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HOW TO IMPROVE THE CRIMINAL LAW THROUGH THE ONLINE RESTORATIVE JUSTICE A NEW FIELD WITHIN THE ODR GENRE, AN OPPORTUNITY FOR ALL THOSE WHO ARE AFFECTED BY A CRIME, CONDITIONS FOR ITS SUCCESS

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ABSTRACT

Restorative Justice presents itself as a more human justice, closer to those who suffer the consequences of a crime. It is known that a crime produces material damage, however, less visible are the psychological damages that although can be quantified economically as moral damages, usually do not receive attention within the traditional criminal justice system.

Restorative practices seek to: [1] repair the damage caused and the current needs of the victim and the community, [2] the assumption of responsibility and commitment, by the offender, in order to do everything necessary to repair or mitigate the damage caused, and at the same time, satisfying the current needs that, as a consequence of the lawful act, the victim suffers, and [3] it needs the participation of all those who are affected by the crime in order to create recognition and reinsertion of the offender in the community. Practices arise from adaptation to a specific context, but its principles and purpose do not change, so why not think on an online restorative justice? The objective of this article is to review some concepts that need to be clear when thinking about it and how to develop it through the Online Dispute Resolution tools.

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INTRODUCTION

Restorative Justice is a specialized branch dealing with the criminal and victims of ordinary crimes.

"There are three fundamental principles that differentiate this new conception of justice from the traditional one: [1] In the first place, the process, understood as the normalizer of a harmful event in which the needs and emotions emanating from the crime in the victim converge, in the same space, with the made awareness of the damage caused by the victimizer and its personal and social repercussions. [2] Secondly, the presence of all the parties involved, including the community, as indispensable elements for the restorative process. [3] Ultimately, the agreement, which repairs symbolic or materially to the victim, and that allows to reintegrate the offender and restore to the affected community" (Conforti, 2018b).

The nomenclature of the "restorative movement" is not univocal, we can find in the specialized literature the following

terms "community justice", "positive justice", "relational justice", "restorative justice", "restorative justice" and "compensating justice"; anyway the central idea of Restorative Justice is that criminal behaviour not only breaks the law but also damages the victims and the community (United Nations, 2006). Henceforth I will say "restorative face-to-face justice" rather than say Restorative Justice, to differentiate it from "online restorative justice" which is the modality proposed here, in the consideration that using this terminology will be pedagogically very useful for the readers.

Restorative face-to-face justice focuses on repairing the damage caused to the victims, making the criminals responsible for their actions and involving the community in the conflict resolution process (Batley, 2005).

Restorative face-to-face justice is a methodology to resolve conflicts that, in various ways, involve the offended (victim), offender (victimizer), social networks, judicial institutions and the community (Conforti, 2017b). As noted, great care is taken

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not to stigmatize the parties, that is the reason why their name changes in the manner indicated.

By restorative face-to-face justice process, we mean a procedure carried out with the help of a facilitator in which the offended, the offender, any member of the community and institutions affected by the crime actively participate together to resolve the consequences derived from a crime.

It is clear that for face-to-face restorative justice the result of the process (reparation) is as important as the process itself.

Adapting to the different socio-cultural contexts and always keeping in mind the needs of the community, the restorative process requires the participation of all involved in the crime, because only in this way they will be able to rebuilt, reconnaissance reconciliation and the interrelationship that will allow them to reach the goals desired results, that is to say, to satisfy the needs of the parties to be considered repaired.

An early research showed the potential of the recognition and awareness, into the relationship between parties it is also regarded as structures is accurately depicted even with their differences and singularities, there is an isomorphism relationship between them and they can crystallize the solution of the dispute if they do so in an associated way, therefore, online restorative justice practice is set to become one of the most an indispensable prevention, re-education, rehabilitation and reintegration screening tool (Conforti, 2018b).

The present research looking for show not only the advantages of a online restorative justice process, such as permits express emotions and find an answer to the question, "why me"? (and at the same time also promote the self-responsibility and awareness of the damage caused, this visualization of both sides should have therapeutic effect but even most important, it should solve a conflict between parties including the community), but also that the restorative practice is not limited to "face-to-face" meetings, but rather that these encounters and practice are proposed in their online modality, using online dispute resolution mechanisms (ODR). This will herald the birth of a new field: which is no other than the online restorative justice.

