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Feminisms in the challenge of alternatives to punitivism: The necessary synergies in a path to be explored

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Abstract

In this text, after focusing the analysis on the incidence of patriarchy in law, we want to trace the basic defining lines of the three currents of feminism that can be differentiated in relation to penal issues: prison feminism, feminist guaranteeism and anti-punitive feminism. Secondly, starting from this last thesis, some key arguments will be developed to deepen in the development of a feminism attentive to the dangers of punitive logic, the creation of frameworks that move away from punitivism as an expression of patriarchy and approach other strategies. On this path, synergies with critical criminology, restorative justice and penal guaranty are necessary.

Key words

Feminism; patriarchy; feminist criminology; critical criminology; restorative justice

Resumen

En este texto, luego de centrar el análisis en la incidencia del patriarcado en el derecho, se quieren trazar las líneas definitorias básicas de las tres corrientes del feminismo que se pueden diferenciar en relación a la cuestión penal: el feminismo

This work includes some ideas already elaborated by the author in other texts (which are opportunely cited in the article) and others are framed within her doctoral thesis work, registered in the Doctorate Program of the Basque Public University *Human Rights, Public Powers, European Union: Public and Private Law*, for the access to the title of Doctor in Criminology. The title of the work is: *In search of a non-androcentric justice. An analysis of the possibilities of restorative justice from a feminist point of view* and the director is Gema Varona Martínez, so some of the conclusions that are exposed are provisional and in the absence of a more detailed development that will be done in the framework of the aforementioned research. The work is part of the following research project: PID2020-118854GB-I00 *Instrumentos normativos preventivos en la lucha contra el fraude y la corrupción*, IP Inés Olaizola Nogales.

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carcelario, el feminismo garantista y el feminismo antipunitivista. En segundo lugar, partiendo de esta última tesis, se desarrollarán algunas claves para profundizar en el desarrollo de un feminismo atento con los peligros de las lógicas punitivas, la creación de marcos que se alejen del punitivismo como expresión del patriarcado y se acerque a otras estrategias. En este camino las sinergias con la criminología crítica, la justicia restaurativa y el garantismo penal se muestran como necesarias.

Palabras clave

Feminismo; patriarcado; criminología feminista; criminología crítica; justicia restaurativa

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1. Introduction. Patriarchy, feminist legal theory and penal sciences

The issue of the creation of patriarchy has been addressed many times. It is not the aim of this work to investigate it, but to start from the reality in which we are in order to think about it: we live in a patriarchal system. As Gerda Lerner (2017, 319–321) states in a simple way in her immense work *The creation of patriarchy:*

> Patriarchy is a historical creation elaborated by men and women in a process that took almost 2,500 years to be completed. The first form of patriarchy appeared in the archaic period. The basicunit of organization was the patriarchal family, which constantly expressed and generated its norms and values (...)

Since then, there have been progressive changes in the position of women as a result of how deeply entrenched patriarchal definitions of gender became before there were formally written legal codes, which eventually resulted in the institutionalization of female subordination and its codification in laws (Lerner 2017, 99, 129) This has resulted in prolix legislation and regulation of institutions such as marriage, adultery and abortion. The presence since then of normative texts regulating these institutions reveals to us the social conditions and situations of each historical moment for women. The aim of this paper is to focus on one of these expressions of patriarchy: punitive power and its institutions. Being aware that punitive power is a patriarchal power, so that the former shares the fundamental features of the latter, we intend to analyse what these features are, how feminisms approach this issue and how, and specifically feminisms that advocate a radical change in the conception of the approach to violence tend to address the criminal issue from logics far from patriarchal consolidation. The road upto this point has been long, so it seems pertinent to attempt an initial approach as to how feminist theory has approached some elements of the study of the criminal sciences and which have been opening this path. Evidently, patriarchy does not explain everything that happens in punitive power or, if one prefers, in punishment. In its existence, its own dynamics, the transformations it has undergone, etc., many concordant circumstances converge that produce it as a result and that do not occur in a causal and consecutive manner, because nothing in the history is linear. One of them, perhaps the most studied, is the relationship between punishment and neoliberalism (see Garland 1999, Wacquant 1999, 2010, González Sánchez 2021). Precisely what happens is that there are very few works that explain the relationship between punishment and patriarchy. This shows the low centrality of this issue in feminist and gender studies, its short historicity, its marginalization and above all the need to study the phenomenon from thisplace (Howe 1994, 165).

Until the 1970s, the study of crime in a broad sense was exclusively androcentric. In those years the so-called feminist criminology was born and from that prism, it began to analyse the whole criminal phenomenon (crime, victim, social control and offender) and criminal policy (Smart 1977, 89). Undoubtedly, the article by Daly and Chesney-Lind (1988) was a milestone in the gap between feminism and criminology. I will refer to it under different headings in this section. To begin with, on the relevance of feminist thought in criminology the authors (Daly and Chesney-Lind 1988, 505) asked themselves: What can feminist thought contribute to crime and justice studies? Sophistication in thinking about gender relations is an obvious contribution. Unfortunately, however, they pointed out how most criminologists rely exclusively on

gender difference, or do not even take into account the impact of gender relations on men's behaviour. In this sense, they pointed out four lines of action that had to be addressed by criminology (Daly and Chesney-Lind 1988, 505–507), which can be summarized as: the need to create a conceptual framework for gender and gender relations; to leave the narrow limits of their discipline; to begin to appreciate that their discipline and its questions are the product of the experiences of white and economically privileged men; to raise different questions or to address problems that the discipline had ignored until then. Finally, the authors discussed how there are points of congruence between feminist perspectives and other social and political theories and, consequently, between feminist perspectives and theoretical trajectories in criminology. They show how much of what is called mainstream criminology readily adopts a liberal feminist perspective. Critical and Marxist criminologies have affinities with radical feminist, Marxist and socialist perspectives. Thus they conclude how it is not surprising that the sharpest feminist critique today is directed at left-wing varieties of criminology precisely because they hold the most promise for incorporating class, race, and gender relations into theories of crime and justice, which has turned out to be absolutely necessary in criminological study.

1.1. Feminist legal trends: The first approach to their relationship with penal control

At present, there is a certain consensus in considering that five major feminist legal trends can be referenced (see Cain 1991, Hopkins and Koss 2005, 698 ff., Bodelón 2010, 184 ff): Liberal legal feminism or equality feminism, Radical legal feminism, Cultural legal feminism or feminism of difference, Marxist legal feminism and Postmodern feminism, which includes a heterogeneous set of contributions that have in common a critique of the essentialist and universalist appeals that feminist legal theory has frequently made.

The different levels of the feminist legal debate determine the concrete approach to the penal issue. In this sense, it is time to ask which of these feminist tendencies tend to widen the penal framework or punishment, which offer a critical dimension or which propose alternatives. This is a very complex question given the blurred boundaries between the different theories, their rich nuances and the plurality of proposals. It is not possible to state categorically which proposals can be framed in the triple classification that I will use later: prison feminism, feminist guarantee? feminism and abolitionist feminism. Assertions such as, for example, that liberal and cultural feminists are framed in prison feminism, the proposals of radical feminism in the guarantee feminisms and postmodern feminism in abolitionist feminism, are too simple and reductionist and cannotbe sustained.

However, in general terms it could be considered that:

- With the exception of postmodern feminisms, none of the aforementioned thesesadvocates a radical and extreme change of the existing penal system.
- Marxist or socialist feminism is capable of criticizing punishment from the axis of the critique of capitalism and/or neoliberalism but without posing clear rupturesbetween the punishment-feminism binomial.

- Within each of the feminist legal currents, depending on the specific thesis or even the authors who carry them out, the positions range between an exacerbated punitivism and the guaranteeing of rights.

Perhaps these would be the only clear elements. But with Hopkins and Koss (2005, 698 ff), some trends can be explored within the different legal feminisms in relation to innovative ways of approaching the criminal issue. Thus, in the eyes of liberal feminists, the objectives of legislative reform should be to address violence against women as a priority. To the extent that women's experiences of sexual violence are only partially addressed by a theoretically neutral legal system, the formal system often provides no redress, much less a feminist response. The failure of the system, in turn, can reinforce the notion that sexual violence against women is not a serious crime. Thus, a victim-centred restorative justice response that holds the perpetrator accountable to the victim and to the relevant community may produce the opposite result. This response would theoretically be a step towards meeting the demand of liberal feminists that those who inflict gender-based harm be punished by the justice system in the same way as those who commit non-gendered violent crimes.

With respect to cultural feminism, insofar as it insists on the importance of interconnectedness and human relationships, it would advocate for the harm that sexual violence causes to relationships, rather than only recognizing the wrong done to the abstract state (Hopkins and Koss 2005, 698–701). Restorative justice takes exactly this approach, so there shouldn't be too much resistance to it. In addition, a victim-centered restorative justice response that incorporates the full experience of the survivor satisfies cultural feminism's call for the justice system to take into account the voice of women. (Hopkins and Koss 2005, 698–701).

For radical feminists, the fact that sex is the arena in which male control is most clearly exercised speaks to the depth of patriarchal domination in our society. Thus, specific programs focused on sexual violence against women would target precisely where radical feminists argue misogyny is found, but it would certainly not negate the fact that sex is the area in which male control is most clearly exercised (Hopkins and Koss 2005, 701), but it is true that it would not deny intervention from other places such as traditional punishment.

