators' discourse about their practices.

We sought to identify a qualitative sample composed of mediators from the institution in question, where each mediator was invited to tell a story of "a mediation that went well" and "a mediation that did not go well." From there, after transcribing the interviews and preserving their due confidentiality, we moved on to a refined analysis of each discourse to induce the formation of analytical categories, which were, in turn, the result of meaning units extracted from the interviews.

The result of any evaluation depends first and foremost on the conception that the evaluator brings to the thing being evaluated. In our case, we were able to understand this process from narratives containing privileged representations of how the mediators themselves understand their practice. For this, we used a hybrid inductive-analytical methodology of two analytical methods: the semiotic approach and the actantial scheme developed by Julien Greimas, based on Vladimir Propp's literary studies, and grounded theory, elaborated by Barney G. Glaser and Anselm L. Strauss.

This "new" hybrid approach is a "bricolage" of an "inductive-analytical" nature that allowed us to describe, organize, and identify, from our primary data, the emergence of hypotheses during the analysis phase. Initially, the semiotic approach and the actantial scheme allowed us to present and carry out a first structuring of the stories told by the mediators, and then served for the assembly of our axial coding in the grounded theory analysis phase.

Based on Vladimir Propp's studies on the structure of Russian folktales, Greimas developed a theory of literary text analysis where he examines "the conditions of text production"[7] from the linguistic dimension of semiotics and the theory of meaning. Greimas simplifies the actantial inventory defined by Propp and determines six actants whose relationships allow for the interpretation of stories based on the analysis of their "actantial roles," respectively identified as a quest designated by a sender to a receiver. This quest is carried out by a subject who, during their endeavor, encounters helpers and adversaries.[7]

By applying this model to our research, we defined the actants based on the stories told by the mediators, who are our subjects. The objects are the stories of the mediation itself and their characteristics, quests designated by a sender to a receiver, either the perpetrator or the victim, depending on the situation. Each mediator brings into their narrative the presence of helpers and adversaries who either helped or hindered the task of conducting a mediation. After an initial structuring, we moved on to the use of grounded theory, which served as our analytical method.

First, we proceeded to elaborate "conceptual categories" by identifying, structuring, and grouping the "units of meaning"[8] extracted directly from the mediators' accounts. Through successive comparisons, we were able to refine and complexify the observations, formulating hypotheses and specifying new categories to analyze the properties and dimensions of the phenomenon under study.

Grounded theory insists on the importance of the perspectives that social actors give to the definition of their social universe, taking into consideration the social contexts (micro and macro) in which they are inscribed.[9] Grounded theory served us to analyze a specific mediation practice inserted into a broader historical context where there is a discussion about a shift in a justice paradigm and/or, simply, the elements of a specific local context for the implementation and evaluation of this practice.

Qualitative interviews proved indispensable for our research for the reasons highlighted by Poupart when arguing for their use in social sciences research. According to Poupart[10], qualitative interviews are useful for conducting an in-depth exploration of the perspective of the social actors involved and for grasping and understanding their social behaviors; they provide an understanding and knowledge from within the dilemmas and issues that social actors face; and they also offer quality as an information tool capable of clarifying social realities, and, above all, as a key method for accessing the experience of the actors.

This was, therefore, the most suitable method for collecting our research data, given the initial objective of understanding the analysis of a mediation practice from the social representation of the mediators themselves. From the careful segmentation, selection, and organization of the units of meaning, we established categories and

subcategories, the result of several non-linear comparative stages that began with theoretical reflections and the refinement of the units of meaning, and then we moved on to the analysis of this coding, establishing relationships between the categories to finally formulate hypotheses.

The social representation of mediators: evaluating a specific practice

As mentioned earlier, the choice of stories was left to the mediator; we only indicated that we would like to hear two stories, one about a mediation that went well and another about one that did not. With the objective of discovering and understanding the representations of the Médiante mediators regarding how they evaluate the practice they are in charge of, we embarked on an analysis of their discourse.