What is an online restorative justice process?

Online restorative justice programs will be a complement to the criminal justice system because, they treat the consequences of crime and never the crime itself. An online restorative intervention may be practiced at any stage of the criminal justice process if the existing laws permit it.

Always keeping in mind that the online modality does not alter the objectives of restorative justice in person, it is possible to summarize them in that way:

1. Restore order and peace in the community and repair damaged relationships (when appropriate).
2. Reporting criminal behaviour as unacceptable and reaffirming community values.
3. Give support to the offended (victims), give them a voice, enable their participation and address their needs.
4. Motivate all related parties to take responsibility, especially the offenders.
5. Identify restorative, forward looking outcomes.

6. Prevent recidivism by motivating the change in the offenders and facilitating their reintegration into the community (Sherman and Strang, 2007: 68-73).

Therefore, bearing in mind that in the criminal justice system four levels or moments can be identified in which a process of online restorative justice can be successfully carried out: (i) pre-charge, that is, before the accusation or charges by the public prosecutor's office (police); (ii) legal proceedings or prosecution level (after the charges and always before the trial), (iii) court (up to the sentencing stage); and, (iv) correction (as an alternative to incarceration, as part of or addition to, a non-custodial sentence, during incarceration, or upon release from prison) (Just Equipping, 2008: 5).

As in other sciences, the diversity of existing programs on face-to-face restorative justice is directly related to the different views on the conflict and its consequent way of working it. The online restorative intervention can be designed from the various practices that it registers, the main programs are (Zher and Gohar, 2003) (United Nations, 2006):

1. Criminal mediation between offended, offender, community and institutions;
2. Community boards and family groups conferencing;
3. Circles sentencing and forums in native justice;
4. Restorative juvenile justice programs;
5. Peacemaking circles; and,
6. Reparative probation.

Almost all authors coincide in stating that, the diversity of programs, which are not likely to be exhausted in the enumeration made above, have many elements in common. The next table show how both the offended and the offender are affected (House of Commons, 2016: 9-10).

Table 1 Common elements to all restorative justice programs.

What does the process represent for the Offended?	What does the process represent for the Offender?
Participate directly and personally in the resolution of the consequences of the crime.	Recognize their responsibility in the crime and understand the effects and damage that has caused in the offended.
Being able to ask the offender why he has chosen it.	Express his own regret or other emotions.
Express the impact that crime has had on your life.	Receive support to repair the damage caused.
Receive an apology.	Apologize to the offended, his family and the community.
Grant his personal forgiveness	Receive the forgiveness of the offended and the community.
Reconcile and restore, if it were the case, the relationship with the offender.	Reconcile with the offended and the community..
Successfully close a life experience.	Restore the relationship with the community.
	Successfully close a life experience.

Own elaboration.

It is important to note that there must always be a "face-to-face" meeting between the parties. The meeting must be held in a context of confidentiality, neutrality, and privacy and at the same time should allow the facilitator to deploy all the techniques and / or tools of their professional work to actively collaborate in the achievement of the desired agreement by the parties and the purpose of the restorative process (Ministry of Justice, 2004: 13-14).

The disadvantages faced by online restorative justice

The first disadvantage refers to access to the Internet because we must not forget that there are countless towns and small cities where technology still does not be present.

The risk of a breach confidentiality of the process is the second disadvantage. However, we cannot lose sight of the fact that there is no infallible method, since it is not even in a "face-to-face" process in which, after one of the meetings, one of the parties could comment on what happened in the session with someone else.

Nowadays, with the secret codes and encryption programs that are available for free on the net or going to specialized companies, it is not too complicated to offer a high degree of confidentiality when using electronic means.

In the case of the use of electronic mail or chat in which there is no possibility of visual contact, it is essential establish the necessary security filters (keys, secret questions, codes, etc.) that allow verifying that the person with whom you are in contact is she and no other, that is to say, there is no identity theft.

Only in this way will both the facilitator and the parties involved be sure that the conditions of privacy and confidentiality necessary be achieved.