In the field of criminology, Marxist feminists point out that violence against women is not the same in all societies (Hopkins and Koss 2005, 701). Thus, modern capitalist societies have dramatically high rates of rape and have revealed, for example, the higher rate of victimization of poor women by men. The need for justice to address these circumstances would be fundamental, but they do not propose how, so it seems that new perspectives in conflict resolution would not be renounced.

In relation to postmodern feminists, insofar as sexual violence towards women arises from and is based on the polarized gender roles of the male aggressor and the female passive, breaking down these constructs, the argument goes, can result in the reduction of sexual assaults by men on women (Hopkins and Koss 2005, 702). Restorative justice is part of the postmodern impulse to break categories. Thus, by providing a particularized response to a crime of sexual violence, restorative justice insists that survivors and perpetrators be seen as something other than predetermined caricatures of victim and perpetrator (Hopkins and Koss 2005, 702).

Specifically on multiracial feminism, the fact that restorative justice constitutes a focal point in current international human rights debates means that multiracial feminism meets restorative justice in the international human rights arena, thus substantially enriching the dialogue and critique of restorative justice initiatives globally (Hopkins and Koss 2005, 703). A clear example of this is the number of works on restorative justice and transitional justice. In addition, in the context of violence against women, multiracial feminist theorists and empiricists have significantly expanded our understanding and knowledge base on violence against women of color, and from there have made a number of proposals to address violence against women of color (Hopkins and Koss 2005, 703) and from there have made various proposals for community-based approaches to violencethat will be given specific attention later in this paper.

1.2. Contributions of feminist criminology: On crime, women prisoners, women victims and criminal policy

Once defined, the framework of the different currents of legal feminism, which prevent speaking of feminism in the singular, is important to explain the contributions that specifically feminist criminology has made in relation to the issues of explanation of crime, women prisoners, women as victims, ending with the issues of criminal policy.[1] For reasons of space, I will only refer to the last of the questions as it is the most relevant to this work.

Part of Feminist criminology has also been dedicated to the study of criminal phenomena that affect legal goods closely linked to the female sex, fundamentally crimes against sexual integrity and gender violence, and it has done so from the point of view of criminal dogmas and criminal policy. In either case, the majority thesis has contributed to the widening of the penal system. Since then, one of the claims that has acquired a certain centrality is that the feminist movement has driven and reinforced the punitive drift of criminal policies and in particular the expansion of prison. One of the reasons for this is that, as Ricordeau (2019, 49) says, feminist criminology has never been devoid of reformist ambitions, and the development of specially designed prisons for women to which it has contributed reveals the controversies that run through it, like the rest of the feminist movement.

The second reason for this is that feminist campaigns against sexual violence were – and continue to be – integral ingredients of the prison trend in late capitalism, interweaving neoliberalism and sexual and gender politics. This drift is a reality, and the feminism that has driven it has been generally referred to as prison feminism. This is the most official and visible feminism, the one that has been institutionalized, which has relegated the protection of human rights to criminal law, which complies with the punitive cause, which resorts to criminal law without regard and ignoring its limits and above all its limitations.

This carceral feminism inspires most of the proposals made on violence against women (Ricordeau 2019, 152) The creation of new categories of crimes (such as incest or femicide), the reduction or even elimination of statutes of limitation (for crimes of a sexual nature), harsher sentences and various innovations to systematize complaints and

[1] On this subject, see my paper: Francés 2021b.

prosecutions. Calls for the prosecution of "street harassment," such as that implied by the proposed law mentioned above, are perfectly aligned with the development of prison feminism. (Ricordeau 2019, 152). In fact, its judicialisation mainly affects young, racialized and/or working class men, whose occupation of public space results from their often limited access to provoked or other spaces of sociability. However, the contours of prison feminism are blurred. (Ricordeau 2019, 154) How could the imprisonment of thousands of men for femicide or sexual violence or the imposition of hundreds of fines be considered feminist victories? (Ricordeau 2019, 154) Since this text considers that they can in no way be considered as such we will attend to other feminisms.

Not all feminisms have promoted this political-criminal tendency. There are other feminisms that have denounced the opposite, that the neo-liberal punitive agenda has co-opted the feminist cause (Mackinnon 1987, Bernstein 2012) and have deepened the idea that the structure of the criminal law and process is profoundly patriarchal (Davis 2003, Maqueda 2007, Iglesias 2013, Macaya 2013, Restrepo Rodríguez and Francés 2016, Barona 2018) Therefore, it must be transformed from feminisms. These two premises are accepted by the so-called minimalist or guarantee feminisms and by the abolitionist or anti-punitivist feminisms, since many of the analyses they develop coincide and/or are inserted with the broad approaches of critical criminology, abolitionism[2] and, in part, the proposals of restorative justice, as will be developed at the end of the chapter.

Furthermore, I would like to point out that since 2010 the so-called Queer Criminology has been inaugurated, which comes to evidence and question the hetero-centrism and cis-centrism of the discipline. (Adams 2019) and that is installed in the debate in clear cooperation with the abolitionist proposals. Queer abolitionism responds to the fact that if prison feminism is promoted by some women who have nothing to lose, from the point of view of the most marginalized people, abolitionism is not a utopia, but the means to escape the reproduction of the relations of domination that inevitably contribute to criminalization (Ricordeau 2019, 155). In the following, the proposals of the guaranteeist and abolitionist feminisms of the penal question will be explored in more detail.

2. Guarantee feminisms[3] and abolitionist feminisms[4] of the penal issue

As Pitch warns,

> the feminist movement attends to theory and practiceat the same time: the (political) practice is inspired by and feeds back on thought (...). Wecan say, therefore, that feminism is not a theory: because there is no single feminism andbecause none of the current theoretical definitions fits it. There are many different elaborations that self-identify as feminist: even in their diversity, they interact with eachother, building a recognizable and recognized space that gives a horizon of meaning through which not only we speak, but we speak to others. (Pitch 2010, 437)

[2] The term "abolish" means "to repeal or render ineffective a law, precept or custom". When reference is made in this field to abolitionism, it is referring to the abolition of prison and/or more broadly to the abolition of the penal system as it exists today. Not to be confused with the abolition of prostitution.

[3] In general, feminist guaranteeism is that which considers it necessary to have recourse to criminal law but with scrupulous respect for the traditional limiting principles of *Ius Puniendi*, with special emphasis on the principle of minimum intervention.

[4] In general, abolitionist feminism advocates the abolition of the penal system as we know it or some of its expressions, such as prison.

Bearing this in mind, in the same way that I have wanted to point out the fundamental features of the so-called "prison feminism", I will give some notes on the guarantee and abolitionist feminisms, emphasizing what unites them and what separates them, to finally focus on abolitionist feminism.

Feminist guarantee and abolitionist feminisms converge in the idea that penal logic has counterproductive and perverse social effects. The first is the expansion of penalcontrol characterized by selectivity, with an enormous impact of penalties on the individual – especially custodial sentences – and the neglect of the victim. Secondly, both feminisms agree that criminal law is not an ideal instrument for resolving conflicts and that it produces more problems than it intends to solve. A third axis of study is found in showing how the penal system is in itself a device for the creation of femininity (of gendered norms and deviances, included femininity) in which apparently objective and neutral criteria are applied, but which in reality respond to a set of values and interests for the patriarchate. (Iglesias 2013, Camps 2018). Specifically, on the one hand, it is shown that the prison tries to perpetuate the hegemonic and hetero-centric models of "good woman" and "good mother" (Almeda 2002, Hudson 2002, 626, Lagarde 2005, Juliano 2009) and it supposes a double condemnation for women. On the other hand, it analyses how the penal space victimizes women in particular and how it stereotypes the ideal woman-victim, creating more gendered devices (Macaya 2013, Restrepo Rodríguez and Francés 2016). In both cases it is denounced how the State intervenes by concretizing different institutionalized gender violence. (Bodelón 2010, 2014). Finally, it is worth highlighting the emphasis of these feminisms in underlining the power relations embedded in punitive power, its intrinsic violence and the logics of domination inherent to it: the penal system and prisonare a fundamental part of the spiral of violence, as I explained in a previous work which I will refer to below (Francés and Restrepo Rodríguez 2019).

From feminist theses attuned to penal guaranties, it is considered that if the struggle against what dominates is an essential characteristic of feminist ideology, feminism must be channelled through a guaranties approach (Barrère 1992). From the premises of the guaranteeism, the proposals for the transformation of the penal system do not go beyond the limits of the existing system (Larrauri 1997). Thus, for example, the need to review the values of supposed objectivity and neutrality on which the penal system is apparently based, but without going further; they put at the centre the idea of not questioning the capacity of agency of women; they bring the need to be aware of the limitations of the criminal law itself (Maqueda 2007, Laurenzo 2008, 2015, Ortubay 2015, Villacampa 2018, Jericó 2019, Lloria 2020). They also point to the need for specific and comprehensive training in gender on the part of the operators who attend to women who have suffered (Francés and Zuloaga 2019). Basically they are those who advocate the introduction of what is called the gender perspective in criminal law but from scrupulous approaches of minimal intervention of criminal law limited to the most serious cases and with absolute respect for the rights of the persons investigated and convicted. These feminisms do not think of an alternative project, but only that the Law should incorporate the gender perspective, that is to say, that it should attend to all social groups to define what is unjust and that it should attend to their needs (Larrauri 1997). Therefore, the incorporation of this perspective would not imply a renunciation of the

general principles of criminal law, of punitive law. However, they look critically at the punitive imaginary.

