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ON FEMINIST JUSTICE AND PUNISHMENT

Feminist criticisms and alternatives to punitive justice

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DECLARATION OF AUTHORSHIP AND ORIGINALITY

I, Alma Gamper Saez, hereby declare that I am the sole author of this final dissertation for my Bachelor's Degree in Philosophy, Politics and Economics. The ideas, arguments, and conclusions presented in the work are my own, and any external sources have been duly cited and referenced. I also certify that this text has not been submitted for assessment in any other subject, either partially or in its entirety.

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ABSTRACT

In the 1970s the mainstream feminist movement in the United States turned to the carceral system as a desirable tool to pursue feminist goals. Nowadays, feminists often advocate for harsher penalties as the solution to sexist violence, as can be seen in the current discussion around the Spanish Organic Law 10/2022, on the Comprehensive Guarantee of Sexual Freedom—punitive responses to male violence have become the norm. In this context, this paper aims to question the naturalization of punishment and widen the responses to violence we are able to imagine by asking the following questions: what should the relationship between feminism and punishment be? What can feminist justice look like? These questions have been addressed by first discussing some of the main criticisms of punitive approaches to justice presented by anti-punitivist and abolitionist feminists, to then examine the idea of abolition as well as alternative practices such as restorative and transformative justice and their limitations. Through this, I have argued that transformative and intersectional feminism should not rely on punitive strategies that fail victims and often come into conflict with the aims of feminism. I have also tried to show that feminist justice could look like restorative and transformative practices that center the needs of those involved while working to dismantle the systems of oppression that sustain violence. Some of the limitations of these alternatives have been discussed, such as their reliance on the existence of community, pointing to potential future lines of research.

Keywords: carceral feminism, feminist abolitionism, anti-punitivist feminism, restorative justice, transformative justice, imagination.

Table of contents

1. Introduction

1.1. It's easier to imagine the end of the world than the end of punishment: *Promising Young Woman* (2020) and feminist punitive imagination

The British filmmaker Emerald Fennell has been widely praised for her subversion of the rape-revenge genre in her directorial debut *Promising Young Woman* (2020). This film follows Cassie, a girl whose best friend Nina committed suicide after being raped by a classmate, as she navigates trauma, forgiveness, and vengeance through her relations with men and the various people involved in Nina's rape and trial. *Promising Young Woman* subverts genre expectations by never showing the sexual assault that triggered the situation, something that is often done in a sensationalist way and appealing to male fantasies. Most importantly, however, during most of the movie the protagonist is not seeking revenge "in the expected rape-revenge trope manner, filled with brutal violence and gore" (Heimberger, 2022: 56). Instead, she "utilizes her wit in order to manipulate men into recognizing their inappropriate and predatory behavior" (Talbert, 2021: 16), without inflicting any tangible harm. *Promising Young Woman* also depicts Al, Nina's rapist, and those who supported him as "nice" people, with respectable jobs, as well as partners, friends, and families who love them, actively countering the collective imagination in which rapists are strangers we run into at night instead of parents, friends, and boyfriends. Because of these—and other—reasons, many consider *Promising Young Woman* to be a remarkable feminist fiction, "another example of the relevance of rape narratives in the dismantling of rape culture and as a consequence, as a tool for social progress" (Oller Figueres, 2022: 39).

Most of the film's supporters have extended their praise to the film's ending, in which, after finally confronting Al to avenge Nina, Cassie ends up being murdered by him in a demonstration of the "ever-present reality of male violence which the feminist-hero is, ultimately, unable to surmount" (York, 2022: 1). Cassie is dead and Al, after being comforted by his friends, is getting married: it seems evident that the patriarchy has won. There is, however, a twist: during the wedding, the police—that had been alerted by Cassie—come and arrest Al, who will finally have to face the consequences of his actions (Oller Figueres, 2022: 37). This ending has been described as "cathartic", "fantastical" (Heimberger, 2022: 56 - 58) and "satisfactory" (Oller Figueres, 2022: 37): the rapist is "finally serving justice in the end" (Heimberger, 2022: 58). Others have been more

critical of this ending, pointing to the fact that Black women survivors of sexual violence tend to have a more negative experience of the police than the one suggested in the film's ending, as well as questioning whether it is desirable to reinforce the narrative that the police are reliable actors that will arrest rapists (Shaw, 2021: 34-35). I believe that, from a feminist perspective, the danger here lies in seeing this ending as something to celebrate instead of a defeat: can we say that "justice" has been made for the victim if she and her best friend are dead but her rapist is arrested? In trying to subvert traditional narratives, can't we imagine a feminist way of making justice beyond what Siddiqi (2021) sarcastically calls "the radical praxis of alerting the authorities"?

These are some of the questions that motivate this research. I find it relevant to preface this paper by discussing *Promising Young Woman* and the discourse surrounding it because visual culture plays a relevant role in shaping the popular imagination (Davis et al., 2022: 8) and at the same time in showing some of the current limits of what we are able to imagine. In a context characterized by Mark Fisher (2014: 2) as that of capitalist realism, where the current political and economic system is not only seen as the only viable option but it also seems "impossible even to imagine a coherent alternative to it", envisioning justice beyond carceral solutions requires a "great feat of the imagination" (Davis, 2003: 19). *Promising Young Woman*—and the praise it received from many of its feminist viewers—can be seen as showcasing this inability to envision other strategies and processes to treat harm and pain, resorting instead to state-enacted "justice" that often—as is the case of the movie—does not care for victims' needs.

This punitive imagination is not limited to the cultural realm but also operates in policymaking as well as in contemporary discussions around feminism and justice, such as the one currently taking place in Spain. I believe that this punitive or carceral "common sense" (Davis, 2003: 19; Serra Sánchez, 2022: 42; Srinivasan, 2021: 159) is also at play in both the justifications for and the criticisms of the Spanish *Ley Orgánica 10/2022, de 6 de septiembre, de garantía integral de la libertad sexual* [Organic Law 10/2022, on the Comprehensive Guarantee of Sexual Freedom], commonly referred to as the *ley del (sólo) sí es sí* [(only) yes is yes law]. Intending to combat sexual and gendered violence, this law reframed the definition of sexual aggression in order to classify as such any non-consensual sexual act, eliminating the previous distinction between sexual aggression and sexual abuse according to whether violence had been used. In order to fight against sexual

violence, this law centered consent in the definition of what constitutes sexual aggression, eliminating the category of sexual abuse, which now is always considered sexual aggression, a more serious offense. The strategy at play, therefore, was a punitive one: to combat sexual violence with harsher penalties. The law also implemented a progressive system of penalties according to the severity of the crime, which had the unintended effect of revising previous prison sentences and reducing them. This has led to criticisms from right-wing politicians and media outlets, which have written about how "1.079 sexual offenders have benefited from this law" (Coarasa, 2023; Martialay, 2023; Vega, 2023; Duran & Montero, 2023). Media outlets in the center and the left have also echoed these concerns (Pozas et al., 2023; Rincón, 2023), while the Ministers behind the law have attributed the reduction of prison sentences to the lack of gender perspective and sexism of the judges applying the law (Kohan, 2022). All of this led to a reform of the law months after its initial approval, which reintroduced a separation within types of sexual aggression determined by the use of violence (Kohan, 2023).