Without any doubt, the biggest disadvantage to an online restorative justice process is the deficit in the information and interpretation of the non-verbal language necessary for a good knowledge and good professional practice. That is why it is highly recommended to use video-conferencing, which, while still not perfect, but allows a good follow-up of the parties. It is essential to not lose sight of the fact that the technology is racing forward and soon another type of cameras will appear, sensors of Artificial Intelligence (AI) sensors that will make the relationship through the Internet much easier.

To sum up, therefore, the main disadvantages detected are:

1. Internet access and technical incidents (Internet cuts, equipment problems, etc.).
2. Violation of confidentiality.
3. Information and interpretation of non-verbal language insufficient.

The Online Restorative Justice model

Online restorative justice is presented as a functional tool to all the programs and models of restorative practices mentioned above, that is, it is a transversal tool for all models. It can be carried out at any time of the criminal process, becoming one more procedure within the same process of the criminal justice system.

It is highly recommended that the organization and location of the program be within the same criminal justice system in the same seat of the courts.

Access priority to the online restorative justice program will be given to the offended persons who: [1] live a considerable distance from the seat of the Courts and [2] who, due to their personal circumstances, are limited or unable physically to move autonomously.

Some aspects that remain pending for future research are:

1. Further measures should be taken in order to ensure the commitment of participants to refer cases to the program and determine the referral mechanism.
2. Determine the evaluation method or process that will be used to determine case eligibility for the programme.
3. How to provide the programme with an adequate structure.
4. Estimation of costs and budgets that allow the sustainability of the program. This includes anticipating the issues of profitability.
5. Recruitment and training of facilitators and other administrative personnel necessary for the execution of the program.

The online restorative justice is a mixed process that consists of both the use of information technology (IT) tools of both asynchronous and synchronous types.

Table 2 Mix of tools used by the online restorative justice model.

Asynchronous - No temporal-spatial coincidence of the people participating in the process.	Synchronic - Coinciding people in the same space and time.
Chat	A video-conference
Forum	A teleconference
E-mail	Other point-to-point communications
Sms	

Own elaboration.

Finally, in addition to the objectives referred to in paragraph 1) online restorative justice process will aim to repair the damage caused to the offended, the reintegration of the offender and the healing of any wound that as a result of the crime has been caused to the community.

The fulfilling of the agreement will be monitored by the same restorative justice unit that has already been suggested to operate in the seat of the criminal courts.

These are the elements that parties (offended, offender, community member, and the Institution that may correspond) must have to perform an online restorative justice process: computer, Internet access, webcam, headphones, and microphone.

It is important to keep in mind that in the synchronous mode the Internet connection (bandwidth) should have good quality to allow a session without cuts or interruptions.

It should be clear that the facilitator and the parties of the online restorative justice process must comply with the principles of face-to-face restorative justice that a priori are the same as those of the face-to-face process; however and more important even is that we do not forget that in this online modality it introduces some substantial considerations:

Thus, for example, with regard to electronic signatures foreseeing that the parties will not go have a digital signature certificate (which not all the computers are able to read, by the way) to do a online restorative justice process, the signature of documents to be used will be the so-called clickwrap (as for instance, the typical tilde window through which conditions are accepted on any Web page).

The electronic signature is a concept directly related to the digital signature, however, they are not the same: [1] an electronic signature is one that has been stored in a hardware support; while [2] the digital signature can be stored in both hardware and software supports.

1. The recognized electronic signature has the same legal value as the handwritten signature. In Europe, Directive 1999/93 / EC of the European Parliament and of the Council, of December 13rd, 1999, establishes the community framework for electronic signatures. By reading these Directive, it clearly appears that the following types of signature are:

Basic electronic signature: one that does not meet the requirements to be considered "Advanced electronic signature" (see below).

2. Advanced electronic signature: that which (a) is uniquely linked to the signer, (b) is capable of identifying the signer, (c) is created using means that the signer can keep under its control, and (d) it is linked to the data in such a way that any subsequent change to the data is detectable.
3. Qualified electronic signature: that "advanced electronic signature" that is based on a qualified certificate and that has been created by a "secure signature creation device" as defined by the directive.