It is the anti-punitive or abolitionist feminists who respond to the longing for an alternative project (Larrauri 1997). They share all the previous reflections and warnings, but they go a step further. From their postulates, the criticism that is made is stronger than the one that comes from the guarantee and they consider that the punitive power is a system of organized state violence sexist, racist, re-victimizing, selective in its control butabove all absolutely inadequate for the achievement of the feminist project in a broad way, since the punitive is a cornerstone for the maintenance of the patriarchal system that continues to propagate the same models of interpretation/action regarding gender, sexuality, class, race and power... Therefore, it is considered a failed structure that must be abolished. From the evidence that punitive power (the power of the State to punish) isa patriarchal power, it is considered that it must be radically confronted in order to thinkof other models. In other words, if feminism wants to change the way of being in the world, the change in justice will have to take place and be marked by feminism (Francés and Restrepo Rodríguez 2019).

There is no single abolitionist feminism. Alongside the different abolitionist proposals, one can also find different feminist perspectives on abolitionism: abolish the concept of crime, in Hulsman's sense? Abolish the concept of punishment, because of itspunitive character? Or simply abolish prison as the most questionable punishment?

It is difficult to define feminist abolitionism, as well as the abolitionist proposals themselves, because of the richness of their theoretical and practical developments. (Francés and Restrepo Rodríguez 2019, Ricordeau 2019, 155). Feminist abolitionism can be defined neither as a current of feminism nor as a current of abolitionism, but as a co-production of feminism and penal abolitionism. (Ricordeau 2019, 156).

Be that as it may, as Ricordeau (2019, 31–32) notes, there are some common elements among all the abolitionisms (see also Scott 2020). The first is the firm belief that prison cannot be reformed. In line with the work of Michel Foucault, any prison reform will mean the creation of another, different prison model, but where new, equally unsolvable problems will arise because the institution itself cannot be reformed. The second common point is the idea that abolitionism is not idealism, it is something possible and it is not a simple idea. On the contrary. In the awareness that social conflicts are inevitable, a more realistic and possibilistic approach is proposed. In this sense, one of the first premises is that social justice must always take precedence over criminal justice. Finally, precisely because conflicts are an intrinsic component of societies, abolitionist proposals are committed to a broad resolution of social problems with the participation of society, reducing (or even denying) the intervention of institutions and professionalizing profiles.

It is in this abolitionist framework, poor in terms of academic weight in Spain,[5] inwhich this brief reflection and the proposals that will follow are inscribed. It is intended, therefore, from the proposal of abolitionist feminism, a radical epistemological,

[5] On this subject, see my work: Francés and Restrepo Rodríguez 2021.

methodological and ethical rethinking in penal matters in order to challenge the political terrain. (Valencia 2014) and all this that I am enunciating is already happening.

In the same way that it is evident that hegemonic feminism promotes the reinforcement of the penal system, other feminisms, more minority and that move in themargins, are those who for several decades have been promoting the abolitionist project in a more evident way all over the world, and specifically the abolition of prisons. Thereare notable works from different parts of the world that take into account the effects of patriarchy and how they converge in prison (Carlton and Russell 2018, Thuma 2019).

From the streets and from the academy, feminists are the ones who are supportingthe broadest prison abolitionist movements and the most radical debates and questioning of the penal system (Davis 2003, Ricordeau 2019, Francés and Restrepo Rodríguez 2021, Francés 2021a), although it is true that this has been a recurring theme for several decades, alluded to as: the traps of punitive power (Zaffaroni 1998).

In the historicity of penal policies, different ruptures are known: the disappearanceof corporal punishment or the appearance of prison are some of them. I consider that some of the political-criminal approaches of these feminisms are already progressively breaking with what has been known until now and are marking different lines of criticism of the criminal phenomenon and its approach.

What I will focus on next is the common features between punitive power and patriarchal power, to which I have already dedicated a previous work (Restrepo Rodríguez and Francés 2016, Francés and Restrepo Rodríguez 2019) but that I consider it is important to bring in here, at least minimally, and with the most extensive reference to that work, precisely to justify and understand some of the paths that are raised regarding where to move forward from feminisms and the synergies and alliances that are raised in the text.

3. Common features between punitive power and patriarchal power

The feminist approach to social control made it possible to expand the field of critical criminology to situations that had not yet been considered (Antony 2001, 251).

As this author rightly points out, one of the major themes of critical criminology was that of punitive power, which was denounced as selective and discriminatory. However, on the one hand, the oppression and discrimination of women was not taken into account, and on the other hand, the fact that punitive power was in itself a gender power was not taken into account (Antony 2001, 251).

However, there is no doubt that starting to analyse the penal issue in relation to the patriarchal system is a necessity and not an arbitrary decision resulting from lucubration or chance. Patriarchy is the oldest cultural system of humanity and really theonly one we know of, although matrilineal societies can be found at different times in history. In the Western world as well as in other cultural traditions, all human relationships have been and are inscribed in patriarchy.

With the above, punitive power is a patriarchal power since all the systems that configure and support the current hegemonic culture are patriarchal and because patriarchy is a total system that contains other total systems such as consumer capitalism, punishment and prison, etc. and it is also a global system. It is precisely punitive power

that is the fundamental core of Western culture today dominant in almost the entire planet. As Antony (2001, 256) points out, criminal law is an essentially masculine law, both in the way its norms are conceived and in the way it is applied: even its apparently neutrallanguage leads to the conclusion that even the prevailing values of criminal law – impartiality, objectivity and inquisitoriality – are essentially masculine.

There is a close structural link between the punitive and the patriarchy that can beseen in some general convergences and in specific aspects (Restrepo Rodríguez and Francés 2016).

The first general meeting point between the punitive and the patriarchal is social control through fear: of force, of punishment, of crime, of hell, etc. For many years women have been subjected to the scheme of femininity and its roles constructed by men. This has been so because of the fear that women have had to stop "being women" becauseof what is socially expected of them, the social and family rejection, realities that have included in time different sanctions to those women who refuse to be subjected. This issue is very well described by Gerda Lerner (2017, 325):

> The patriarchal system can only function thanks to the cooperation of women. This co-operation is guaranteed in a number of ways: gender inculcation; deprivation of education; prohibiting women from knowing their own history; dividing women by defining 'respectability' and 'deviance' on the basis of their sexual activities; through repression and outright coercion; through discrimination in access to economic resources and political power; and by rewarding women who conform with class privileges.

Likewise, the punitive power uses the fear of social exclusion of people and the possibility of being labelled in the category of delinquent to subject them to its control. To keep these threats alive, the punitive system provides for penalties that have evolved over time and whose main paradigm today is prison. To reinforce intimidation, the punitive system uses the fear of crime and the criminal and of what is different, fomenting in the common people a permanent alarm, to justify the punishment and the control that it entails. In short, fear, as a nuclear part of domination, is a key element in patriarchy, which is in turn the same that is used by the punitive system. This relationship is the first common feature between punitive power and patriarchal power. The second general link between punitive power and patriarchal power, which we simply want to mention, is the intimate relationship with capitalism (Davis 2003, Federici 2004, Roberts 2017, Mies 2019) which translates into similar logics of servitude, an evolution of punishments and of the penitentiary universe at the pace of capitalism, in the current business of prisons, the impact of the different penal systems in the "first and third world", different criminal law for different social classes, etc.

As for the more specific traits shared by punitive power and patriarchal power that I would like to announce in this text are the following: contempt for all life in general, the generation of handmaids: victims, incapable and infantilized; the manipulated use of science; the interest in breaking the bonds of solidarity; the assumption of the concept of guilt and the possession by men of the body and mind of women. As already noted, I will not refer to each of them in particular, for that the reader can refer to other texts (Restrepo Rodríguez and Francés 2016, 2019) I will instead bring the most important

global considerations of these specific traits in order to better understand the proposal that we want to specify in this text.

It can be said that punitivism and patriarchy, considered from the perspective offered by history, clearly carry out a policy of systematic disregard for life. Margarita Pisano (2004, 46, 56) in her work: *El triunfo de la masculinidad* (*The Triumph of Masculinity*) to understand this aspect clearly affirms:

> Whoever maintains that patriarchy has been humanizing, does not see how racism and xenophobia are permeating all the spaces of our culture, even those where historically libertarian thought, universities and political parties of progressive ideas were built.
>
> Whoever claims that patriarchy is humanizing does not want to see that the supremacy of the white race has been empowering itself over the rest of the world and that exploitation and poverty are greater than they were twenty years ago. Nor does it want to see the thousands of Third Worlders trying to escape in terror from famines, droughts and wars, unable to jump over the invisible wall that the First World has erected to maintain its privileges.