Some feminists have criticized what they see as an exaggerated retributivism that does not serve the needs of victims (Herrera, 2023; Alabao, 2023), as well as the lack of an antiracist and intersectional perspective in this law (Kajakeh, 2023) and a general trend of excessive reliance on the law to combat sexism (Macaya, 2023). They are, however, the exception: the majority of the law's supporters and critics, despite their many differences, all seem to agree on the notion that the reduction of prison sentences is not a good result and that criminalization and increased punitiveness are adequate strategies in the fight against gendered and sexual violence. I aim to contribute to this discussion by drawing from the work of those who have questioned the punitive "common sense" that seems to dominate feminist discourses in Spain and elsewhere, so as to show other ways of thinking about justice through feminism.

1.2. Research question and methodology

The aim of this essay is twofold: first, to discuss the main criticisms of carceral and punitive approaches to feminism, analyzing the arguments put forward by some of the authors who argue that the aims of feminism cannot or should not be pursued or achieved through criminal law and other punitive practices. Then, to examine some of the alternatives to punitive justice suggested by

those critics, among which the idea of abolition. I consider this second part necessary in order to develop a rigorous criticism of punitive justice for two reasons: first, in the current framework of capitalist realism, "the partisans of the established order cannot really call it ideal or wonderful. So instead, they have decided to say that all the rest is horrible" (Badiou in Cox & Whalen, 2001). This means that convincing criticisms of the *status quo* need to show that alternatives to the existing system are not necessarily "horrible". On the other hand, Ruth Wilson Gilmore, one of the most prominent abolitionist scholars, has called attention to the fact that abolition "isn't just absence; (...) abolition is a fleshly and material presence of social life lived differently" (Gilmore & Petitjean, 2018). Taking abolitionism only as criticism and ignoring its propositive dimension, therefore, would be a misrepresentation of this position. These two objectives will help me draft a tentative response to the following questions: what should the relationship between feminism and punishment be? What can feminist justice look like?

The hypothesis that motivates and guides this research is that feminism must look beyond punitive and carceral practices when seeking justice and fighting against sexism and for the effective liberation of women. Taking as a starting point the belief that, as stated by Amia Srinivasan (2021: 30), "a feminism worth having must, not for the first time, expect women to be better – not just fairer, but *more imaginative* – than men have been", I intend to map some of the voices that refuse to accept the inevitability of punishment and are imagining or have imagined other ways to react to harm and violence from a feminist perspective.

In order to do this, I will review the literature on this topic, drawing from the work of scholars from various disciplines who are thinking about these issues in the Spanish context but also from those that have thought about it in other countries such as the United States, England, or France. I believe that, although knowledge is situated and some contributions may have limitations when applied outside their original context, not taking them into account would mean ignoring some of the most important reflections and experiences of this tradition, leading to an incomplete account of feminist abolitionism[1]. I have also decided not to limit my set of references to only one discipline

[1] By this, I do not intend to say that my account of feminist abolitionism and anti-punitivism will not be incomplete or leave out many relevant contributions to this field. I mean that leaving out the literature produced in other countries would lead to a set of references even more incomplete than mine.

and include the work of philosophers, criminologists, sociologists, legal scholars, political scientists, and geographers—as well as people outside academia—because, when attempting to grasp a complex social issue like that of justice in the face of harm and violence, transdisciplinarity allows us to approach it from as many perspectives as possible without renouncing to complexity.

The structure of this paper will be the following: in the next section I will present the framework in which this subject is situated, discussing the naturalization of punishment, the main justifications of punishment, and some of the positions against it. I will also introduce the concepts of carceral feminism and feminist abolitionism, relevant to the discussions in the following sections. In the third section, I will examine the main criticisms of punitive justice from a feminist perspective, which I have divided into five main points, as well as their limitations and possible applications to different contexts. The fourth section consists of a discussion of some of the proposed feminist alternatives to punitive justice, touching on the issue of abolition, practices of restorative and transformative justice, and the possible limitations of the centrality of the notion of community in this literature. Finally, in the last section, I will revisit my initial research aims, highlighting the main contributions of this paper as well as its limitations, and indicating some of its implications and possible avenues for further research.

2. Theoretical framework: general notes on punishment and anti-punitivism

2.1. The naturalization of punitiveness: punishment as a given

One of the incidents described in the second chapter of Ursula K. Le Guin's science-fiction novel *The Dispossessed*, which recalls some episodes from the protagonist's childhood, is his discovery—together with his classmates—of the notion of prisons as they existed in Urras, the planet from which their race is originally from. After coming across this subject in an old book which sparks their curiosity, the kids try to better understand the subject by asking questions to a history teacher, who answers them "with the reluctance of a decent adult forced to explain an obscenity to children" (Le Guin, 2011: 39). Through his responses, the children are bewildered to learn that people could not just leave prisons because the doors were locked, and that they could not choose to not enter because they were ordered and forced to do so. Later in the book, it is the children of Urras who ask the protagonist Shevek about his childhood in Anarres, and their parents who are entranced when he explains that "nobody was ever punished for anything"(Le Guin, 2011: 148).

It is conceivable for a society such as Le Guin's Anarres to exist without the practice or institution of punishment, for it is "not necessary, conceptually or empirically, to human society" (Bedau & Kelly, 2017). Yet punishment, defined as "the deliberate infliction of harm, by authorized agents, on a person, in response to a breach of rules by which, it is claimed, the person is governed, and for which he or she is held responsible" (Brown, McLean, & McMillan, 2018), is oftentimes taken as a given, a natural fact and a social institution necessary for the functioning of any society. Discussions around punishment are often reduced to what Harding & Ireland (1989: 24) call *ex post facto* rationalization: in the words of Torstein Eckhoff,

> too often it is taken for granted that punishment should be used roughly to the extent and in the way that it is actually used in one's own country at the present time; much of the discussion concerning justification has been a search for premises suited to back up this preconceived conclusion (Harding & Ireland, 1989: 24).

In order to avoid taking the link between crime and punishment as a pre-established conclusion, it is helpful to take it as a starting point to develop one's analysis (González Sánchez, 2021: 23), as in

Foucault's approach of examining "punitive methods not simply as consequences of legislation or as indicators of social structures, but as techniques possessing their own specificity in the more general field of other ways of exercising power" (Foucault, 1991: 23).

On the basis of the above, this paper will not take the existence of punishment as a given but as a contingent and questionable practice. It will also not limit its scope to legal or state punishment, which is often the sole concern of discussions surrounding punitiveness due to the "concentrated coercive power" it uses (Brown, McLean, & McMillan, 2018). This has the effect of pushing aside discussions about punishment in contexts such as families, the workplace, or spaces for political organizing (Hoskins & Duff, 2022), even though it has been argued that "more punishment is handed down by families, institutions of work, and education, and within the interpersonal sphere than is dealt out by the state" (Harding & Ireland, 1989: 31). In opposition to a tradition that has understood society and politics as necessarily taking place under/in relation to a State (Clastres, 1974) and "assumes such a crucial relation between the state and the employment of penal measures" (Harding & Ireland, 1989: 3), I will work with Harding & Ireland's (1989: 14) understanding of punishment as "a social method or technique available to any social group with a minimum degree of cohesion". This will allow me to comment on punitive practices associated with feminism beyond the use of legal punishment—although it will not be the focus of my research.