As for reconciliation, it can be argued that the renewal of the "social pact" that operates at the interpersonal level between offended and offender (victim and victimizer) must be understood, without losing sight to the community.

The process on which the restorative practice is based would respond to the following formula:

"Truth + Justice² = Reconciliation"

The two central elements that are recognized in the formula are:

The "truth" We must recognize that in a conflict there are different "truths", it is known that you have to listen to all them because this is the only way to approach to "The Truth" achieved, in capital letters.

In the criminal sphere, the "victimizer" has an unlimited number of opportunities to express "his truth" in court, but this is not the case with the victim.

Of course, this leads me to distinguish between:

(1a) The legal truth, material, and objective, whose proof is found in the evidence of factual facts.

(1b) As the legal truth would be implied in the term Justice, it is obvious that the "social truth" to which I allude in the formula is the social truth which is more subjective and that is represented, on the one hand, in the expression of the perpetrator's motivation, and on the other hand, by the response to the question formulated by the victim: "Why me?".

Fixing the attention on the victim it can be affirmed that this aspect of social truth, today, is absent in the criminal process. It can be of transcendental importance that the victim can hear the victimizer the answer to his question "Why me?" (in a context of restorative practices) because only through the explanations

or narrative of the victimizer and not (or never) through a process or criminal sentence, can overcome or start to overcome the trauma of the damage suffered.

Will be necessary to ask each victim because they respond to multiple profiles that differ among themselves, in "almost" all its characteristics, since it is worth remembering that we speak of "individuals", that in a broad sense includes individuals and legal entities, it may be vital for some people to listen to the victimizer and for others not.

In the formula, Justice is squared but actually and in more precise mathematical terms, it is not a numerical exponential but a set of elements that enhance the previous one and that consists of:

(2a) The conflict, which nests latently in society, manifests itself and transforms into litigation with the breach of the legal order, that is, breaking the law (specifically the criminal one), followed by public and institutional recognition by the Judicial Branch of both: quality of the victim and the responsibility of the offender in the face of specific damage. In determining and recognizing the damage, the Justice partially accomplishes the reconciliation; this partial reconciliation will be extended to the extent that Justice achieves the reparations (material, aesthetic, psychological, legal, etc.) necessary for the victim.

(2b) The awareness of the damage caused (in all its extent) by the offender is an element that Justice badly achieves on its own.

This is where restorative practices take a major role regarding the social truth.

However, reconciliation must be distinguished from "forgiveness" and "recognition" as well as its concomitant phenomena: "guilt" and "repentance", since they are structurally different experiences.

Forgiveness and repentance are quintessentially personal and individual acts essentially asymmetric and oriented towards the past, that is, they seek the "liberation of the weight" that lead to guilt (Madrid Fernández, 2016), remorse and repentance (by the offender) and the self-recognition of the "moral superiority" (by the offended) that, with this act of forgiveness, frees itself from the irreversible damage it has suffered.

To do reconciliation properly, recognition must take place. However, reconciliation and recognition are two different things.

In the context of a social life where subjects manage to develop and self-realize, learning to be conceived from the normative perspective of their social recipients, that is, their interaction partners and all them under the imperative of reciprocal recognition.

The recognition paradigm of Honneth is built on three key elements: love, law and solidarity (Fabregat Rosas, 2015).

These principles should be explained in the following way (Conforti, 2016: 79-80):

- a. identity. It implies that the person needs the other in order to build their identity in a full and stable way. The purpose of life itself would be for the person to establish

a certain type of relationship with himself that would allow self-realization, in the sense of self-confidence.

- b. Law: when a person can also think as a component, with their rights and obligations, of the community that integrates. The recognition of rights of a person is the other side of the ability to meet certain obligations. When the person is denied their rights, they are depriving them of their self-image, and the person will be perceived as being without moral capacity and without autonomy. Legal recognition implies self-respect.
- c. Solidarity: understood as the social practice oriented to allow the person to detect and perceive which of their qualities are valuable in terms of the achievement of collective objectives considered by community as relevant. Social recognition thus translates into self-esteem.