Within patriarchal society, punitivism as an extreme mechanism of social control that in turn systematically disregards life, can be evidenced from two different perspectives. The first, in relation to the extent to which the criminal justice system considers life. Despite what people may think, it is not true that the most serious crime for criminal law is the one that attempts against life, when another person is killed. From the study of the different penal codes it can be seen that the most complete penal protection is given to patrimony and private property, and not to life. When a criminal process takes hold of the conflict (Hulsman and Bernat de Celis 1984, Christie 1993) that involves one person killing another, those who judge are only in charge of imposing a penalty on whoever they hold responsible for the act, depriving them of their liberty and making them pay a certain sum of money as civil liability. This scheme is repeated in all the conflicts that the penal state system assumes and in the case of homicide or other crimes in which life, physical integrity or those more important eminently personal goods such as freedom or sexual freedom, makes it even more questionable. The bureaucratic procedure that is followed obviates and even forgets all the existing human conflict, both for the indirect victims and for the offender who, although it may seem unusual, has in his hands an experience as transcendental as that of causing the death of a person.

This allows us to affirm that the impact on the life of the people involved in a human loss has little value in the penal system of a State. The process of mourning and respect, of transit in the loss that accompanies the accused, the possibility of transformation, have no place whatsoever, which would be the same as affirming that life, again, while the procedure lasts, has no relevance for those who have to judge and punish. In this paper I'll focus specifically on the most questionable aspects of the formal criminal process in cases of gender violence and sexual violence and the different alternatives that have been proposed from feminist and community perspectives precisely because of this. The second perspective of contempt for people's lives is manifested in the concrete dynamics of prison life. Within prisons these dynamics of contempt for life and above all for a dignified life are reflected naturally throughout each day of confinement, and there is an innumerable bibliography on this subject.

The deprivation of liberty not only restricts freedom but a whole series of rights: the right of association, religious freedom, sexual freedom, provision of personal and family privacy, the right to disseminate and express thoughts and ideas, education and training, the right to decent work and adequate remuneration… (Rivera Beiras 2006, 2017) And even more serious: prison and its context subject prisoners to a whole series of daily and constant humiliations as a result of the submission they owe to the institution in which they are held. In addition, it is more than proven that the same confinement in prisons for long periods of time generates a series of physical and mental illnesses in prisoners. It is also certain that the very conditions of many prisons threaten the integral health of prisoners due to the absence of adequate hygiene, poor nutrition and lack of sunshine. Likewise, there is permanent evidence of the lack of recreational spaces, the lack of means to practice sports and other deprivations that lead to a very high consumption of drugs in the prison population and self-harming practices that sometimes end in suicide. Although it is assumed that we are currently living in an era of greater freedoms (or at least this could be affirmed before the COVID-19 event), paradoxically this is the historical period with the highest number of prisoners in the history of the world.

It is of interest to note from the feminist perspective that prison generates in peoplethe same consequences that have the slavery assumed by women in patriarchy. Étienne de la Boétie in 1548, in his work *Voluntary Servitude* (De la Boétie 1548/2016) already used this concept of voluntary disposition even if it was thought in this case to explain the voluntary subjection of people to the monarchy of the time. In the same way that in patriarchy women are presented as the main reproducers of this regime that in reality subjugates them, they themselves are the main educators of future generations of men and women. This feedback dynamic is achieved through the formula of making women assume the position of victims and not voluntarily leave it. The penal system also produces this victimisation in the people who participate in its processes. Again, there are two aspects to this. On the one hand, it takes the form of the infantilization that the penaltyof deprivation of liberty inevitably causes in any person and, on the other hand, the use of the victim by the penal system in general. The victim subjected to these derivations ispermanently used and doubly victimized in the creation of more punitive criminal policies. It happens continuously and especially happens that the woman in these cases isused to toughen the penalties of the system and is doubly victimized. In the first place, because she is used for the hardening of certain crimes, to create a culture that ultimatelybenefits men to the extent that it endorses their dominant system (but at the same time destroys them as human beings) (Hudson 2002, 626). Secondly, because hypocritically this strategy of increasing punishments is presented as a way that wants toprotect women (Macaya 2013) and that in reality disregards them.

On the use of women as victims employed as a weapon to harden criminal policies, and still asserting that the penal system supposedly seeks to protect women's interests Tamar Pitch rightly states (Pitch 2009, 124) that this path of appealing to penalties should lead us to understand that in coherence with feminism, we cannot use the penal system in our struggles:

> The issue is, above all, the reduction of women to the role of victims, as well as the necessary simplification of the meaning of sexuality and relations between the sexes and, at least in the beginning, the opportunity of the use of a typical instrument of institutional repression by a movement whose objective is female freedom. In other

> words, the limited radicalism of a movement that, in this way, legitimises criminal justice and the state itself. What I am trying to say, in short, is that recourse to the symbolic potential of criminal law is never innocent and we must be aware of the symbolic and cultural consequences, as well as the practical consequences that it can generate. The legitimation that women and feminism can give to criminal law can have perverse effects, both on women's self-consciousness, sense of self, on the type of political action to carry out and, finally and more generally, on a cultural climate already greatly affected by the repressive response given to the diffuse sense of insecurity in our societies. (Pitch 2009, 129)

With these reflections it is evident that, although in some historical moments feminist movements have resorted to criminal law to achieve these goals that provide the protection of especially important interests for women, the risks of this path are evident and conclusive, as it has been previously pointed out.

Both the offended and the offenders end up being victimized by the State in punitive procedures, when it robs them of their autonomy.

Regarding the feature of the infantilization of the penal-penitentiary processes, women have also been infantilized by patriarchy and this same technique of resorting to the infantilization of the whole population is also used by current capitalism in its general development for its survival. With respect to prison, it can be clearly observed how the mechanisms that permanently underlie confinement for long periods of time provoke an infantilization of the person subjected to punishment. Prison dehumanizes, to a large extent infantilizing, cutting off people's autonomy and putting an end to the freedom of conscience that leads to the person's self-extinction (Carlen 2002).

However, the naturalization of prison as a legitimate and suitable tool seems indisputable. Patriarchy, throughout most of its history, has been based on certain induced beliefs that have come to be understood as natural, especially the one that assures the biological superiority of men over women.

Angela Davis (2003, 10) exposes how "[p]rison is considered so 'natural' that it is extremely difficult to imagine living without it". However, prison is a relatively recent creation and does not fulfil any of the functions for which it claims to exist. This assumption allows us to affirm that also in this sphere of punitive thought there is a rigged use of the sciences by denying its ancestry and showing it as neutral. Presenting Criminal Law as an exact and objective science can only be understood as a farce since it is by no means exempt from ideology, as everything in society, even if we want to pretend a natural neutrality (Hulsman and Bernat de Celis 1984, Ruggiero 2010).

Furthermore, this natural way of legitimizing prison and understanding the criminal process is crossed by binary logics. It is important to show the incidence and consequences of dualist or binary logics both in patriarchy and in the structures of Criminal Law and Process, in order to demonstrate the importance of moving away from these dynamics both to confront patriarchy and to propose alternatives, as I will point out later. Hulsman and Bernat de Celis (1984) expose very well the binary logics of the penal process. They start from the idea that this system assumes the dramatic model of the division between good and bad, producing Manichean images of the penal conflict, a product of the scholastic influence to which our culture is still sensitive. This dualistic logic, also impregnated in the punitive aspect, causes mainly two things on two different

levels: the conception of the criminal act as an act that by its very nature is criminal and the creation of "necessary bad guys". Regarding the first consequence, the authors point out that there is nothing in the nature of the act, in its intrinsic nature, that allows us to recognize whether or not it is a crime or a misdemeanour. The fact that they are defined as crimes is the result of a modifiable human decision. Thus, what is a crime one day may cease to be so the next day due to different and unforeseeable circumstances, and this has been the case throughout history.

As for the second consequence of the specification of crimes, it is the creation of culprits or necessary evils. Also in patriarchy the concept of guilt, the feeling of guilt acquires a special relevance for the subjugation of people, and as well as linked to the penal system it seems to have an important role in consolidating, as I mentioned before, "voluntary servitude".

I wanted to show this close relationship between the two powers and demonstrate how patriarchy is fully represented in the model of retributive justice that we have built. Indeed, the domination of someone over someone seems to be a natural feature of life and therefore it is very difficult to identify it in its full extent, especially if that domination is cultural and is covered by a structure as perfected and defined as the domination that involves the imposition of a criminal punishment.

Hence the need we have as a society to overcome what lies beneath certain issues that are given as natural but are not.

4. Then... what would be the common features between a non-patriarchal justice and feminism?

Some questions arise: Which are therefore the steps to advance towards fairer paths in the field of violence? Which models to accept? How to do it far from the dystopia of capitalism and out of patriarchal logics? Why is it possible to think that from these models patriarchal violence is going to be better attended? In the following, we will try to answer some of these questions.

4.1. A framework of knowledge

Let us start with the first of the questions: What are the steps to advance towards fairer paths in the field of addressing violence? I consider that, first of all, it is essential to begin to build different poles of reference and for this, we have to be aware that we are made of patriarchal order and that we learned to do justice from the punitive (Segato 2016). There is no simple solution, but from feminisms we have to go further. It will be a matter of building paths in the opposites of what exists, of deconstructing the hetero-patriarchal-sexist thinking established in justice, starting by putting the lives of all people at the centre and for that it is absolutely central to get out of the binary or dualistic logic constantly present in the penal-penitentiary: criminal-victim/good-bad, but also in some feminisms. It is necessary to put an end to the binomial woman-victim-man-monster (Iglesias 2013). It is not a question of bringing the masculine or feminine way of being/doing, or the masculine or feminine way of doing justice, it is not a question of essentialisms: it is a question of structure. It goes beyond gender, but without making their struggles invisible. This implies bringing to justice the production of feminist knowledge and feminist struggles and that also means bringing what has been entrusted

to women throughout history. Care, vulnerabilities, community and the rejection of all oppressions are fundamental elements to build another model of approaching conflicts and violence. In short, it is about transforming the way in which we understand justice and think and build it under the variables of minority becomings. The accent, therefore, is placed on power, on its questioning, on the awareness that power and violence are intimately related.