2.2. The case for punishment: consequentialist and retributivist justifications

Legal, moral, and political philosophy has as one of its central concerns the justification of punishment—determining whether it can be justified and how. The existing definitions can be generally grouped into two categories, consequentialist and retributivist (or deontological) justifications, although we find accounts that incorporate elements of both theories (which will not be discussed in this paper). Even though this paper is not specifically concerned with the general consequentialist and retributivist justifications of punishment, it is relevant to briefly outline their main traits. This will allow me to better articulate the discussion of different criticisms made to punitive understandings of feminism in the next section.

Consequentialist justifications consider punishment to be justified "if it is an effective means of achieving its aim, if its benefits outweigh its costs, and if there is no less burdensome means of achieving the same aim" (Bedau & Kelly, 2017). In this case, therefore, punishment is not seen as an intrinsically appropriate response but has an instrumental use as the means to achieve a goal—usually crime reduction—supposedly in a more efficient way than alternative methods. This is usually attempted either through deterrence, making committing crimes undesirable because of their expected consequences, or through the rehabilitation and reeducation of those who have committed crimes, so that they can re-enter society without causing any further harm. Because the justification of punishment following this line of thought is contingent, objections can easily be raised by showing that in many cases punitive solutions fail to achieve their goal (Petrich et al., 2021). Another set of justifications for punishment is that of deontological or retributivist ones, which understand punishment as being intrinsically justified based on the principle that "those who commit certain kinds of wrongful acts, paradigmatically serious crimes, morally deserve to suffer a proportionate punishment" (Walen, 2021). According to Bedau & Kelly (2017), this is the currently dominant justification for punishment.

In Spain, this can initially seem counterintuitive: article 25 of the Spanish Constitution states that "Punishments entailing imprisonment and security measures shall be aimed at rehabilitation and social reintegration". Imprisonment is therefore presented as having a clear objective, being the means to achieve a specific goal through rehabilitation. In practice, however, criminal justice policies are not only justified in utilitarian terms. This is clear when taking into account David Garland's (2001) analysis of the punitive turn that took place in the United States and many other countries (including Spain) during the second half of the past century, an increase in incarceration rates due to harsher criminal policies that did not necessarily respond to increases in crime rates nor caused these rates to decrease (Larrauri, 2009). A concept relevant to understand this turn is that of punitive populism, a term initially coined by Anthony Bottoms in 1993. Punitive populism refers to the notion that "public support for more severe criminal justice policies (most specifically incarceration) has become a primary driver of policy making (...), with the result of increasingly harsh punishments regardless of their ability to reduce crime or redress its known correlates" (Wood, 2014: 1). According to Sales (2023: 22), the rise of punitive populism is characterized by an

increased emphasis on the opinions of victims, an electoral use of insecurity and a transformation in the role assigned to prisons. This punitive turn, therefore, cannot only be understood in consequentialist terms. Far from that, retributive discourses around the *deservingness* of punishment play a decisive role in the implementation of (and public support for) these policies which should not be overlooked.

2.3. Against punishment: anti-foundationalism and abolitionism

The current debates surrounding punishment, especially from abolitionist perspectives, are greatly influenced by the work of French philosopher Michel Foucault in the 1970s. Foucault understood legal punishment as intrinsically linked to the dominant forms of the social and political power of the moment. Furthermore, he questioned the very idea that penal institutions can be justified, and this is the reason why Beau & Kelly (2017) characterize his view as anti-foundationalist. Richard Quinney's (1970) work also advances this understanding of crime and punishment as constructs that serve to control and enforce certain social norms. According to Quinney's understanding of crime as a social construct, our understanding of what constitutes a crime is created by criminal laws, and these laws are themselves created by the most powerful sectors of societies in order to enforce certain norms and protect their interests in an inherently political process[2]. Punishment can therefore be conceived, in Foucault's words, as a "political tactic" (Foucault, 1991: 23).

There are many different positions and arguments within abolitionist thinking, but they all share an opposition to our practices of punishment, which are considered unjustifiable and unreformable, which only leaves the option to abolish them (Bedau & Kelly, 2017). I will not go into much detail on abolitionist thought in this section because it will be thoroughly discussed in the following two sections. It is however still relevant to present a general framework that can later

[2] As Ilea (2018: 361) has pointed out, the constructionist view of crime held by most abolitionists, according to which "there is no ontological reality to crime; that is, there are no intrinsically harmful acts" but only acts constructed as harmful through their illegalization, is problematic when applied to interpersonal harm. Sexual violence and other sexist attacks have very real effects on the individuals which they harm, regardless of whether they are criminalized.

be applied to the different claims advanced by feminist abolitionists[3] in order to understand some of their differences and limitations. Besides putting forward different reasons and arguments, one of the main topics abolitionists disagree on is the question of what should be abolished: if only specific forms of state-sanctioned punishment such as the death penalty and imprisonment or also policing and alternative forms of criminal punishment—or even all forms of punishment[4].

One of the main traditions is that of prison abolitionists, and within that, the most prominent line of thought is the one developed in the United States and deals with mass incarceration as found in that country. Incarceration in the United States is a very specific phenomenon, not only because of its status as the country with the most prisoners both in absolute and relative terms but also due to the close links between the criminal justice system and a tradition of institutionalized racism, first through slavery and then through Jim Crow laws (Alexander, 2010). The arguments found in this body of literature, from which I will greatly draw through the rest of my paper, are very relevant even if not always translatable to other contexts because they question the legitimacy of the US prison system based on a specific historical framework that is not at the origin of many other prison systems, which also function differently than the American one. Nonetheless, it is still very relevant to work with this literature, not only to think about the links between punishment and different systems of oppression, but also to learn from their proposed alternatives to punishment, all while taking the aforementioned limitations into account.

2.4. Feminisms and punishment: carceral feminism vs. feminist abolitionism

Feminist movements have also been concerned with the debate surrounding punishment, its justification, and the use of punitive methods to pursue political ends. Elizabeth Bernstein (2007: 143), who coined the term "carceral feminism", has been one of the authors to identify a preference for punitive methods and state coercion as the favored methods of the predominant U.S. feminist

[3] Here it is important to note the difference between feminists which are also prison abolitionists, which is what I mean by feminist abolitionists, and feminists who wish to abolish sex-work and do so through carceral methods, whom Bernstein (2007) also calls "abolitionist feminist activists"—this is not how I will be using this term. Following Davis et al. (2022), I "feminist abolitionism" to refer to a feminism that also advocates for the abolition of prisons and the carceral system.

[4] Following Davis et al. (2022: 51) I will use the term abolitionism interchangeably with antipunitivism, understanding abolition as "a political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to *punishment* and imprisonment" (emphasis mine).

movement starting in the 1970s, which committed to a "law and order agenda". A significant part of the feminist movement therefore also played a role in the aforementioned "punitive turn" away from the welfare state to the carceral state "as the enforcement apparatus for feminist goals" (Bernstein, 2007: 143). This is also noted by Marie Gottschalk in *The Prison and the Gallows*, her 2006 account of the origins of mass incarceration in the United States, where she argues that the demands of women's rights groups of tougher sentencing for rape and domestic violence contributed to creating the punitive environment which fostered the subsequent dramatic rise in incarceration rates. According to Amia Srinivasan (2021: 159), over the last fifty years this carceral response to issues of prostitution, gender-based violence, and rape "has become increasingly accepted as common sense in most countries" and it is "the most common approach to responding to sexual violence" (Deer & Barefoot, 2019: 509).