During our analysis, we were able to formulate five "data-driven hypotheses," which we named: I) Confronting the 'Peril' (The Inherent Challenge); II) the relationship with the perverse effects of penal issues; III) proximity and non-coercion; IV) The Mediator's Satisfaction Stemming from the Parties' Satisfaction, especially the victims; and V) the quality of the communication challenge and the influence on the outcome of the mediation.[9]

It should be noted that the process of defining a mediation that went well or did not go well was not simple for the mediators. On the contrary, it involved considering a complex set of interrelated factors, such as the conception of the conflict, mediation and its objectives, the protagonists (including the mediators or other third parties, even if not directly linked to the mediation practice) and their expectations. It also involves the most varied feelings and actions, the influences exerted by the penal system, the objective and subjective conditions for carrying out the mediation, the assisting or hindering factors, the process itself, and its outcome.

Our first hypothesis, confronting the 'Peril' (The Inherent Challenge), refers to what Cappi[11] defined as the challenge inherent in encountering the other in a conflictual and complex relationship, considering the possibility of changing our view of the other by seeing them as a bearer of their own potential and point of view. We should note that the notion of péril developed by Cappi goes far beyond danger, singularly considered. The péril also brings with it the fears of a dangerous quest but, in addition, emphasizes in the lived experience the possibilities of change and recognition of the other.

We observed that the decision to request or agree to enter a mediation process is a much more difficult and complex decision than it seems and goes far beyond the risk of instrumentalization of the process, which exists but is not what most captures the mediators' attention in their evaluation. For them, the emotional dimension observed in mediations demonstrates that it is not a simple matter for the parties to confront the varied feelings they carry, their own conception of the conflict, of the other, and of themselves. These issues are extremely important in a mediation process, even when dealing with conflicts considered simple and/or mediations that happen indirectly, without a physical meeting.[9]

Suffering, anger, and even feelings that were not initially desired in a mediation process, proved to be important catalytic elements that could lead to a change in the parties' sensibility in relation to the other (alterity) and in relation to themselves (empowerment). However, we cannot be naive and disregard the risks that a mediation entails, such as the risk of victimization, manipulation, instrumentalization, among others. We observed that the feeling of frustration is also present in some of the mediators' accounts.[9]

Regarding II) the relationship with the perverse effects of penal issues, it should be highlighted that the risk of instrumentalization of mediation is a present reality, even considering that the mediation carried out by Médiante has less to do with the "legal constraints" than parquet mediation. We cannot ignore that the penal field exerts particular pressures on the parties and sometimes unfolds into perverse consequences. However, in addition to the perverse consequences, the coexistence of penal and restorative logics in "mediation in criminal matters" also demonstrated the possibility of an opening in the treatment of the conflict that might not exist without this risk of instrumentalization.[9] Many mediations that "went well" arose from a "stimulus" from the penal system during the sentence execution phase, for example, for the inmate to seek out their victim to compensate them, with the results being much more comprehensive and well-evaluated than purely legal or economic outcomes.

The relationship that Médiante mediation maintains with the penal system is observed in different ways, depending on, for example, the criminal offense and the time at which the institution was mobilized to offer the mediation service. We observed, however, that the offering of the service during sentence execution and the seriousness of the offense were not decisive for whether a mediation went well or not;[9] that is, the risk of instrumentalization of the demand during sentence execution does not preclude its success.

We also observed a particularity regarding mediations that were proposed before the trial, especially when they are related to offenses considered simple. In proximity conflicts, specifically, it is observed that criminal justice often refrains from giving a response to the parties, and mediation runs the risk of acting only as an extension of the penal system's tentacles. In these types of conflicts, the very definition of the conflict and the status of victim or offender occupied by the parties is undefined, and the penal response is usually the archiving of the case.[9] Under these conditions, we perceive a dispute over claiming "penal status"[12] of victim or offender, which translates into a lack of collaboration and poor involvement during the mediation process. Here we identify another of our hypotheses that refers to the relationship between III) proximity and non-coercion.