Gerda Lerner (2017, 338–339) points the way in a general way by stating that:

> The change of consciousness that we have to make is produced in two steps: we have to put women at the centre, at least for a while. We have to put aside, as far as possible, patriarchal thinking. Focusing on women means: by asking if women are at the centre of this argument, how would we define it? It means to ignore any testimony of feminine marginalization because, even when it seems that women are on the margin, it is a consequence of the intervention of patriarchy; and usually that too is mere appearance (...). To put aside the patriarchal system means: to be sceptical of any known system of thought; to be critical of any assumption, value of order and definition (...). To be critical of our own thought which, after all, is a thought formed within the patriarchal tradition. Finally, it means to seek intellectual courage, the courage to stand alone, the courage to go beyond our understanding; the courage to risk failure.

Responding therefore to the questions formulated, the first affirmation will be a model in which prison does not fit and in which the legal consequences are not crossed by the logics of the exercise of violence which is what punishment implies And how will the approach to violence and conflicts look? What I propose are two spaces for action: one within institutional justice and the other outside of it, with the creation of a purely community justice space that is progressively expanded (Francés and Restrepo Rodríguez 2019, Francés 2021a). This proposal brings together three essential ingredients in line with Lerner's approach and the feminist criminology in which I am politically and criminally situated: the consideration of the effect of the criminal justice system and prison on women, taking into account intersectionality, the unambiguous rejection of the most genuinely patriarchal institutions, and the exploration of new models of doing things.

4.2. Refusal of imprisonment

It is true that within anti-prison struggles within prisons, women's participation has traditionally been minor and their experiences undervalued. The central consequence of the above is the initial and resounding rejection of the use of prison as the symbol par excellence of the domination of bodies and minds, and we have learned this very well from the experiences of female imprisonment. Since criminal law has had as a fundamental object of punishment the minorities, women have been throughout history the object of enormous control and exceptionally victimizing. This alone raises the question of how we can then have recourse to criminal law or think that anything transformative can be gained from it. I will not go back here to mention all the criticisms that can be made of prison, some of them have been mentioned above and the literature on the subject is endless in all languages. For all these reasons and the intrinsically patriarchal roots of prison, feminist movements must directly and as a matter of priority work towards its disappearance. Moreover, with Ricordeau (2019, 180) and Carlen (2002), I see the proposal for the strategic decarceration of all women as a path to prison

abolition because it will initially be easier to convince the public to abolish women's prisons than men's prisons. This is a tactical approach on the road to abolition. To this end, building political, material and emotional solidarity between relatives of prisoners contributes to women's autonomy. This collaboration is necessary and must also be based on a deep empathy with men in prison: the forms of dispossession they suffer inside prisons are not unrelated to domestic work (Guagliardo 1996, Ricordeau 2019, 205).

Abolish means to repeal or leave without effect a law, precept or custom. A word that does not refer to the fact that there are proposals to replace what is abolished or disappear, but focuses only on the fact of its elimination. This is a great virtue of the term, since it allows us to unify the proposal to abolish despite the differences in the projects that are held as alternatives to what is intended to repeal or leave out of force. Three abolitionist currents can be observed today: the abolition of prison, the abolition of the entire penal system and the abolition of the culture of punishment. These currents are progressive, and just as the second one assumes the first one, the last one includes the two previous ones. A proposal is put forward here in which at least the abolition of prison is advocated. Regardless of the speed. There will be those who consider it necessary and possible for abolition to be done immediately and those who advocate a progressive reduction of its use until it disappears. I believe that either approach is possible. The important thing is that the proposal that is made clearly contains the abolition.

4.3. Restorative justice as an indispensable tool

In accordance with the principle of reality, I believe that we cannot renounce a gradual transformation of what already exists. This transformation will not be radical, it will not question the basic structures on which it is based and it will necessarily be slow, but it is currently essential. On this path, the alliances with guarantorism and the proposals from restorative justice are essential. The change in this already existing field requires the following milestones:

- reduce the conducts contained in the Penal Codes,
- not to confront the rights of the persons investigated with those of the victims to bet on clear and real public policies of social justice and to stop thinking of institutional justice as a space where the community does not participate, where justice is in itself a product,
- Gradually introduce mechanisms for resolving intra-judicial conflicts that are more complex and involve the parties more directly.

All of this will require the promotion of public policies that relocate justice and train all agents involved in the criminal process in conflict resolution in order to progressively change the paradigms.

In the following, I will focus specifically on the necessary development of the introduction of such conflict resolution mechanisms based on the restorative paradigm.

The concept of restorative justice is a borderline concept with fuzzy and substantial (Varona Martínez 2018) with diffuse and substantially different contours depending on who and where offers the definition. It is a concept that has been distilled from an

evolution that, from the field of criminal law, criminology and other social sciences, tries to emphasize the need for a paradigm shift in criminal justice, in response to the dissatisfaction with its results and the need for the humanization of sentences. Restorative justice is also the materialization of the development of the social and democratic rule of law and of the concept of service to citizenship. It is, in part, an overcoming of justice per se, as a prerogative of the State, with a clear anchoring in the concept of the rule of law (Barona 2011, 25–52) with a clear anchoring in the concept of social reintegration as the purpose of punishment (Barona 2011, 48 ff.) and of minimum criminal law (Ferrajoli 1986, Baratta 1987, Zaffaroni 1998). Moreover, in Restorative Justice there coexist different social movements, of different ideology among which it is worth highlighting: the movements in favour of the rights of prisoners, of victims, abolitionism and movements that are committed to formulas of alternative conflict resolution (Francés and Santos Itoiz 2012). Their roots, therefore, are not unique; on the contrary, they sometimes start from opposing premises (Aranda Jurado 2018, 47 ff).

Even the term "restorative justice" itself has been the subject of discussion until the International Congress of Budapest in 1993 determined that the term to allude to this model of justice would be "restorative justice" and not others such as: Positive, Pacificatory, Temporary, Transformative, Community, Conciliatory, Re-integrative, Conciliatory, Reparative, Reparative, Restorative or Restorative Justice (Aranda Jurado 2018, 23, Miguel Barrio 2019). The term "restorative" was considered the most appropriate because it recognized the rights of victims, avoided vengeance and focused on reparation, seeking to create a state of peace (Sampedro Arrubia 2005). Thus the European Restorative Justice Forum has arrived at the following definition of restorative justice: it is an open and inclusive approach, aimed at repairing, as far as possible, the harm caused by crime or other wrongful acts, and/or reducing the risk of (further) harm. This is done through a process that involves all those affected (victims, offender and community), reaching an understanding (and agreement) about reparation, taking into account the relationships between people and the needs of justice, usually with the help of a facilitator (Varona Martínez 2018). In this sense, art. 2.1 (d) of the European Union Directive 2012/29, establishing minimum standards on the rights, support and protection of victims of crime, describes restorative justice as: "any process that enables the victim and the offender to participate actively, if they freely consent to it, in the resolution of the problems resulting from the criminal offence with the help of an impartial third party".

In short, in the concept of restorative justice a whole series of principles and values converge that promote a justice different from the traditional one. Marshall's (1996) often quoted definition, indicates that Restorative Justice is "a process by which all parties involved in a particular crime come together to collectively resolve how to deal with the consequences of the crime and its implications for the future". Therefore, Restorative Justice is much more than a series of provisions in the legislation of mitigating circumstances of reparation of the damage, than the provision of suspensive benefits, pardon, mitigating circumstances of other types in case of reparation of the damage etc. And it is much more than this because the previous ones are purely instrumental logics of procedural collaboration, of economic recovery, of benefits granted to the confession or denouncement of another person (Donini 2013).

Pali (2020) describes in a very graphic way the evolution of Restorative Justice in Europe. In conclusion, the author (Pali 2020, 383) argues that it can be stated that restorative justice in Europe seems to be politically and legally supported and institutionalized, while its impact remains in many cases only marginal within criminal justice systems, where prosecutors and judges still have a decisive role in determining which cases are given access to restorative justice. In short, while retributive justice sees crime as a punctual? event focused on the past, based on legality, order, punishment, confrontation and imposition, which result in the stigmatization and exclusion of people; restorative justice is a response attentive to the circumstances and context, based on collaboration and consensus to achieve the reparation and transformation of people who have caused harm. The goal will never be exclusion but reintegration and reparation of harm.

From this place, a whole series of benefits can be raised in the intervention of the conflict in victims, offenders, criminal justice and community that have been widely documented by the doctrine and experiences of justice (see, among others, Bouchard 1992, Mannozzi 2005, Barona 2011, 144, Francés and Santos Itoiz 2012, Varona Martínez 2018, 72–73, Miguel Barrio 2019). In terms of the offender, the main benefits: obtaining and offering an explanation for the harm caused, real attention to their personal and social problems, if any, less stigmatization, learning another way of managing conflicts and a decrease in the possibility of recidivism. Secondly, in terms of the victim: more adequate reparation, reduction of secondary victimization, better emotional approach to the conflict, emotional affective level, visibility, listening, extension of the space to all victims, future relational level or reduction of the feeling of insecurity. In terms of society: better coexistence, learning from other models of conflict resolution in communities, emotional approach of the community, leveling symmetries, neutralizing fears, expanding networks of solidarity and trust, social pacification and community feeling and prevention of future conflicts.