It is clear that guilt, remorse, repentance, recognition, and forgiveness must accompany and enrich the interpersonal dimensions of reconciliation, and even, eventually, be present to consolidate it.

In order to reconciliation function efficiently, some legal systems, such as in Argentina, also contemplate the realization of a community labor (Law 24.316, known as 'Probation'). In Spain "conformity is an alternative to the procedure that has always been present in the codes of criminal procedures, and always with the concern of a fast justice" (Madrid Fernández, 2018: 160). Or as in the United States of America, the negotiation of the penalty is almost a tradition and has a wide application, the plea bargaining, is a procedure through which the Prosecutor has a wide margin of negotiation regarding the quantification of the penalty, and even the very definition of the crime, being able to change the type of fraud, or even withdraw some charge. And while these types of measures humanize justice, no less true is that we are still far from returning to litigation in conflict.

Restorative practices help to reconvert litigation into conflict

Having established all the above distinctions, and having helped into the transformation litigation to conflict, even with everything seen so far, the conflict has not been transformed. For the transformation to be carried out, it is essential that it be given both in the person of the offender the offended, and this objective is reached when working both on commission acts and acts of omission (that Justice does not include).

Regarding the acts of commission, things do not present great difficulty of understanding, the victimizer must commit to the future in that he will convert his acts of commission into acts of omission, that is, he will not re-offend in the crime (levels intra and interpersonal). The commission acts will be dealt with both within the criminal process and outside of it, that is, through, for example, criminal mediation, as an instrument of restorative justice. There is a point that deserves to be highlighted that "criminal mediation can be conceived as a new space of social control, understanding as such the organized way in which community responds to behaviors and people that it regards as deviant, problematic, worrisome, threatening, annoying or undesirable or another form, that is, planned and programmed responses to deviant behavior, as in this case, the conflict derived from the constitution of a crime or quasi-crime"

(Conforti, 2007).

However, regarding the acts of omission, the explanation is somewhat more complex because it is not about what the offended could have done to avoid the crime, it is about what community could have been done and It was not done (its structural level). The acts of omission must be converted into acts of commission so that the transformation is carried out in full; but how do we do it? Is it possible to incorporate the omission into the legal system? In this regard we could think in the Omertà (Italian code of silence) and equate it with "complicity", that is, a society that omits is complicit to watch to the side.

The reflection that seems to be even more important has to do with the following question "Why is it important to incorporate the omission?" And the answer is: because it is the only way to achieve reconciliation and consequently the renewal of the "social pact" that now must operate both at the interpersonal level (between offender and offended) and at the structural level (between offender and all members of community).

All this is essential if we want to achieve the transformation of conflicts and then aspire to achieve the transformation of civil society.

Assuming that the Law has converted certain conflicts, calling them "crimes", in litigations in which the victim has been made invisible; the restitution to the victim in the face of the conflict can be done through restorative justice. A restorative justice that seeks social transformation through the following formula:

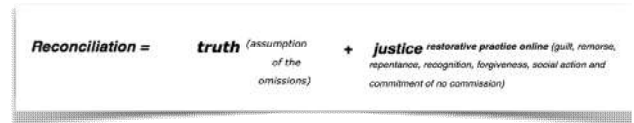


Fig 1 Reconciliation Formula. Own elaboration.

Where:

1. The truth is nothing other than the answer to the question of the offended "Why me?", strengthened by the duty to assume the omissions (if any); and in which,
2. Justice is enhanced by the Restorative Practices set that must necessarily include guilt, remorse, repentance, recognition, forgiveness, communitarian action for the benefit of the community and commitment of no commission or recidivism.

Reconciliation is, in short, the vehicle that, through the transformation of conflicts, must lead us to the transformation of society (Conforti, 2017a).

Regarding recidivism, that is, the commission of new crimes by the offender.

It is appropriate to assume that the criminal justice system is far from being a method of peaceful conflict resolution. It has been argued that the legal system is a violent method of conflict resolution whenever it uses or threat of enforcing the strength to finish the litigation (Enteman, 2005). Online restorative justice is a tool that, due to its modality and its underlying philosophical foundations, collaborates in the construction of

peace and thereby reduces violence and is preventive of crime in its double aspect, general prevention, and recidivism.