On the other hand, there is also a tradition of feminists who are critical of punitive methods and aligned with prison abolitionism because of historic, strategic, or moral reasons. Here we find feminism of difference, feminisms belonging to the third wave, intersectional feminism, or postmodern feminism, which have criticized the cooptation of feminist discourses by penal neoliberalism (Francés, 2021: 66). They consider the penal system to be profoundly patriarchal and in need of transformation—or abolition—through feminism[5]. An example of the abolitionist position is Angela Davis, known for being both an advocate for prison abolition and a relentless feminist activist and scholar, who in 2022 published, together with Gina Dent, Erica R. Meiners, and Beth E. Richie, *Abolition. Feminism. Now.* out of the conviction that feminism and prison abolition are indivisible projects and struggles. The rest of this paper will be dedicated to examining the arguments put forward by feminist thinkers and activists critical of punitive methods, discussing both their criticisms and their proposed alternatives, as well as the limitations of those.

[5] Not all feminists who are critical of approaches to justice that rely on the criminal justice system agree on what the solution to this should be. Paz Francés (2021, following Larrauri, 1997) distinguishes between two positions: garantist or minimal feminists, and abolitionist or anti-punitivist feminisms. Garantist feminists want to transform the criminal justice system without exceeding its limits, incorporating gender and feminist perspective in criminal law while respecting its general principles. Abolitionist feminists, on the other hand, aim to build an alternative project, because they believe that the problem is not located in the current form of the criminal justice system but that punitive justice is inherently contrary to feminism and sustains the patriarchy. These two positions, however, can join forces when trying to enact changes within the current framework (or complementing it) in order to improve the situation of those who interact with the criminal justice system nowadays.

3. Against punishment: feminist criticisms of punitive justice

In this section, I will discuss some of the main criticisms of punitive approaches to justice from a feminist perspective, which I have grouped into the following five main points: an understanding of law as an inherently patriarchal instrument, punitive approaches as individualizing what is actually a structural problem, punitive justice as perpetuating essentialism and gender reductionism while going against intersectionality, the argument that criminal justice processes have a symbolic goal but they do not provide tangible changes, and finally a summary around the limits of law as an instrument to enact transformative change.

3.1. Law as a patriarchal instrument

"*El Estado opresor es un macho violador* [the oppressive state is a rapist *macho*]" sang 2000 women in front of the Chilean Supreme Court in Santiago de Chile, on the 25th of November 2019. This was one of the first public stagings of the performance titled *Un violador en tu camino* [a rapist on your path] by the Valparaíso-based feminist collective LASTESIS. The performance was soon seen and reproduced by women in multiple cities in over 40 countries, and translated to more than 10 languages. I refer to this performance because I find especially interesting and relevant to my research the comparison and equation it makes between state and police violence (a topic very present in Chile at the time in the context of the protests known as *Estallido social*) and sexual violence, as made evident in the aforementioned quote but also in the verses that precede it, which say that "*(el violador) son los pacos, los jueces, el Estado, el presidente* [(the rapists) are the cops, the judges, the State, the president]". The song also starts by saying that "patriarchy is a judge", and calls the "unseen violence" a "punishment", further contributing to this parallelism between the criminal justice system and sexist violence.

This can be read in the light of Davis (2003) and Davis et al. (2022)'s emphasis on "the connection between state-inflicted corporal punishment and the physical assaults on women in domestic spaces" (Davis, 2003: 68). One of the examples Davis (2003: 63) gives is that of strip searches, a routine practice still present in prisons which she argues that "verges on sexual assault as much as it is taken for granted", and considers it an example of "the extent to which women's prisons have held on to oppressive patriarchal practices that are considered obsolete in the "free world". In

Abolition. Feminism. Now. Davis et al. (2022: 114) further develop this argument, referencing the work of the formerly imprisoned abolitionist Monica Cosby who "forcefully argues that prison is quite literally a form of gender violence". Presenting sexual and gendered violences in the domestic or intimate context and in prisons as part of the same continuum is one of the ways in which abolitionist feminists have argued that the criminal justice system is inherently patriarchal and should be abolished. Others have pointed to the forced revictimization of survivors who seek legal justice and to the performative dimension of law as a device that creates or enforces femininity.

The Spanish lawyer and criminologist Miriam Ortubay Fuentes (2021), when writing about what we can expect from criminal law in the face of sexist violence, has pointed to the fact that legal processes are especially brutal and revictimizing for victims of sexual or domestic violence because the legal system has not been designed with these cases in mind. She develops this argument, which I find especially interesting, by pointing to the fact that criminal investigations aim to prove specific, individualized, and isolated facts while gendered violence is a relational and lived experience, which makes the process of reporting it to the police and testifying especially violent and complicated, as it implies having to relive a series of violent events and attempting to turn a subjective and often traumatizing lived experience into a coherent and objective account. This is aggravated, Ortubay Fuentes (2021) argues, by the fact that gendered and domestic violence, which often takes place between current or former sexual or romantic partners, "stresses" a system that is designed to punish strangers and not people in a relationship, as well as a system designed for victims who recognize themselves as such, something that is often hard for victims of sexual violence. Sarah Deer & Abigail Barefoot (2019: 514) echo this concern by stating that "the law simplifies acts of sexual violence that do fail to address the complexities of larger social structures that shape women's experiences of what is consensual sex or rape" (Deer & Bafefoot, 2019: 514)—legal processes as simplifying of a complex issue will be developed in the following point, which examines the individualization of a structural issue through punitive practices.

Another argument that I believe contributes to this understanding of the law as an inherently patriarchal tool is put forward by those who have written about law as having a performative dimension as part of a penal system that creates and enforces a specific conception of femininity (Francés, 2021). In her seminal essay *Are Prisons Obsolete?*, Angela Davis (2003) emphasized the

importance of taking into account the gendered dimension of punishment and prisons—not only of women's, but also of men's, for whom prison often reinforces hegemonic masculinity. This is evident in the fact that women and girls make up less than 7% of the prison population, meaning that men are overrepresented in prisons while women are less likely to be imprisoned, something that aligns with the roles and attributes traditionally assigned to them. Women, therefore, are more likely to interact with the criminal justice system in the position of victims—even there, a certain version of femininity is enforced: not all women are seen as equally legitimate victims. Davis et al. (2022: 105) talk about how, as self-help anti-violence activism from the 1970s became co-opted by state actors, a narrow understanding of what a victim was started to settle: "the legitimate victim of gender and sexual violence could not be a sex worker, a queer person, a woman of color, and certainly could not be an incarcerated person". Ilea (2018: 360) also references many studies showing that "certain individuals and groups are less likely to be recognized as victims, particularly when they do not fit the imputed victim characteristics". This enforcement of femininity through judicial decisions is also noted by the Spanish activist and researcher Laura Macaya (2014), who found that, between women who were being accused of murdering their aggressors and claimed self-defense, those who conformed to hegemonic femininity were more likely to have those claims accepted, while the ones who did not were "punished" by the legal system.

3.2. Individualizing a structural problem

Another prevalent claim among anti-punitivist feminists, as I mentioned beforehand, is that punitive or carceral approaches to justice individualize what is actually a systemic issue, obscuring its origins and failing to contribute to its eradication. Feminism has historically striven to highlight the fact that the hardships and struggles women go through are not individual issues but part of a structural problem and system of oppression: patriarchy. Dealing with these individual cases of violence and harm is urgent, but punishing specific individuals cannot be the main or sole way of fighting to end oppression (Serra Sánchez, 2022). Ilea (2018: 360) argues that this could even be counterproductive, going against feminist efforts to conceptualize gendered violence as systemic: "A long custodial sentence (...), contributes to the misguided idea that sexual harm is the result of one 'sick' individual, removed and isolated from the very culture that allows these kinds of interpersonal harms to happen".