From all that has been said, I consider that one of the paths to be traced for the transformation of justice lies in the implementation of restorative justice services in all courts, which little by little gain space to the traditional administration of justice. The guiding principles of intervention should be respectful of the international standards that already regulate restorative practices and the elements that will be developed in section 4.5. However, there are different conceptions of this justice and I believe that only a critical restorative justice will be capable of real transformation, as I will indicate at the end of this text.

4.4. Community justice or transformative justice

Regarding the second space for action that I have mentioned, there is the need to start thinking that many of the conflicts that reach the institutionalized justice bodies canbe resolved in the heart of the community itself, which is where they are born, take root, become virulent and with which we will most likely have to continue to coexist. It is about widening this community space, so much demanded by feminisms, and that all of us get involved in the community processes of conflict resolution of all kinds to live safer in our communities. It is about progressively creating a community management of conflict resolution close to the people, where there is co-responsibility and a real approach to what happens to us as human beings in community (Hopkins Moreno 2019).

It could be said that all Restorative Justice is communitarian, to the extent that it will always benefit offenders, the offended, and their close community (Karp and Clear 2006, 224). Community Justice is not therefore an illegal justice, since State Law itself provides the framework for the regulation of its actors. The difference lies in the fact that the basic criteria, the motivations of the decisions, do not come from State Law, but from social Law; that is, from the community conceptions of what is just and equitable. This denomination also alludes to the aspiration that, being a Law that gathers the feelings of the community, it can serve as an instrument to improve the social inequalities that affect it, besides being able to respond to the reality of increasingly plural societies, which must face complex phenomena of miscegenation, also in the cultural sphere.

This proposal for community management would act in different dimensions, very clearly proposed by the approaches of Transformative Justice but also for the communal justice of indigenous peoples. At present the most defined and extended proposal is the one presented by Kershnar *et al.* (2017) and by Hopkins Moreno (2016, 2019) after the study of different ways of doing justice from the indigenous peoples to expand them today in our communities under the premise of how to do a feminist and communitarian justice, antagonistic to capital and the State. Thus, on the one hand, one of the pillars of action is to create and affirm in the communities values and practices that resist abuse and oppression and motivate security in order to transform the political conditions that reinforce oppression and violence. Essentially, this would be community networking. The second pillar is to develop sustainable strategies to address the abusive behaviour of community members, creating a process for them to take responsibility for their actions and transform their behaviour by providing safety, and thirdly it is essential to support people in thecommunity who have been violently attacked by respecting their self-determination. The action therefore crosses both the political-collective and the political-personal level, giving concrete answers to conflicts by creating satisfactory processes for all parties. This is basically a proposal to create from below and from here we can start whenever we want, without renouncing a careful and exquisite approach to conflicts, especially in the most serious cases.

Some feminisms ventured to place non-punitive attention on perpetrators ofviolence against women because of the exposed limitations of the traditional criminal justice system (Ricordeau 2019, 180). But non-recourse to the criminal realm is not a matter of principle. We will never criticise those who have recourse to it, but it cannot be ignored that sometimes recourse to the police is the only option in a situation of physical and psychological urgency (Ricordeau 2019, 183). However, in my opinion,any recourse to criminal law is a collective failure that we must take advantage of to thinkabout the establishment of collective solutions. Following Ricordeau (2019, 185) thisobservation calls for another in the light of different dynamics that are being observed inthe daily collective practices of certain groups who choose to exclude aggressors from their spaces and sometimes make this publicly known. This choice is unsatisfactory, because it leaves the excluded person and the conditions that made their actions possiblewithout the possibility of change.

In the logic of rooting transformative collective practices, different proposals for transformative justice began to be put forward since 2000, under the concept of community accountability. The projects embedded in the concept of community

accountability, away from institutionalized proposals start from a broader social movement project to challenge the persistence of heteropatriarchy and white supremacy in communities and to displace the criminalization paradigm that emerged as a response to interpersonal violence in the last 40 years (Kim 2011-2012, 31–33). The community-based approach to violence intervention has required the recovery of traditional community practices as well as profound transformations in the remedies to violence.

Following Kim (2011-2012, 31–33) the dangers and paradoxes of these community spaces that have been fragmented by individualism and competition are abundant, and increasingly plagued by the material realities of poverty, surveillance and pervasive violence. In this regard, efforts to document the complex dimensions of community accountability and practices and the resistance to these mechanisms being co-opted by state institutions have been all-important, as it is felt that community accountability and transformative justice can serve the interests of marginalized communities as long as states do not acquire the power to control and determine their content and the capacity to inject the logics of the system (Kim 2011-2012, 31–33).

4.5. Core pillars of both lines of conflict intervention

The common lines to propose real alternatives both in the developed field of institutionalized justice – that is, to carry out an authentic implementation of the guaranteeing and restorative model of formal justice, and not to use it for other interests –, and from the non-institutionalized community – that is, outside formal justice and without reproducing patriarchal justice –, are the ones that will be pointed out in a necessarily succinct way below.

In the first place, we must start from the recognition of the other person, whatever the party, as equal in dignity. In other words, the human dignity of all persons must be affirmed, rejecting any vision that establishes friend-enemy relations between the parties or that leads to the search for someone to blame (scapegoats) instead of creating spaces in which the autonomy of the parties is decisive.

Secondly, it will be necessary to pay attention not to the ends of punishment, which is the object of criminal law and punishment, but to the people involved and their needs. This means truly putting people at the centre and leaving the act of judging to itself. Thirdly, in these processes, the principles of voluntariness, confidentiality, reasonableness, proportionality, gratuity and neutrality must be preserved and respected absolutely. In all of them, it is important to progressively try to use a different language than the one used and promoted by the punitive system in order to modify what underlies it. Regarding the implications for the people involved, I refer to what is expressed by transformative justice, but I would like to add that in this eminently restorative logic it will be possible to think of community interventions of wider reparation with a transformation of the work for the benefit of the community, also in its dimension of carrying out specific programmes; or simply in meeting spaces such as restorative circles or open forums which deal with existing conflicts.

When any restorative or community practice is carried out, one of the fundamental roles of the facilitator of the dialogue is to balance the parties; that is, to try to ensure that at the moment and in the space of the restorative dialogue (regardless of the practice used: mediation, circle, conference, etc.) people are on an equal footing. This should be based

on the criterion of material equality, according to which each party should be treated differently in order to achieve a balance that ensures that the dialogue itself and the decisions that may be taken there will not reproduce any type of violence or affect the dignity or freedom of any of the parties.

Structural violence and cultural violence are the most difficult not only to identify, but also to counteract, since the facilitator must have previously carried out a personal work of recognition of these subtle forms of violence, where many micro-aggressions that can be very harmful are hidden.

Thus, in all cases where men and women are involved, regardless of their sexual and gender orientation, a gender perspective that avoids inequalities will have to be implemented, which is an issue of utmost importance for feminisms. Obviously this will be even more evident in cases where the conflict involves gender-based violence, but not only there must this be taken into account.

As she points out (Ricordeau 2019, 196) transformative justice, as a community option at the expense of agents and people who launch and develop it, has its limitations. One of them is that the aggressor has to accept to start a work process, sometimes in a group, to transform the problematic situation. On the other hand, not all victims have the same access to these community resources, since not all people have the same affinity networks or knowledge of the existence of these spaces.

Having fulfilled the previous premises, this way of understanding justice inside and outside the institutional, is presented as a possible and perfect alternative to the current idea of justice in a globalized world of western style. Moreover, precisely because of the characteristics of the global world, this proposal is especially realistic since it really attends to people and does not leave us helpless in the name of other purposes.

5. Specific references to addressing violence against women

The starting point for this text is the fact expressed by Mies (2019, 313) that violence against women is a historically produced phenomenon and that it is closely related to the relations of exploitation between men and women, between classes and on an international scale. All these relations are more or less embedded in the systems of accumulation and traversed by the element of intersectionality.

Violence against women is not about the sporadic actions of isolated men, fulfilling the myth of the "sexual predator". On the contrary. It is a structural violence with a strong impact, which is specified in men as a way of exercising power, without pathologising their behaviour, making it monstrous or isolating it (McMillan 2007, 17). The victimization (and survival) of women is an important and growing part of criminology and is of central interest to feminists within and outside of criminology (Daly and Chesney-Lind 1988, 520–521). In research on physical abuse and sexual violence by men against women, the following themes are noted as crucial and major findings (Daly and Chesney-Lind 1988, 520–521).

- Rape and violence – especially between intimate partners – is far more common than is reported.

- Police, court officials, juries and the general public do not take victims of rape or violence seriously, especially when the relationship between the victim and the perpetrator involves intimate or acquaintances.
- Myths about rape and intimate violence are common.
- While the victim-women feel stigmatized and ashamed, the victims-women feel stigmatized and ashamed, the victims-women feel stigmatized and ashamed.

Male perpetrators often do not consider their behavior to be wrong.