Online restorative justice returns to the parties and the community, in particular, the solution of the conflicts that arise as a result of the crime, thus avoiding a double victimization, rehabilitating the offender and restoring the state of social peace in the community.

The certainty that the restorative process avoids recidivism since their agreements establish a commitment to conduct that the offender must maintain in the future, in other words, they contain ex-ante the commission of the criminal act encourage some legislatively propose the sanction of the law of criminal mediation (in this case) as a criminal policy measure (del Val, 2015: 221-233).

However, the two special considerations or major challenges to overcome from the point of view of virtual systems are represented by confidentiality and the identity assurance of the parties involved.

Confidentiality affects the entire mediation procedure and the documentation used in it. The obligation of confidentiality extends to the facilitator, who will be protected by professional secrecy, to the institutions and parties involved in the process so that none of them can reveal the information they could have derived from it.

Regarding the identity guarantee of the participants, since the facilitator will have access to reliable information from the judicial office, its comptroller does not present major difficulties.

The importance of these two aspects in the practice of online restorative justice is not small due to the possible criminal liability that can be incurred by disclosure of secrets, and identity theft.

The video-conference encrypted under protocol 'https' covers the guarantee of security, privacy, and avoids identity theft. The encrypted video-conference is the only technological element that, being synchronous, allows the parties and the facilitator to see and hear each other, thus guaranteeing the identity of the parties and avoiding identity theft, in a simple way for every user (Conforti, 2013).

Finally, the two most important elements that, due to their modality, can only be found in online restorative justice are:

The dialogue

Traditionally, the communication process is studied from the theory of human communication (Watzlawick et al., 1985), however, in online restorative justice, the particular characteristics of the field mean that we have to study the communication process from the point of view of David Bohm. Videoconferencing has an advantage over the process of personal communication, here the user must respect the turn to speak, because, otherwise, it may happen that the voices are superimposed and none of them is audible clearly enough to become understandable. Here, when a person speaks, others actively listen and when they respond, the first can corroborate if there is any difference in meaning between what he meant and what the other parties have understood. The awareness of differences reveal to all participants the presence of something

new, and that dialogue can serve not only to make certain ideas or information common but also to do something in common, that is, to create jointly something new. *"At the beginning, people expressed their views too rigid and work to defend them, but gradually it became clear that more important than maintaining a certain perspective, was to foster the feeling of community ..."* (Bohm, 1987: 175).

Helped by the facilitator, the parts of a process of online restorative justice thus enter a dynamic that avoids fractional thinking, and when they are able to listen without prejudice and without trying to impose anything, they will be able to create.

In the excellent prologue to the book *On Dialogue*, Lee Nichol says: *"Dialogue is a process of direct and face-to-face meeting that we should not confuse with endless theorizing and speculation."* (Bohm, 2012: 14).

The idea that governs the dialogue is the fact that the parties (together and face to face with the help of the facilitator) face the real nature of the problem that exists between them, can serve to modify the tendency to fall prey to the blockades (disability to question our own beliefs, the way to avoid the most obvious contradictions, etc.) and transform into an intelligent collective community. *"Dialogue is something more than a common participation in which we are not playing against others (as in the discussion) but with them."* (Bohm, 2012: 30).

In the age of communication, people still have to learn to dialogue, to understand the relationship between dialogue and thought (the proprioception of thought, to put it correctly), to learn to deal with their beliefs and also with their needs.

The online restorative justice process must generate a dialogue that influences our feelings and bodily states and the way it affects others. The development of the ability to listen, observe and pay attention to the real thought process, to the order in which it occurs and to notice its incoherence, that is, those points where it does not work properly, is of the utmost importance. As we make that, we will discover that certain types of thinking play a more important role than others and that, among all of them, the belief in necessity stands out (Bohm, 2012). Online restorative justice is communication by itself. Here the challenge lies in going a step further, in advancing towards dialogue, and it will only be possible if it is synchronous (Conforti, 2015).

The creativity

Our responsibility to create a coherent relationship between our thought processes and the world (from which they arise and de interpreted) arises as a consequence of the fact that our perceptions of the world are affected by or affect the reality that they integrate.