This individualized approach to sexual violence also leads to the essentialization of sex offenders: in the case of those who have committed sexual violence, more than with most other crimes, their violent actions are perceived as almost inevitable, and part of their identity. It seems as if no prison sentence could be long enough for them, because they are unable to change and they will always be sex offenders. This is, however, not the case: "Recidivism studies show that sex offenders have one of the lowest reoffense rates, particularly when they are identified and treated" (Ilea, 2018: 367). Most feminists understand gender roles as socially constructed instead of biologically determined, which means that men are not naturally violent towards women but taught to be—and therefore ending gendered violence is a possibility. Punitive approaches, however, often respond to and discuss gendered violence in ways that perpetuate essentialist understandings of hegemonic masculinity as inescapable and men as unable to change. The other side of this issue can be the naturalization of women as being trapped in a (potential) victim position, always having to be careful around those naturally dangerous men (Serra Sánchez, 2023).

Other scholars have pointed to an issue related to this, which is the use of individualized punitive practices as a distraction from structural issues which also affect women: in the words of Angela Davis (2003: 16), prison "relieves us of the responsibility of seriously engaging with the problems of our society, especially those produced by racism and, increasingly, global capitalism". All women are exposed to sexual and gendered violence, which is a dramatic and pressing issue for feminist activism and policy-making. This is, however, not the only source of oppression and suffering for women: "globally, most women are poor, and most poor people are women" (Srinivasan, 2021: 163). This means that liberating women from oppression means fighting against all the structures of inequality that oppress women, be it for their gender, class, race, sexual orientation, or others—therefore, "a feminism focused on women's common oppression leaves untouched the forces that most immiserate most women" (Srinivasan, 2021: 163). From an intersectional perspective, a punitive feminism which "sees the punishment of bad men as its primary purpose" will not be able to liberate all women because "it obscures what makes most women unfree." (Srinivasan, 2021: 169-170). In the next subsection, I will further examine concerns about punitivism and gender reductionism from intersectional and antiracist perspectives.

3.3. Essentialism, gender reductionism, and ignoring intersectionality

Legal and punitive responses to sexist violence take gender as the main (and sometimes sole) lens of analysis, presupposing "a subject who is a 'pure' case of women's 'common oppression', uncomplicated by such factors as class and race" (Srinivasan, 2021: 162). This gender reductionist approach "individualizes and decontextualizes sexual violence from larger systems of oppression" (Deer & Bafefoot, 2019: 515), failing to grasp the reality that experiences of gendered and sexual violence are greatly shaped by other factors such as race, class, migration status or sexuality (Davis et al., 2022: 48; Francés, 2021). Focusing only on an essentialized notion of women's "common oppression" means leaving behind those women whose experiences are shaped by other factors beyond their gender—as radical feminists of color have long reminded us. Furthermore, as Françoise Vergès (2022: 91) has noted, the construction of masculinity and femininity is very linked to whiteness, which would imply that "racialized women are not completely 'women' and racialized men are not completely 'men'". This means that the experiences of men and women of color do not fit into the (supposedly neutral) gender binary categories that guide punitive approaches.

The punitive approach to sexist violence has also brought many women of color, poor women, immigrant women, sex workers, and other marginalized women in conflict with the law, while failing to address the root causes of crime and of their oppression. Critical Resistance and INCITE! (2003), as well as Srinivasan (2021) mention cases of undocumented women who reported cases of sexual and domestic violence and ended up being deported. In Catalonia, one of the criteria used by the General Directorate of Child and Adolescent Care (DGAIA) to take a child's custody away from their parents is whether one of the minor's parents or guardians is in prison—among other criteria that criminalize poverty and migration. This has meant that some women—most of them poor and migrants—who have been victims of gendered violence and have successfully reported it have ended up losing custody of their children (Bou, 2021). As Assiego (2021) has pointed out, advocating for a carceral response to gendered violence means giving more power to a State that might abuse it. It is therefore important that feminists "ask what it is they set in motion, and against whom, when they demand more policing and more prisons" (Srinivasan, 2021: 171).

In line with this intersectional perspective, many black prison abolitionists have pointed to the many similarities between prisons in the United States nowadays and the institution of slavery. The second chapter of Angela Davis' *Are Prisons Obsolete?* is dedicated to this issue, and Michelle Alexander's *The New Jim Crow* as well as Ava Duvernay's *13th* greatly base their criticism of mass incarceration in the United States on this argument[6]. The link is in the American Constitution: the 13th Amendment states that "neither slavery nor involuntary servitude, *except as a punishment for crime* whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction" (emphasis mine). Many of the treatment once reserved to slaves was later applied to prisoners. Davis (2003: 28) also points out the racial essentialism underlying both institutions, since "both prisoners and slaves were considered to have pronounced proclivities to crime". An argument made by Davis (2003: 23) that I find especially interesting is her use of this parallel to argue that, if slavery has gone from being something taken as permanent and "so widespread that even white abolitionists found it difficult to imagine black people as equals" to something considered immoral and unimaginable, the same might happen with prisons.

The parallel between slavery and prisons is also useful to highlight the racial—and class—bias of punitive institutions, where black and brown men, as well as poor people, are overrepresented. This is not only the case in the United States, where constructions of criminality have always been linked to race (Davis, 2003: 28) but also in Spain, where scholars have described a continued criminalization of migrants and low-income individuals (González Sánchez, 2018). This is also the case when dealing specifically with sexual violence: A black man serving time for sexual assault is 3.5 times more likely to be innocent than a white man convicted of sexual assault" (Srinivasan, 2021: 4). Srinivasan (2021: 17) argues that this means that a politics centered on unconditionally

[6] As Davis et al. (2022) have pointed out, criticisms of the current American prison system such as Alexander and Duvernay's, which are based on the (contested) link between slavery, Jim Crow laws, and the current system of mass incarceration are not the strongest abolitionist arguments. For once, they criticize the carceral system of a specific country because of its links with racist institutions that this country had in the past, but that are not linked to the carceral institutions of other countries—this means that they might not directly apply to some other countries. On the other hand, they highlight the seriousness of the problem by pointing to the numbers that show that the United States is an outlier when it comes to incarceration, having the most imprisoned people in both absolute and relative terms and holding 25% of the world's prisoners when it only hosts less than 5% of the world's population. This might seem to suggest that the issue is not punitive and carceral practices but an excessive use of them, and that there is an acceptable level of incarceration, which points to a need for reform instead of abolition.

believing women might come into conflict with the demands of intersectionality, since "black women in particular suffer from the stigmatization of black male sexuality to which the injunction 'Believe women' too readily gives cover". When considering punitive solutions to sexist violence, therefore, it is important to take into consideration how societal understandings of crime, violence, and victimhood are shaped by factors beyond gender in order to avoid strategies that further endanger the most marginalized women.