The lack of a response or classical penal coercion, which at first might mean a problem of impunity, should be viewed beyond the illusory handling of the flow of repressive case files within criminal justice.[9] The application of criminal mediation in this type of conflict can represent a real possibility of treating it from a new approach and according to the will of the parties, which can be to focus on the pragmatic characteristics of the dispute or to immerse themselves in a deeper approach.

At the origin of mediation demands and acceptances, Antônio Buonatesta[13], founding president and a mediator at Médiante, identified two major categories of needs for victims and offenders:

I. The first is personal and psychological, related to feelings of empathy, hope, guilt, the need to express remorse or anger, grief, the need to "turn the page," etc.

II. The second category is related to more pragmatic situations and needs linked to the institutional context of detention and punishment, such as the regulation of conditional release conditions. In Belgium, these can be negotiated and formalized in documents like the "reintegration plan" for the offender and the "victim's file."

The observance of these needs may or may not result in a formal mediation agreement, as there is the possibility of a more realistic

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regulation of certain issues, consequently increasing the chances that they will be respected. Our fourth hypothesis emerged from the observation of IV) The Mediator's Satisfaction Stemming from the Parties' Satisfaction, especially the victims. It is important to note that even mediations that "did not go well" still had some utility, whether objective (compensation, agreement) or subjective (appeasement, information, apology) for the parties. It is worth highlighting, however, that the victim's satisfaction was a determining factor in the mediators' own satisfaction. This indicates that, in addition to the element of utility not being sufficient to define whether a mediation went well or not, the satisfaction of the parties, especially the victims, was an element that directly influenced the mediators' choice of narratives.

Finally, we also observed a close relationship between V) the quality of the communication challenge and its influence on the mediation outcome. We identified several factors that influence the quality of the process and, consequently, the result, such as: the involvement of the parties, cultural differences among the actors involved (including the mediator), the objective conditions for conducting interviews and meetings (space, time, surveillance), emotions, the difficulty of maintaining deontological rules; the type of relationship between the parties (with each other) and between the parties and the penal system; the parties' expectations; the type of exchange (direct or indirect mediation), among others.[9]

We observed that each phase of mediation is of extreme importance for it to be considered a successful experience. We emphasize, however, the importance of the preparatory phase in our analysis, as it is during this phase that the mediator has their first contact with the parties, their fears and expectations. The mediator introduces the service and its deontological rules (voluntariness, free of charge, neutrality, confidentiality, the possibility of withdrawal, etc.),[14] learns about the conditions under which the conflict occurred, and identifies possibilities for intervention, among other things.

It is essential to note that there is no mandatory list of topics to be addressed in the first meeting between the mediator and one of the parties. The preparatory phase is indispensable for any mediation (even if a meeting is not envisioned by the parties), and the mediator uses their sensitivity and subjectivity to move the process forward within the ethical and deontological boundaries established by the institution.

Given the concern and involvement of mediators, who allow themselves to be moved by the unique details and overall context of each case or participant, we also identified a particular expectation generated by the mediators in their stories, which we termed the "empathetic quest for the parties' future".[9] This "empathetic quest for the parties' future" includes three types of discourse from mediators about their work:

The first type of discourse concerns I) the utility of mediation directly linked to the parties' interests.[9] As we mentioned in the first part of this article, Médiante's mediation does not have predefined purposes but seeks to adapt to the interests of the parties within the deontological possibilities of the intervention and the openness provided by the other party to facilitate exchanges and find solutions for conflict resolution.

A second type of discourse from mediators concerns II) the resolution of the dispute and the establishment of a communication link.[9] As we demonstrated earlier, in a large number of cases, the parties face communication problems that are directly linked to the way they understand the conflict, the other person, and themselves. The possibility of creating a space where peaceful and voluntary communication can be enhanced increases the chances of resolving, or at least discussing, pertinent issues about a conflict, without necessarily leading to reconciliation or the signing of a formal agreement.