When entire restorative process is performed as prescribed by the good practice, a series of dualisms appear (good and evil, true and false, intellect and intuition, absolute and relative, etc.) that require from the parties the maximum possible attention to be able to unite these dualisms and thus avoid the crystallization of the thought process and commitment to creative perceptions, for which, according to Bohm, definitions do not yet exist.

For Bohm, creativity, which has always been awarded to artists, thinkers, and writers, is not exclusive to them.

Bohm exemplifies learning that involves the perception of new relationship orders and that revolves around sensitivity to notice difference and similarity, with the story about a real case, in which a teacher named Anne, gets her student Helen (who is deaf, blind and mute from birth), manages to link a series of previous experiences unrelated to water, drawing in the palm of his hand the word every time Helen came into contact with water.

What facilitation will try to awaken in the people is this sensitivity to similarity and difference, because this is what will allow the parties to perceive new orders of structures, both objective and subjective. To put it with an example, we can differentiate the arrangement of bricks in a wall (similarity and difference define basic orders -bricks-), then the relationships between these orders (bricks) result in a new structure (wall), and, finally, the relation of the new structures creates integral totalities (a house).

Bohm distinguishes two different blocks of creativity. The simple confusion, that which we experience when, for example, we do not understand the instructions that are given to us, or when we can not find the solution to a certain problem or enigma; and, the self-feeding confusion, that is, the one that takes place when the mind tries to escape from the knowledge of the conflict, when the intention of the person is to avoid the reception of the fact, instead of trying to accept and resolve it. This dynamic creates, in Bohm's words, an order of its own that leads to a reflective state of obfuscation in which natural mental agility is replaced by apathy and automatic fantasies. If we want to promote creativity, in the parties, facilitator should take particular care to the confusion. (Bohm, 2013).

In the development of an online restorative justice process, the parties find themselves in isolated places, such as their office, their house, etc. These conditions of "loneliness" in the immediate environment are a breeding ground for self-feeding confusion. To break self-feeding confusion and creativity can appear on the scene, due to that, online restorative justice must be synchronous (Conforti, 2015).

It is clear and quite obvious that the facilitator must develop and be able to apply all the techniques inherent to the process of restorative practices, that is: ask and/or cross-examine obtaining response at the moment and in a voice, develop resilience, active listening, co-build trust with the facilitator and the restorative justice process so that the parties are sincere and honest, empower, generate and motivate empathy, detect and work on emotions, etc.

In Spain, the first platform to offer an online mediation ODR service has been Mediar On-Line (www.mediaronline.com). Since 2008 they offer a video-conference system that follows an 'https' security protocol to guarantee the privacy and confidentiality of mediation. The service was developed with the collaboration with the Family Mediation Center of Catalonia of the Department of Justice of the Generalitat de Catalunya, Spain (Sanz Parrilla, 2011: 449-450).

The benefits of online restorative justice

When evaluating the advantages, we must take into account their efficiency, seeking the practical results that restorative justice requires:

In the first place, it is worth noting that online restorative justice allows physically disabled, agoraphobic, rural people, people who fear being stigmatized, to consider the possibility of going to a specialist to solve the consequences of a crime.

Secondly, would weigh up the ease of contact (through e-mail, social networks, WhatsApp, SMS, etc.) and the freedom to choose the moment of contact. This means that from anywhere in the country, or the world, and at any time of the day, the parties can come to contact through a platform of online dispute resolution services (ODRS acronym of Online Dispute Resolution System).

The third place is offshoring, which means that anyone can reach a facilitator and get his attention regardless of the geographical location in which they are located. It is an excellent resource in towns and cities distant from the courts.

As a fourth point, we should highlight the effect of "disinhibition by electronic means" that can favor the reduction of prejudice to initiate a process of online restorative justice. It is also advisable to use a page of frequently asked questions to answer the most common questions and at the same time to present and explain both the role of the facilitator and the purpose of the restorative process (Vallejo-Jordán, 2007).