- Strategies for change have two distinct dimensions for men and women. For women they include empowerment through demonstrations, marches, shelters and centres, and legal advocacy; and for men they include arrest, more active prosecution, and stiffer penalties for rape.

What I would like to focus on next are some proposals and ideas that have been developed from feminist perspectives to address the violence suffered by women in the wake of the failure of traditional formal justice (on forms of organization against violence and testimonies in this regard, see McMillan 2007). The question of the specific approach to sexual violence and feminism could be the subject of an entire article. It is not the subject of this paper. An excellent book to which I refer is: *The Feminist and the Sex Offender: Confronting Sexual Harm, Ending State Violence* (Levine and Meiners 2020).

I will refer then to restorative justice projects in a broad sense within formal justice and also to informal community justice proposals. However, with regard to the concrete intervention from restorative practices in conflicts considered eminently gender based, in the Spanish State there are important difficulties. The only express prohibition of penal mediation was introduced by the Organic Law 1/2004, of 28th December, of Integral Protection Measures against Gender Violence, in which an article 87 ter was added to the Organic Law 6/1985, of 1st July, of the Judicial Power and which is circumscribed to the so called crimes of violence against the partner, in spite of the name of the Law, which seems to refer to all gender violence in the wide sense of the Istanbul Convention. This is also the case in other countries. Thus, for example, CEDAW's GR no. 33 expressly refers to all gender-based violence. 33 of CEDAW expressly recommends that state parties "ensure that cases of violence against women, including domestic violence, are under no circumstances referred to in any of the alternative dispute resolution procedures" (CEDAW/C/GC/33, para. 58 c).

However, as recently studied by Villacampa Estiarte (2020, 64) the adequacy of restorative justice in cases of domestic violence, that is, in the scope of the LO 1/2004, is interesting and it is urgent to give a framework to this intervention because it is considered, as comparative studies show, positive.

Beginning with the first space, that of the possibilities of restorative practices within formal justice (Hopkins and Koss 2005, 708). Some feminist scholars have raised important questions about the appropriateness of using restorative justice inresponse to gender-based violence in particular. Most of these concerns focus on whetherrestorative justice is an effective and safe response to violence against women. In this regard, feminist concerns about the use of restorative justice for gender-based violence fall into several basic categories: (a) safety and physical and emotional well-being, (b) factors

that may bias the subsequent agreement reached by the parties, and (c) scepticismabout the efficacy of the intervention.

One of the authors who has done the most work on the appropriateness of restorative justice in relation to violence against women in a broad sense is Barbara Hudson. The author maintains that restorative justice is effective justice in this area (Hudson 2002, 626) but that, as with most attempts to measure the effectiveness of criminal measures, it is difficult to determine whether the claimed benefits are the result of the measures themselves or of case selection. With all the questions raised by research in this area, the author highlights two important issues. Thefirst is that restorative processes have a positive quality, above and beyond the formal, which is that they not only involve victims and offenders, but can reach out to family, friends and community, which reduces structural violence and fosters safer societies. Thesecond, closely related to the previous one, is that restorative justice has a purely re-integrative aspiration, which should be incorporated into formal criminal justice. In doing so, the author does not see restorative justice as always being the first level of the law enforcement pyramid; or as a form of justice suited to a particular typology of crime; or as a replacement discourse. He considers that it can be all these things, depending on thepersons, the conflict, the legal-social-political contexts. In short, he considers that restorative justice and formal justice can develop as parallel systems, which is, at best, what is happening in most countries.

Theoretical works are abundant (see, among others, Strang 2002, Godden-Rasul 2017, Keenan 2017, Pali 2017, Daly 2017) and empirical-practical works (see, among others, McGlynn *et al.* 2012, 2017, Jülich and Landon 2017, Lopez and Koss 2017, Wager and Wilson 2017) that address the possibilities of restorative justice in sexual violence. All of them highlight that the interventions produce very positive results in terms of satisfaction of victims and offenders and in terms of reduction of recidivism. Furthermore, contrary to what is often considered research suggests that restorative justice appears to reduce offending more effectively for more serious offences than for less serious offences and for offences where there is a specific victim, a specific personal harm.

In order to attend to the gender perspective in the restorative and community intervention, in the first place (Francés and Zuloaga 2019) the following issues should be taken into account:

- Be aware that no one is exempt from prevailing gender stereotypes. Review the values of supposed objectivity, neutrality and impartiality on which the penal system is apparently based, but which prove to be obstacles to the articulation of a deal.
- Do not question women's agency.
- To be aware of the limitations of criminal law itself and that the fact that a woman does not conform to its demands and rhythms, sometimes dragging her into restorative intervention, does not mean that the woman is doing something wrong.
- To look beyond gender, taking into account situations related to social class, cultural, racial, ethnic, sexual orientation, privilege, age, etc. in order to really

introduce gender into all possible situations in which women find themselves in the face of the violence they suffer.

However, the studies also agree on the difficulties of evaluating the programmes and the need for theirextension in numbers and territories.[6]

The last issue that had been announced to be pointed out is the basis of Critical Resistance and Incite's deinstitutionalized, community-based approach. From the idea that the mainstream anti-violence movement has increasingly relied on the criminal justice system as the frontline approach to ending violence and has failed, along with the critique that abolitionist movements have traditionally neglected women of color, they propose the following axes to consider in the development of attention to violence:

> We call on social justice movements concerned with ending violence in all its forms to:
>
> 1. Develop community-based responses to violence that do not rely on the criminal justice system and that have mechanisms to ensure safety and account ability for survivors of sexual and domestic violence. Transformative practices emerging from local communities should be documented and disseminated to promote collective responses to violence.
> 2. Critically assess the impact of state funding on social justice organizations and develop alternative fundraising strategies to support these organizations. Develop collective fundraising and organising strategies for anti-prison and antiviolence organizations. Develop strategies and analysis that specifically target state forms of sexual violence.
> 3. Make connections between interpersonal violence, the violence inflicted by domestic state institutions (such as prisons, detention centers, mental hospitals, and child protective services), and international violence (such as war, military base prostitution, and nuclear testing).
> 4. Develop analyses and strategies to end violence that do not isolate acts of state or individual violence from their larger contexts. These strategies must address how entire communities of all genders are affected in multiple ways by state violence and interpersonal gender violence. Battered women prisoners represent an intersection of state and interpersonal violence and as such provide and opportunity for both movements to build coalitions and joint struggles.
> 5. Place poor and working-class women of colour at the centre of their analysis, organizing practices, and leadership development. Recognize the role of economic oppression, welfare 'reform,' and attacks on women workers' rights in increasing women's vulnerability to all forms of violence; locate anti-violence andanti-prison activism alongside efforts to transform the capitalist economic system.
> 6. Center stories of state violence committed against women of color in ourorganizing efforts.
> 7. Oppose legislative change that promotes prison expansion or criminalizationof poor communities and communities of colour, and thus state violence against women of colour, even if these changes also incorporate measures to support victims of interpersonal gender violence.

[6] Two important programs are: Circles of Support & Accountability (CoSa) and the RESTORE programme.

8. Promote holistic political education at the everyday level within our communities. Specifically, they show how sexual violence helps to reproduce the colonial, racist, capitalist, heterosexist, and patriarchal society in which we live, as wellas how state violence produces interpersonal violence within communities.
9. Develop strategies for mobilizing against sexism and homophobia within our communities to keep women safe.
10. Challenge men of colour and all men in social justice movements to take particular responsibility to address and organize around gender violence in their communities as a primary strategy for addressing violence and colonialism. We challenge men to address how their own histories of victimization have hindered their ability to establish gender justice in their communities.
11. Link struggles for personal transformation and healing with struggles for social justice.

We seek to build movements that not only end violence, but also create a society based on radical freedom, mutual accountability, and passionate reciprocity. In this society, safety and security will not be premised on violence or the threat of violence; it will be based on a collective commitment to guaranteeing the survival and care of all peoples. (Kershnar *et al.* 2017)

To conclude this section, as mentioned above, the task ahead in the development and evaluation of these and other programmes is enormous, because the real test is empirical. The application of restorative justice in general, in other types of crimes, shows that it is a possible and very positive model and for this reason, and because of the evidence of the failures of traditional justice, it is strongly supported in this work. But it's true that it must be specifically evaluated if it's a safe and effective method for dealing with individual cases of violence against women and, eventually, for deconstructing the systems of oppression that trigger, construct, and maintain gender violence. If the evidence shows that it doesn't work on either count, we must honestly commit to stepping back and revising the theoretical and structural underpinnings of this approach... but first the commitment has to be to the process. (Hopkins and Koss 2005, 717). But first the commitment must be to the raging need to turn around the politics of addressing violence.

In short, it should be established that in any application of the restorative approach through Restorative Justice or restorative practices, it will be necessary to consider that female people are in an unequal starting position compared to other persons. This is essential because whoever facilitates any restorative encounter or dialogue will have to ensure that in this scenario these inequalities are overcome. And of course, the other factors of discrimination that may be present in this particularly vulnerable population must also be taken into account: the variables of social class, cultural, racial, ethnic, sexual orientation, privilege, age, etc. in order to really introduce gender in all the possible situations in which women find themselves in front of the violence they suffer.