3.4. Symbolic justice instead of tangible change

In 2001, INCITE! Women of Color Against Violence—a network of organizations that worked to challenge the reliance of the mainstream anti-violence movement on policing and punishment—and Critical Resistance—an abolitionist organization working to dismantle the Prison Industrial Complex—joined forces to release their *Statement on Gender Violence and the Prison-Industrial Complex*, a call to social justice movements to "to develop strategies and analysis that address both state AND interpersonal violence, particularly violence against women" (Critical Resistance and INCITE!, 2003: 141). The first point of this text states that "Law enforcement approaches to violence against women MAY deter some acts of violence in the short term. However, as an overall strategy for ending violence, criminalization has not worked" (Critical Resistance and INCITE!, 2003: 141). Over 20 years later, Angela Davis, Gina Dent, Erica R. Meiners, and Beth E. Richie (2021: 157), who were part of the members of Critical Resistance and INCITE! who released that statement, restate the fact that "prosecuting individual civilian men who perpetrate gender and sexual violence (or placing their names on public registries) has not reduced gender and sexual violence".

Criminalization has not eradicated sexist violence. Does this mean that it serves no function to feminist objectives? The Argentinian anthropologist Rita Laura Segato argues that, despite the fact that even in individual processes the law often fails women and does not lead to material change, it still plays a valuable role: the law names what is desirable in a society, and in criminalizing certain sexist attitudes it conveys the message that these attitudes are unacceptable, potentially changing the ethical views of that society (Alabao & Segato, 2017). The Spanish lawyer Violeta Assiego (2021) is less sympathetic towards this symbolic function played by law, which she considers to be

based on exemplary punishment and vengeance as opposed to human rights. According to Assiego (2021), punitive approaches to justice often end up penalizing the existence of a subject because of what they represent, instead of for their specific actions. This is something that Srinivasan (2021: 153) also brings up when discussing carceral responses to sex work, based on prohibition—an issue that feminists often disagree on: she says that "it is the desire to punish the men who buy sex – as individuals, but also as stand-ins for all violent men – which explains the contradictions of a feminism that makes life worse for sex workers". In the case of sex work, Srinivasan (2021: 153) argues, "the psychic, and perhaps moral, satisfactions of punishing men can be had only at the cost of women – and often the women whose lives are most precarious". The symbolic function of the law as setting the standards for what is acceptable or desirable, therefore, can sometimes conflict with the material well-being of those it aims to protect.

Miriam Ortubay Fuentes (2021) also sees the interests of victims and those of punitive policies as divergent: she argues that the penal apparatus serves the abstract goal of punishment for those who have broken the law, and it does not take into account the interests, experiences, and needs of victims when determining which actions to punish, for its rigid structure cannot grasp the meaning or impact of different actions for the victim. Asserting that punishment does not align with the interests of victims can however be problematic when confronted with victims who seek revenge on their aggressors. I think that, as feminists, we should be able to criticize punitive mechanisms without questioning the varied ways in which victims react to pain or violence. This also means being careful with assertions based on paternalist notions of "false consciousness" that presume that survivors who desire revenge do not know what is best for them[7].

3.5. The limits of law: the master's tools and the transformative power of the criminal justice system

After centuries of male violence being met with impunity, it is nice to see violent sexist men being punished. But if we believe that the aim of feminism as a transformative movement "is not merely to punish male sexual domination but to end it", we must consider "whether a carceral approach

[7] The anarchist collective CrimethInc (2013: 38) proposes the following formulation on how to treat these situations with care: "We must acknowledge the specific context of sexual assault and abuse, honor the pain and rage of survivors, and account for oppressive power while broadening the range of conflicts we can address."

that systemically harms poor people and people of color can serve sexual justice" (Srinivasan, 2021: 24). Can punishment lead to the societal transformation proposed by feminism? The unanimous response of abolitionist and anti-punitivist feminists to this question is that it cannot: in the words of Audre Lorde (2018), "the master's tools will never dismantle the master's house". An institution based on power relations, a logic of domination, control, and violence (as defined by Critical Resistance and INCITE!, 2003, as well as Francés, 2021, among others) is not the adequate tool to get rid of sexist power relations, domination, and violence. If, as stated in the introduction, we believe that feminists must be more imaginative than men have been, we cannot settle for a system that responds to sexist violence with state violence that does not contribute to dismantling the systems that allow for sexist violence to exist.

If punishment is the wrong tool for this job, what is the right one? How can we react to sexist violence while trying to eradicate it? What could feminist justice look like? Violeta Assiego (2021) says that feminist justice is social justice, an ambitious project centering life and care beyond criminal justice. The New York Radical Feminists' (1974) *Rape: The First Sourcebook for Women* argued that sexual violence was "not a reformist but a revolutionary issue". While these arguments might seem convincing, it is oftentimes hard to imagine or conceptualize some of the concrete ways in which these other ways of making justice could be materialized. In the following section, I will discuss some of the proposed alternatives, in an attempt to present a clearer image of what an abolitionist approach to feminist justice could entail.

4. Beyond punishment: feminist alternatives to punitive justice

This section has the purpose of "creatively exploring new terrains of justice, where the prison no longer serves as our major anchor" (Davis, 2003: 21). I will not provide an in-depth discussion of specific experiments or a step-by-step set of instructions on how to create other ways of doing justice. Instead, I will try to give an overview of some of the main concepts relevant to alternative understandings of justice from a feminist perspective. I will first examine the conceptualization of abolitionism presented in *Abolition. Feminism. Now.* focusing on its utopian and prefigurative dimensions. I will then discuss restorative and transformative justice and prevention as practical approaches to non-punitive feminist justice. Lastly, I will examine some of the main limitations of these alternatives, focusing on the notion of community.

4.1. Abolition beyond the binary logic: prefiguration, non-reformist reforms, and the "both/and" approach

The abolitionist tradition is broad and diverse, and worth an extensive discussion which I will not attempt to provide here. Instead, I will examine one of its most recent forms which is especially relevant for this paper: the Abolition Feminism that the thinkers and organizers Angela Davis, Gina Dent, Erica R. Meiners, and Beth E. Richie advocate for in their recent book *Abolition. Feminism. Now.* Abolition Feminism is based on the premise that "abolitionist theories and practices are most compelling when they are also feminist, and conversely, a feminism that is also abolitionist is the most inclusive and persuasive version of feminism for these times" (Davis et al., 2022: 2). I find Davis, Dent, Meiners, and Richie's essay especially lucid in their characterization of abolition as utopian and prefigurative at the same time, embracing a both/and approach to transformative politics that can be useful when trying to present abolition as something imaginable.

Davis et al. (2022) embrace the utopian and speculative dimension of abolition, even though it often leads to criticisms for it being an unrealistic or implausible demand. But, they argue, abolition is not only the end goal, the change they are striving to make. It is also the everyday practices and collective experiments done by abolitionists around the world who are finding different ways to relate to one another outside the carceral system: in Davis et al (2022: 134)'s words, "far from utopian, this world is ready at hand, already underway". Abolition is, therefore, a

prefigurative politics, consisting not only in achieving an end goal but in working towards it by creating institutions and relationships which reflect its ideals: abolitionist organizing is "not a prelude, but the practice itself" (Gilmore & Petitjean, 2018). This means that the process is as important as the goals: the methods and strategy used must also be politicized, for abolition is also a way of doing things. The authors of *Abolition. Feminism. Now* work with a "both/and" logic that replaces the binary "either/or" according to which having a utopian objective prevents you from having an impact in the *now*. Instead of this, Abolition Feminism means that "we can and must do multiple things at the same time. (...) We hold people accountable and believe that people can change" (Davis, 2022: 4). A way of surpassing the either/or logic, that suggests that one might have to choose between ameliorating the present situation or working towards a larger goal, are non-reformist reforms, changes that try to improve the current situation while looking at further goals and furthering them[8] (Lydon, 2016). Some of these prefigurative strategies, that are currently being practiced by people and could be the basis of future ways of organizing, are restorative and transformative justice.