Fifth, de-temporalization must be pointed out. Online restorative justice allows for extended contact time between people and the facilitator. In this way, the parties could leave all their doubts and concerns prior to the start of the process itself (written or recorded) and the facilitator can answer the queries (thereby generating confidence in the process) at different times, ie asynchronously.

In any intervention by electronic means we reduce the time surrounding the intervention, this is the sixth benefit; this is relevant not only for the time saving but also to make big economic savings for the offended person, the community and the institutions and perhaps even the offender, face-to-face meeting, measured in displacements, waiting periods, adjustment of agendas, etc.

And finally, since the online restorative justice process would be developed by video-conference, both the facilitator and the parties may have the possibility of observing the other in their daily environment, this can provide them with information of each other and at the same time allowing the sessions to be developed as naturally and as comfortable as possible for each one of them.

To summarize, and without prejudice to the figure of the facilitator, we can divide the benefits of the online restorative justice process according to the parties and thus we will have clearly differentiated the benefits for the offended, offender, member of the community, and the benefits for the institutions.

Benefits for offended, offender, member of the community in an online restorative justice procedure:

1. Savings on travel and accommodation expenses.
2. Do not need to leave the own everyday environment (home or work).
3. They can interact in a simple way (flexibility).

4. They do not require any especially complex software.
5. You can download the documentation that is made available.
6. Expand contact times.
7. Disinhibition effect when acting by electronic means.

Benefits for institutions participating in an online restorative justice process:

1. Drastic reduction of travel and travel expenses.
2. Times saving (idle times).
3. Improvement of quality of internal and external communication.
4. Speed up the decision-making processes.
5. Improvement in the institutional image by offering innovative technological solutions (integrity) (Conforti, 2018a).

CONCLUSION

The use of ODR in restorative practices is justified not only by the benefits indicated above but also in the philosophical foundations that constitute the starting point on which the scaffolding of the Institute of restorative justice has been built, other reasons that have to do with the very purpose of the restorative process.; in that sense, dialogue and creativity have been mentioned.

Currently in Spain many judicial proceedings are conducted by video-conference, when one of the parties resides in another jurisdiction, what brings online restorative justice is that it would not be limited to the statement of the witness, or accused, or the same trial itself, but goes further to get the repair of the damage.

Hundreds of trials are held every day for minor infringements: such as insults, threats, mistreatment, etc., that represent a huge expense for all the parties, and that if there is recognition of facts, in an instance before the oral hearing in trial, could end up with online damage repair. In this sense, the figure of the facilitator should be regulated as the one in charge of contacting the parties and seeking the repair agreement. So that from the offices of prosecutors and lawyers can resolve solutions of criminal proceedings in progress. And also facilitate the fulfillment of the penalty to be applied. It could even be planned in "the penalty of permanent location at home" that the control of the same could be monitored by the same restorative justice unit that has been suggested to work in the seat of the criminal courts, they will contact in an unpredictable moment along the day with the offender at home via online.

It is clear that all the guarantee principles of criminal law must always be respected, and for this reason, it might be advisable to begin to apply online restorative justice in minor crimes, the so-called minor offenses (in the past, in Spain, so called criminal offenses).

In this sense, we should ask ourselves: "what kind of crimes would be the most feasible to be addressed by online restorative justice procedure?"

Probably the answer is in the minor crimes where there can be a conformity with the facts, the fulfillment of the punishment and its reparation can be made feasible in a comfortable way,

eliminating stigmas of victim and victimizer, calling them offended and offender.

In Spain one could even advance to abbreviated procedures, in procedures where there is "conformity" with the accusation, lawyers, victimizer, and courts could economize using an online restorative justice. An improved criminal justice that qualifies as restorative for its purposes, eminently restorative and also reconciliatory.

In Argentina, it could be possible to move forward with the Institute of the "suspension of the trial" process foreseen for articles: 76 bis, 76 ter, 76 quater, and art. 10 of Law 24.136.

What is proposed, is a way to make justice more comfortable and profitable, with less damage for all those involved in the crime. And that could be developed legally, bringing justice to the same domicile of the citizen.

Perhaps we could think that this is a new way to promote the new philosophy of Justice, which is so necessary in these days. The new concept of Justice can also become a new formula to execute it, the Online Justice.

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