The gender perspective, therefore, must be kept in mind in the approach to any conflict: because it crosses everything, it is a transversal issue. And even more so, it will be present in conflicts arising from the commission of certain crimes where it is a particularly sensitive issue at the risk of re-victimization: these are sexual crimes or

domestic violence, without the intention of limiting the gender perspective to these crimes.

6. Final reflections on the synergies between critical criminology, restorative justice, abolitionism and feminism

In the challenge of alternatives to punitivism, it remains to be defined what will be the necessary synergies between different proposals, in the advancement of this tentative path that I have just raised as a possibility of exploration. The approach is very much in consonance with that of critical criminology, the abolitionist of the penal-penitentiary and the perspectives of a critical restorative justice (Pali and Madsen 2011, Pali 2017, Aertsen and Pali 2017). This implies that it is possible to think in a model that puts in the centre all those questions that from the feminisms have been evidenced: Visibility of the violence of patriarchy without individualizing or exonerating the States of responsibility (which is, or at least was, one of the priorities of the denunciation of feminisms), the need to address these violences and name their seriousness, but renouncing the criminalizing and purely symbolic approach of criminal law, which is what the abolitionist perspective raises, giving the mechanisms of justice a more humanitarian approach, based on the reparation of victims and work with the offenders. "Feminism must be linked to prosecutorial currents that seek deep structural and social changes. We must look for alternative values, which do not mean equal or special rights but to try to obtain a totally different way of thinking in front of the law, stripping it of its patriarchal and violent character" (Antony 2001, 257).

Therefore, in the first place, it will be indispensable for feminist analysis to take into account that punishment is in itself a political decision (Hulsman and Bernat de Celis 1984, Donini 2013, 1175). What punishments we have in our system and what to punish is a political question. In Donini's words,

> why a violation of secrets (...) 'deserves' a month in prison, or a pecuniary penalty, a substitute penalty of semi-liberty, or the other way around, three years in prison, none of them can justify it, neither in a relative sense, nor obviously in an absolute sense. (Donini 2013, 1175)

Nor is there an automatic relationship between crime and punishment because the response to crime is the result of political decisions and certain social configurations that converge in a given context and time (González Sánchez 2021, 23) and this should always be taken into account. In the same way that we should not lose sight of the idea that it is the solution that dictates the terms in which a problem is constructed (Pitch 2003) or in the words of Garland (1999, 291) "rather than seeing punishment as a passive 'expression' or reflection? of established cultural patterns elsewhere, we should try to see it as an active generator of cultural relations and sensibilities". Penalty is a complex social institution.

In this sense, the contributions of critical criminology to penal abolitionism are remarkable, especially the contributions to the analysis of the role of capitalism and neo-liberal policies developed by the penal system (Ricordeau 2019, 47, González Sánchez 2021). As it was said, this dimension must be present in the feminist analysis of the penal question and in fact it cannot be far away because, as it was mentioned at thebeginning of this article, there is a strong relationship between the birth of patriarchy andcapitalism,

as well identified, for example, by the concept of the "prison industrial complex" (Davis 2003). At the same time, in the opposite direction, feminist epistemology has served to problematize and enrich critical criminology, as has been shown in different sections of this article (Prando 2019, 38) as has been shown in different sections of this work.

However, it seems that "the tendency to reduce the complexity of women's oppression to terms of violence has hindered a critical approach regarding criminal justice apparatuses and institutions and their role in the reproduction of social and, of course, gender inequalities" (Rebolledo 2019, 32). Possibly it is because the most influential feminism, prison feminism, is the one that constantly reproduces, in truth, patriarchal logics without questioning them. In this sense, Gerda Lerner (2017, 334) states how:

> There has always been a small minority of privileged women, generally belonging to the ruling elite, who have had access to the same kind of education as their brothers. From among their ranks have come the intellectuals, the thinkers, the writers, the artists. They are the ones who, throughout history, have not been able to offer a feminine perspective, an alternative to androcentric thinking. They have paid a very high price for it and they have done it with enormous difficulties. These women, who were admitted to the centre of the intellectual activity of their time and especially of the last hundred years, have had to learn to 'think like men' first. In the process, many of them took on so much of this teaching that they lost the capacity to conceive alternatives.

On partnerships with restorative justice, it is important to emphasize several issues.The first is that the way in which restorative programmes are specified will be a vortex to materialize what is being said here or, on the contrary, restorative justice will be nothing more than a supporter of the system that reproduces the characteristic elements of penal neoliberalism: the individualization of problems, the moralization of people and the empowerment of control mechanisms. For this reason, we are committed to a concept of critical restorative justice (Aertsen and Pali 2017). We are aware of the need to relate it to other phenomena such as radical democracy, decolonization, social justice, questions of race, class, gender... Therefore, a restorative justice aware that it will not be the panacea and solution to all problems, but it is a path to explore with the possibility of moving away from the prevailing logics of domination that govern the traditional criminal justice system. Regarding the specific concern that the restorative dimension can mean for feminisms, we can say that it in no way implies renouncing the public question of offences (Pali and Madsen 2011, Pali 2017). Those of us who defend these positions make an effort to show that it is not a matter of privatising conflicts, nor of returning these problems to the private sphere in the case of violence against women (sexual aggressions,violence in the family, human trafficking...). In this context, it is shown how it is possibleto continue to make structural violence against women visible and to constantly generate public debate about it, while creating high-standard alternatives for women in need of realsupport.

The sisterhood with the abolitionist horizon I think has to be clear as well. As Ilea (2018, 363) asks: How, then, do we deal with the very real harm caused by sexual violence while at the same time being aware of the equally harmful effects of relying on state intervention. Abolitionism and feminism must be understood as co-constitutive, essential to finding innovative solutions to the twin problems of violence against women and the criminalization of women (Smart 1977), especially those already most likely to be marginalized because of their class, race, or sexuality. But as abolitionists, we need to

develop solutions that do not strengthen criminal justice apparatuses and point out how further criminalization can negatively affect those involved, especially the marginalized, the racialized, and the poor (Ilea 2018, 364–365).

In the realm of everyday alliances of practice, again with Ilea (2018, 366), I argue that working with non-profit organizations that develop programs such as Circles of Support (CoSA), which are not abolitionist, can further the abolitionist project. It is also important to create spaces to meet with prisoners and their families. Most abolitionistmovements are linked to the families of prisoners because they are the ones who know the most about the failures of the system. It is also true, of course, that these collectives have their own logics and codes, their own idiosyncrasy, their own way of thinking, andtheir own way of life (Ricordeau 2019, 173) their own idiosyncrasies, but like all groups they have their own internal logic. Synergistic alliances with them are indispensable.

Synergies with the creation of fully de-institutionalized spaces of conflict resolution is also crucial. The development of *Transformative Justice* does not guarantee a future abolition of the penal system. In fact, it risks being instrumentalized, which willrequire continued resistance and revision (Ricordeau 2019, 197).

In Spain, based on these notions, although in a less structured way, informal experiences have been taking shape for at least a decade in some collective spaces, neighbourhoods and cities of the State with more or less success, mainly driven by autonomous feminism. There is not enough space in this text to describe the strong pointsof the interventions, which have been many, or the weak points, but I would like to pointout that the latter are to be found in the reproduction in the processes of the same logics as institutional justice, simply transferring the power of the State and its practices to the Community, without questioning them.

It is from minority backgrounds where attention to the abuse of power, dominationand community and horizontal strategies are fundamental for the management of life, thatit will be possible to build a model of justice that is truly attentive to the violence that we suffer as people in community with tangible results.

This goes through the rejection of the structures that are directly contrary to this approach: the hyper-criminalization of behaviours ("everything must be a crime"), prison and hyper-bureaucratized criminal processes that forget people for the abstract purposes of punishment. With McGlynn *et al.* (2012, 239), as long as we do not accept that criminalization and penalization, do not create safe communities for women, we will follow the call of punishment and condemnation to formal justice that does not meet people's needs and expectations. It is about being aware that the conditions that allow violence to occur are the ones that must be transformed, that state and systemic responses to violence fail to promote individual and collective justice, but instead tolerate and perpetuate cycles of violence (Kershnar *et al.* 2017). It is also important to understand that in the search for alternatives from feminisms we will have to be attentive to all the scenarios in which criminal law and punishment move today at the dawn of the 21st century. Furthermore, it is important to stop essentialising violence (specifically sexual violence) and to be aware that gender alone as a category is not useful for analysis if it is not intersected with race, class, migratory status... it has no critical perspective whatsoever. It is important that we challenge constructions of the sex offender as a deviant, that we challenge ourselves to go beyond disgust or outrage when

we hear of sexual victimization and offending... and that we challenge ourselves to go beyond disgust or outrage when we hear of sexual victimization and offending (Ilea 2018, 368) In the words of Karlene Faith: resistance to criminality is a feminist imperative.

In concrete terms, recapitulating what has been said, the actions to be undertaken will be to radically transform the way of building justice from the institutions (not of imparting justice), where all the actors will be important and will transform the current role and the creation of spaces for community resolution of conflicts attentive to the logics of power. I have already said that there are no simple solutions, nor a manual of instructions, the alternatives will have to be built among all of us in a long, constant and laborious process. The fundamental ingredients proposed here are more feminism, more guarantees, abolition of prison, restorative justice in the institutional and transformative in the neighbourhoods, in addition to, of course, essential public policies that amplify rights and the development of radically more democratic societies.

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