4.2. Restorative justice

Restorative justice is an umbrella term that includes a variety of theories and practices that are based on "a collaborative, non-adversarial response to a legal dispute or crime", focused on repairing the harm done to people and relationships (Deer & Barefoot, 2019: 516). It is defined by the United Nations as "any process in which the victim and the offender and, where appropriate, any other individuals or community members, affected by a crime, participate together actively in the resolution of matters arising from the crime, generally with the help of a facilitator" (Deer & Barefoot, 2019: 517). CrimethInc, an anonymous but internationally renowned Anarchist collective that originated in North America, differentiates restorative justice from punitive justice by their goals: while punitive justice, as mentioned in the previous sector, has been characterized as centering the "abstract principles of law" or punishment, restorative justice "focuses on the needs of the ones harmed and those who did harm" (CrimethInc, 2013: 6). According to CrimethInc

[8] For specific examples of this, see Appendix III of *Abolition. Feminism. Now* titled Reformist Reforms vs. Abolitionist Steps to End Imprisonment, which includes "a tool to assess and understand differences between reforms that strengthen imprisonment and abolitionist steps that reduce its overall impact and grow other possibilities for wellbeing".

(2013: 7), restorative justice "is based on a theory of justice that sees "crime" and wrongdoing as an offense against individuals or communities rather than the state".

As mentioned beforehand, restorative justice includes a wide variety of practices. According to Deer & Barefoot (2019: 516), some of the most common ones are victim-offender mediation or dialogue, restorative conferences, and restorative circles. Victim-offender mediations usually include a trained facilitator that mediates a face-to-face victim between the offender and the victim, and they are usually used for cases where these two people do not have an ongoing relationship. Restorative conferences also include members of the community or communities the victim and the offender belong to, and attempt to provide accountability while tackling the causes of the behavior. Finally, restorative circles tend to be more flexible than restorative conferences, allowing for significant involvement of the community. There are three main types of restorative justice circles: Community Building or Peacemaking Circles, Conflict or Harm Circles, and Re-Entry Circles, which differ in their content, goals, and participants[9] (Bankhead & Brown, 2023: 59).

Restorative justice practices, many of which have originated in Maori and North American indigenous communities, were not created specifically to target sexist violence. This means that it is not always adequate to deal with sexual or gendered violence—this is especially the case for mediation, which is not appropriate for a lot of cases of partner abuse, which are not mutual, and it should not serve as a substitute for accountability (CrimethInc, 2013: 37). Because of this, and with the exception of a few practices, most countries do not use restorative justice to deal with sexual violence: New Zealand and South Australia are the only jurisdictions that routinely use restorative justice in youth justice cases of sexual assault (Daly & Stubbs, 2006: 18). In Spain, both Law 1/2004, of 28 December on Integrated Protection Measures against Gender Violence and

[9] Community Building Circles are designed to deepen relationships, connecting with one another, which sets a basis for further work. Conflict or harm circles are the most known restorative circles, where a discussion takes place between those directly or indirectly affected by the harm in order to find a "plan of accountability and repair for the harm that was caused", that can go from "an apology or acknowledgment of wrong-doing" to years of service and restitution", all while taking into account the importance of prevention (Bankhead & Brown, 2023: 62). Finally, Re-Entry Circles or Circles of Support and Accountability, which are the less common type, are used when someone has been removed from a community for having caused harm and intends to join it again.

Organic Law 10/2022, on the Comprehensive Guarantee of Sexual Freedom, explicitly prohibit the use of mediation as an alternative or complement to criminal proceedings.

According to Daly & Stubbs (2006: 18), "the question of the appropriateness of RJ for these offenses [partner, sexual or family violence] may be impossible to address in the abstract". Despite evidence in this field being sparse, Bankhead & Brown (2023: 65) found that, in San Quentin State Prison in California, people who participated in a restorative justice program had a recidivism rate lower than 2%, as opposed to the standard recidivism rate of 64%, which suggests that it might be interesting to continue studying these possibilities. Furthermore, Daly & Stubbs (2006: 17) have pointed to some of the potential benefits of restorative justice as opposed to punitive justice for cases of sexual and gendered violence: (1) the possibility of victim voice and participation, victims being empowered by voicing their story and having a say in the decision making; (2) victim validation and offender responsibility, validating victims' accounts of what happened; (3) a communicative and flexible environment that can be tailored to the individuals' needs and (4) there exists a possibility of repairing the relationship—if it is desired.

4.3. Transformative justice and prevention

Restorative practices have sometimes ended up reproducing the punitive logic they were trying to avoid, such as the over-individualization of a structural issue by its discussion only through mediation which leads to leaving the role of sexism unchallenged (McCold, 1996). Transformative justice is presented as a solution to this: it widens the focus of restorative justice by including "a critique of systematic oppression" (CrimethInc, 2013: 6) such as racism, sexism, homophobia, or classism. The aim of this is to transform the conditions that enable violence to take place (Francés, 2021), allowing for a reparation that is not only individual but also collective and deals with that which is structural (Assiego, 2021: 87). CrimethInc (2013: 7) reference Generation Five, an organization that fights child sexual abuse through transformative justice, who define as such the objectives of this practice: "(1) Safety, healing, and agency for survivors; (2) Accountability and transformation for people who harm; (3) Community action, healing, and accountability; (4) Transformation of the social conditions that perpetuate violence — systems of oppression and exploitation, domination, and state violence". Transformative justice is therefore also linked to

prevention through an improvement of people's material conditions and feminist education, the "transformation of the family, of the economic system and the psychology of men and women so that sexual exploitation' becomes 'unimaginable" that the New York Radical Feminists (1974) advocated for. It also means improving the material conditions that are often the root cause of crime.

4.4. Limitations and the issue of community

As mentioned beforehand, restorative and transformative justice models are not definitive or perfect alternatives to the criminal justice system, but practices that also present many flaws. One of the main ones is, as I said before, the uncritical reproduction of the same punitive logic used by the State in the community. An example given by CrimethInc (2013: 11) based on their experience with restorative and transformative justice is the emergence of "an identity politics around the labels 'survivor' and 'perpetrator' (...) with scenes polarizing around them", which can perpetuate the punitive essentialist and confrontational logic. Francés (2021) suggests that in order to avoid this it is necessary to recognize people as being equal in dignity and not looking for scapegoats, as well as respecting the principles of willfulness, confidentiality, reasonability, proportionality, gratuity, and neutrality. It is also important not to take restorative practices as an excuse to re-privatize the issues that feminism has fought to place in the political and public realm. Another issue that Deer & Barefoot (2019: 520) point to is the potential revictimization of the victim when interacting with the aggressor. Furthermore, most restorative practices rely on the offender admitting that they behaved wrongly, which is often not the case when it comes to sexist violence—this highlights the fact that restorative justice will probably not work in a vacuum but only if accompanied by further transformative work.