Finally, we were also able to observe the idea that mediation is capable of provoking III) the transformation of a sensibility.[9] Mediators try their best to be impartial in their profession, but they are not neutral or insensitive subjects; they not only observe feelings of powerlessness, frustration, joy, and fulfillment in the parties, but they also experience them directly. The reflective thinking of mediators is a recurring theme in their discourses and also demonstrates an ethical and human concern for the other. In this sense, they observe that mediation also has a transformative potential and, as we have already said, has proven capable of causing a shift in the participants' relationship to the other and to themselves.

However, let's not be mistaken, these changes can lead not only to alterity and empowerment but also to the strengthening of selfishness and victimization, for example. The training, experience, and deontological framework that the mediator uses to conduct mediations are, on the other hand, important tools for maintaining the rules and "good circumstances," but they are not sufficient to guarantee or sustain the "success" of this practice. Mediators also accept the peril each time they begin and conduct a mediation meeting.

Mediation, therefore, presents itself more as a concrete and realistic possibility, with its own normative and deontological resources, rather than as an idealistic utopia without the theoretical and practical support to sustain it. It is possible to create another form of complementary intervention—one that is more horizontal and democratic—that better suits the desires and needs of the parties than our traditional way of handling conflicts.[15]

Final considerations

Extrajudicial criminal mediation presents itself as an extremely complex process regarding its diverse and varied conditions of realization. Each observed mediation is unique, and we cannot say that an ideal type of mediation exists. There are ethical and pragmatic rules that must be followed to best conduct the process, but none of them can guarantee the success of an intervention, which is understood as a collective experience that mobilizes unique individual experiences. Furthermore, the analyzed accounts show us that mediation is far from being an exact or Cartesian science, where following a set of rules would yield certainties or guarantee identical results. It is essential to highlight that criminal mediation and restorative justice, the context in which it is situated, do not present themselves as a substitute paradigm or practice for the classical penal system, since in certain situations, parties retain the right to resort to that system if they so wish. It is worth mentioning the hypotheses where mediation can be frustrating (for the parties or the mediator themselves), and that mediation remains, by principle, voluntary.

On the other hand, mediation is not only complementary but also critical, with a concern for rescuing the principles and objectives of restorative justice for the recognition and restitution of the conflict to the parties, the material repair of the damage caused, and also the possibility of subjective restoration of the parties and the social bond weakened by the conflict. Mediation is part of a broader context where concern for human beings is not superseded by an overvaluation of the norm. Mediation operates on a sensory and emotional level and brings with it instrumental and theoretical resources that enable it as an experience that needs to be valued, not only to try to solve the problems of a penal system in crisis but to provide a quality of well-

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being to the users of the penal system, considering them as subjects with their potentialities, restrictions, and other singularities. Beyond the fears of some conservatives or disbelievers who argue that the expansion of restorative practices is costly and uncertain, due to the need for qualified people to intervene in these situations, the need for change and implementation of structures, etc., we believe that the reduction of human, political, and social costs will, in the long run, be an alternative (read as a possibility) to many of the problems we face today in the judiciary and in society in general.

Many countries (including Brazil) have sought to invest in research and implementation of practices in the restorative dimension and prove to us that the greatest advantage of these investments is still questioning existing structures and exploring viable alternatives for designing and implementing penal policies, which, every day, demand to be more interdisciplinary, zetetic, and human than purely legal, dogmatic, or instrumental.

As we said before, restorative justice is characterized by a principled dimension and also by the implementation of various practices, with mediation being just one genre and extrajudicial criminal mediation one of its species that makes up this web of practices where each is founded on a method. Many critics discuss the need and possibilities for regulating these practices, but we need to consider that they are part of a broader movement that is open to proposals and is solidifying. Restorers are concerned not only with the legal effects of their practices but, above all, with the sociological, anthropological, and human effects that can and should be identified and analyzed with the aim of exchanging and expanding the tools and ideas that have the potential to improve the quality of systems and, especially, the lives of people.

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Conflicts of interest

The authors declare there is no conflict of interest.

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