HOW BRAZILIAN LEGAL ACTORS DEBATE THE RISE OF NEGOTIATED JUSTICE

INTRODUCTION

For decades, the United States has relied heavily on plea agreements to expedite criminal proceedings, a model that has gradually influenced reforms abroad. In Brazil, mechanisms such as the Acordo de Não Persecução Penal (ANPP), incorporated by Law 13.964/2019 (Pacote Anticrime), and collaboration agreements have emerged, generating both enthusiasm and criticism. This project examines how Brazilian scholars and practitioners perceive the adaptation of these practices. It draws on key discussions by Máximo Langer in "Plea Bargaining as Second-Best Criminal Adjudication and the Future of Criminal Procedure Thought in Global Perspective" (2010) and Allegra McLeod in "Exporting U.S. Criminal Justice," which served as the theoretical foundation for the research and helped frame how U.S. criminal justice norms travel globally. The analysis relies on monthly newsletters from IBCCRIM (1993–2025), a leading Brazilian institute for criminal-law research, chosen for its comprehensive insight into how Brazilian legal actors interpret domestic criminal law and engage with international influences.

RESEARCH QUESTION AND OBJECTIVE

How do Brazilian legal actors interpret and debate the rise of negotiated justice and the importation of American Criminal law over time? The main objective of this study is to analyze how Brazilian legal actors interpret and debate the adoption of negotiation, based criminal procedures, especially after the introduction of ANPP, which has similarities to the U.S plea bargaining system.

METHODOLOGY

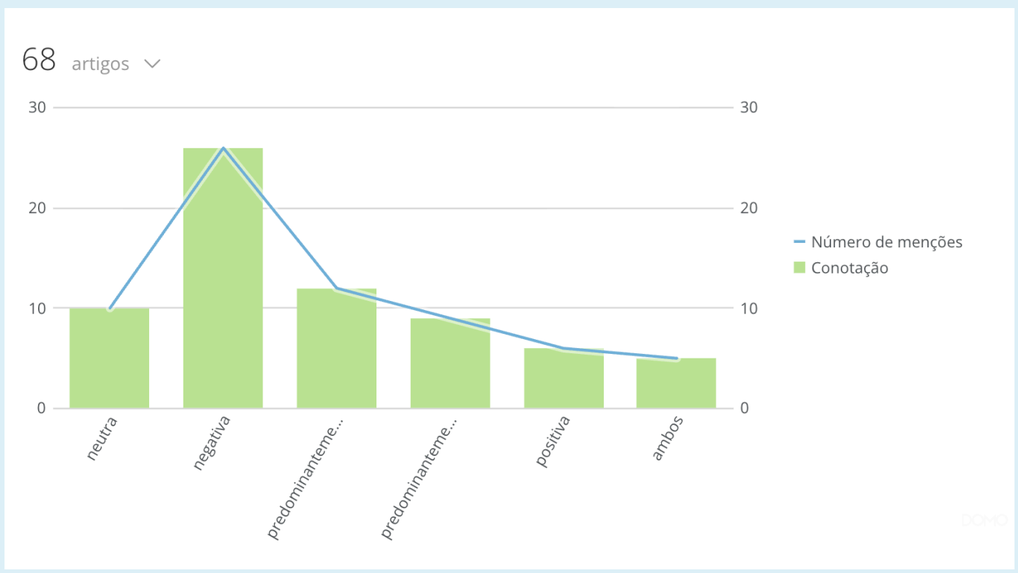
The research involved a comprehensive review of all IBCCRIM newsletters published since 1993. Articles addressing themes of negotiated justice, including ANPP, collaboration agreements, plea bargaining, and negotiated criminal justice, were selected for detailed analysis. A total of 68 articles were identified. Using NVivo, the qualitative analysis was conducted by coding each text according to the themes defined for the study, allowing recurring patterns and contrasts to emerge across the material. The coding was done intuitively, leading to the conclusions from this analysis.Each newsletter was summarized through an individual memo and categorized by connotation as negative, positive, predominantly negative or positive, neutral, or mixed.

ANALYSIS

The qualitative analysis revealed a wide range of opinions on negotiated justice in Brazil. Many articles focused on the legal limits of the ANPP, including questions of retroactivity and its use after proceedings had begun. Comparisons with the U.S. model emphasized structural differences, particularly concerns about coercion, inequality, and mass incarceration. These critiques reflected the view that Brazil's civil law system, with its codified rules, judicial oversight, and limited prosecutorial discretion, operates under a different logic from the U.S. common law framework, making a direct transplantation of plea bargaining impractical. In the U.S., prosecutors possess broad discretion in charging and negotiating penalties; in Brazil, prosecutorial actions are more strictly regulated and subject to judicial control. Critics argued that adopting an American-style model could threaten due process and disrupt the balance between defense and prosecution.

Among the 68 IBCCRIM articles, 38 expressed negative or predominantly negative views, 15 were positive or predominantly positive, and 15 were neutral or mixed. This distribution shows that early reactions to negotiated justice were largely skeptical, especially concerning U.S. influence. After the ANPP was enacted, however, perceptions shifted. Despite its foreign origins, many scholars came to view the ANPP as compatible with Brazil's procedural structure and constitutional safeguards. Post-2019 articles increasingly highlighted potential benefits such as reducing judicial backlog, improving efficiency, and encouraging cooperation. The ANPP thus came to be understood not as a direct transplant of U.S. plea bargaining, but as a Brazilian legal instrument shaped by judicial oversight and civil law traditions.

This shift occurred because, once the ANPP became positive law, scholars and practitioners had to confront its practical application. Debates moved from questioning the legitimacy of negotiated justice to examining how it should function ethically within Brazil's legal framework. Some warned that the ANPP could expand prosecutorial power and threaten procedural safeguards, emphasizing the need for clear limits. Overall, the debates show that global legal practices are not simply imported but adapted and reshaped within Brazil's institutional and constitutional context. Further research will be done on this topic to explore those arguments.



Number of negative and positive connotations in the 68 articles analyzed.

Arguments in favor of ANPP	Arguments in against of ANPP
Reduce the number of criminal cases	Risks expanding the power of the Public Prosecutor's Office
Alternative to incarceration (low offenses)	Weaken procedural guarantees, especially if confessions are pressured
Flexible and negotiated solutions	Could reinforce inequalities, as vulnerable defendants may accept unfair agreements
Can be fairer for defendants when properly supervised	The Brazilian system's inquisitorial features may cause the ANPP to function differently than in accusatorial models like the U.S.

CONCLUSION

This study demonstrates that thehe perspectives of lawyers reveal both openness to and reservations about the incorporation of negotiated justice, reflecting ongoing tensions between efficiency, fairness, and professional ethics. Through their views, it was possible to identify how their opinions evolved in response to the gradual implementation of new negotiated agreements in Brazil. These changing perceptions illustrate that the evolution of such mechanisms is not only a legal transformation but also a professional and cultural one, shaped by how the legal community redefines justice within the country's procedural and constitutional framework.

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