As discussed in the previous point, evidence of the effectiveness of restorative practices for cases of gendered violence is still scarce. Still, Daly & Stubbs (2006) suggested some of the potential problems that these practices might cause when used to deal with partner, sexual, and family violence: these processes might be manipulated by offenders, group pressure might stop victims from advocating for their needs, community norms might end up reinforcing instead of challenging male dominance, sometimes because of mixed loyalties, and the process might not

manage to change the offender's behavior or might be perceived as reducing the importance of the harm caused. Although presented in the abstract, having these potential problems in mind can be useful when attempting to enact restorative practices that do not fail those involved.

A more practical set of problems of community accountability processes "as they are actually practiced" can be found in CrimethInc's (2013) zine *Accounting for Ourselves: Breaking the impasse around assault and abuse in anarchist scenes*, which discusses some of the issues various anarchist collectives have encountered when working with restorative practices. Some of those are the fact that it's often not clear when an accountability process is over, when it has failed, or what constitutes success—the standards for which might be unrealistic. This also happens because often the groups attempting to work on these restorative practices do not have the ability to realize survivors' demands—it is also not clear if the objective of these processes should be to adhere to these demands or to evaluate them. Furthermore, there are not always people available with skills in counseling, mediation, and conflict resolution, and if a division of labor emerges where some are always in charge of these roles they might end up being burnt out, because these processes are often emotionally draining, taking up a lot of time and energy. Common to a lot of these issues is the meaning of community: "you can't have community accountability without community. The entire transformative justice framework falls apart without some coherent sense of what community means" (CrimethInc, 2013: 40).

In their joint statement, Critical Resistance and INCITE! (2003: 143) brought up the fact that alternatives to incarceration, which were often developed without a feminist perspective, tended to rely on "a romanticized notion of communities". Communities, however, are not necessarily "good", and, as mentioned before, they might end up reinforcing sexist norms. A restorative justice that tries to locate or recreate "a primal original community and set of traditions, an unmediated culture" (Weisberg, 2003: 371) will probably end up reinforcing gender essentialism even more than punitive practices do. On a practical note, CrimethInc (2013: 20) point out that many of these restorative practices originated in smaller communities with very tight bonds that contributed to the accountability process—larger and diffuse communities with weaker affinity-based bonds might not stand the test of complex and draining accountability processes. This focus on the community also assumes that there is a collective with shared values and beliefs, of people that share

various attributes—how can restorative justice approaches deal with "harms that are incomprehensible, that are alleged to have been committed by those we do not recognize as our fellows" (Daly & Stubbs, 2006: 13). Hudson (2003: 213) argues that this requires "a 'strong commitment to universal, inalienable, human rights", a position also found in Assiego's (2021) definition of feminist justice as following a logic of human rights.

Because of this, the community where the restorative or accountability process will take place cannot be defined *a priori*: every individual is part of various communities, and different cases might concern different ones—following Hudson (2003) and Assiego (2021), the community might sometimes be the whole of humanity. The practical way in which CrimethInc (2013: 41) deal with this issue is through what they call "concentric circles of affinity", making implicit expectations and commitments within these different circles explicit so that they can be the basis for collective responses to cases of conflict and harm instead of "presuming a 'community' and attempting to hold people accountable based on that fiction".

5. Conclusions

5.1. Revisiting the research aims

The aims of this research were (1) to discuss the main criticisms of carceral and punitive approaches to feminism and (2) to examine some of the alternatives to punitivism proposed by abolitionist and anti-punitivist feminisms. These two objectives guide the responses to the following questions: what should the relationship between feminism and punishment be? What can feminist justice look like?

Section two contextualized the present discussion on feminism and punishment within the larger philosophical discussion around the justification of punishment. Afterward, in section three, I discussed feminist criticisms of punitive justice, divided into five main arguments: law as an inherently patriarchal structure, punitive approaches as individualizing structural issues, punitivism as essentialist and conflicting with intersectionality, legal justice as serving abstract and symbolic goals instead of providing tangible changes and, finally, the law as a tool without the transformative capacity that feminism requires. In the fourth section, I explored the notion of abolition as well as some of the forms that feminist justice could take—namely restorative and transformative justice—as well as some of the potential shortcomings of these practices and their dependence on the existence of a community.

Through the various criticisms of punitive justice, I have tried to show that feminist politics that intend to be transformative and intersectional should not rely on punitive strategies, which do not center the needs of victims nor aid in the liberation of all women. As stated in the initial hypothesis, therefore, I have argued that feminist justice should not be punitive. Regarding the question of what can feminist justice look like, a potential response to this could be found in Abolition Feminism's embrace of a both/and logic, working towards an anti-punitive ideal while advocating for survivors now. Some of the prefigurative actions that could be the basis for feminist justice are restorative and transformative practices, which center the needs of those involved while working to dismantle the systems of oppression that sustain violence.

5.2. Limitations

This research had a few limitations. One of them is the fact that my discussion on alternatives to punishment was mostly speculative, since there is not that much evidence on the use of these practices for cases of sexist violence. The theoretical nature of this paper, without fieldwork or interviews, contributed to the conceptual nature of some of these discussions—which I have however tried to relate to practical issues, drawing from the observations of those that have worked with restorative practices. Furthermore, I have not provided a single or clear response to the question of what can feminist justice look like, but I have instead pointed to various practices that could be part of this alternative organization, since it has been argued that "a more complicated framework may yield more options than if we simply attempt to discover a single substitute for the prison system" (Davis, 2003: 106). Finally, I have taken as a starting point and tried to contribute to the discussion currently taking place in Spain around feminism and punitive strategies by referring to the work of authors from Spain but also from many other countries, because their criticisms bear many similarities. My conclusions are not limited to Spain and can be relevant to other countries, although it might be necessary to consider the specificities of each context.

5.3. Main contributions

In this paper I have contributed to the discussion currently taking place in Spain around the *only yes is yes law*—similar to the conversations that have been taking place in many countries for decades—around the relation between feminism and punitive or legal practices. I have done this by attempting to question the apparent inevitability of punishment as a response to violence, showing that it does not serve victims nor the transformative objectives of feminism. I hope to have promoted the widening of the currently predominantly punitive feminist imagination, which is the first step toward a change in feminist practices around justice: "nothing happens in the 'real' world unless it first happens in the images in our heads" (Anzaldúa, 1987: 109). Although this essay does not have the objective of directly influencing public policy or proposing specific solutions, it can provide a critical perspective to examine political discourses and decisions.

5.4. Further research

There are many possibilities for research taking as a starting point some of the elements discussed in this paper: as mentioned when discussing the limitations, this conversation would benefit from more practical research involving the various non-punitive justice practices and non-reformist reforms currently being explored around the world. It would also be relevant to examine the discussions taking place in other countries within feminist policy-making and organizing from this lens, trying to find whether it is applicable and how it can contribute to different discourses and decisions. Furthermore, many of the issues mentioned briefly in this paper are worthy of dedicated in-depth analysis—one of them is the issue of the use of punitive practices outside the criminal justice system and how to extend anti-punitivist criticism to spaces of feminist political organizing. Finally, for those working on feminist alternatives to punitive justice, it is imperative to take seriously the question of how to define and work with community in ways that do not further harm victims and reproduce sexist dynamics—as well as on the possibility of developing alternative practices that do not rely as heavily on the existence of community—further theoretical and practical research in this direction would be very relevant.

6. References

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