

COLATERAL DAMAGES

THE ‘UNEXPECTED’ CONSEQUENCES OF POLICE MISTREATMENT ON INDIVIDUAL AUTONOMY

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ABSTRACT

This thesis highlights the relations among two issues that are not usually linked together, as individual autonomy and police mistreatment. By showing the long-term impact of diverse manifestations of police mistreatment among two targeted groups (the Romani people of Budapest, Hungary, and the male youngsters living in slums in Cordoba, Argentina) it is possible to track the origins of practices that prevent the members of those groups from enjoying the individual autonomy that is recognized in both countries.

The main idea is that extended practices of police mistreatment, however tolerated they may be, are a source of unjustifiable subduing of parts of the population, what weakens the legitimacy of all of the governmental policies and the State at large too, especially on transitional democracies that try to build their ‘raisons d’etat’ around the value of individual autonomy.

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COLATERAL DAMAGES
The ‘unexpected’ consequences of police mistreatment on individual autonomy

INTRODUCTION

This thesis treats about a series of problems not frequently issued by the theorists of individual autonomy: both the particularities of certain subjects of the restrictions imposed by certain law enforcers, and the scope of the consequences of incidents related to law enforcing are not usually seen with enough clarity. To start from the beginning, this thesis is centered on the impact of certain restrictions of individual autonomy produced as an effect (unexpected, I should note) of Police mistreatment upon members of disadvantaged populations.

At the end of these pages I will try to discover the answer for the following questions: how is it possible that certain persons may suffer mistreatment from those who are supposed to protect them? How are the patterns of such mistreatment? Which are the impacts (if any) in the short, medium and long term on the individual autonomy of those persons? However, all those questions will lead to the main question of the thesis, which is the following: Is there any relation between the ideal of individual autonomy and the final consequences of Police mistreatment? And, how is that relation possible?

I may risk now a probable answer that should be developed, tested and confronted along the thesis: if all the institutional devices that intend to enforce the law in a given type of society (in our case, liberal democracies) are set forth in order to allow and protect a sphere of autonomy such as to let the individuals live their life as they rationally planned, any undue interference by those same institutional devices put

into risk the space of security needed to enjoy autonomy, and thus it contradicts those same goals that they are aimed at achieving.

In my first paragraph I suggested that the subjects of this thesis and the problems they come across are not commonly associated with issues related to individual autonomy. The thesis is centered on the experience of two vulnerable groups that may seem completely unrelated and therefore incomparable: the young male inhabitants of the poorest zones of the city of Cordoba (Argentina), and the Roma people of Budapest (Hungary). To resume, I will give the Argentine group the name of ‘slummers’, even though some of them do not live in the slums but for the purposes of the thesis they share their fate with those who do it¹.

Despite the cultural and historical specificity of each of both groups, they share a couple of unpleasant positions in the imaginary of the mainstream of the societies they live in: they are seen as the lower bottom of the social scale, they are labeled as frequent wrongdoers and hence seen as potential criminals, they are in the center of the scope of the Police activity and this selectivity concludes in an overrepresentation of these groups in the criminal statistics and also in the jails.

There is no need in this point to go deeper in the roots and complexities of the present situation of the slummers and the Roma: this thesis is about autonomy and not criminology. Hence, the references to criminal policies are merely instrumental to show the practices and institutions that affect the main topic of the thesis, that is, individual autonomy.

¹ It is not necessary to go deeper in distinguishing those who live in slums and those who live in poor neighborhoods, because all of them are usually subject to the same kind of treatment on the part of Police officers, as well as the social prejudices of the community at large.

A necessary remark at this stage: I am somehow influenced by some of the theories developed under the ‘umbrella’ of the abolitionism. I maintain a deep distrust on the legitimacy of the imposition of any kind of pain when it is notoriously rooted on the moral tenets of a given group. It is hard for me to skip the notion of almost uncontested cultural homogeneity assumed as self-evident by the penal laws, from the notion of oppressive majorities imposing their lifestyles over isolated minorities. A second line of distrust is related to the societal costs of imposing punishment, related to the supposed benefit that can be extracted out of it.² Frequently the punishments are not only reflections of moral majorities imposed over certain group, but also their costs are overwhelmingly paid by those subdued groups, and that is why my recommendations will tear far apart from new punitive tactics.

About the choice of these groups, an additional and powerful reason lies in the fact that both Argentina and Hungary are living in transitional democracies, with the particularities of that situation as a crucial common point: the challenges of providing for stable democracies, respect for human rights, economic development and social welfare take place in the context of nations that are leaving behind a past of harsh dictatorships and are willing to establish liberal democracies. After years of the forcefully imposition of a determined vision about all public and private affairs, both have made their way out of those regimes choosing a system of government that excludes a stated definition of the good and the evil, leaving for the governed to choose their own rational plans of life.

The concept of autonomy that will circle around these pages is inspired in Carlos Nino’s ‘principle of individual autonomy’, which orders that “*being valuable*

² Conf. Luigi Ferrajoli, “Derecho y Razon. Teoria del galantismo penal” (Right and reason. Theory of Penal Guaranties), Ed. Trotta, Madrid, 1995, Page 248.

*the free individual choice of life plans and the adoptions of ideals of human excellence, the State (and the rest of the individuals) should not interfere with that choice or adoption, restricting itself to the design of institutions that ease the individual pursuing of those life plans and the satisfaction of the ideas of virtue that each one sustains and impeding the mutual interference on the course of that pursuit.”*³ Being the individual endeavor towards moral excellence the ideal of liberal theories, the application of those theories to the political field in which public policies take place, will always have to rest on –at least- two basic elements of liberal democracies: the idea that the individual counts and that the individual must be free from will and fear. In other words, when the State chooses a certain ideal of individual excellence and tries to impose it to the citizens, it ceases to be neutral and starts favoring one group or groups over the others, loosing all of its impartiality and therefore democratic legitimacy.

Moreover, a liberal democracy implies a decision-making process in which the election of the rulers and the selection of the key policies are taken after a public deliberation that requires that all participants in the debate are equally autonomous. Even the most restrictive versions of democracy (as the notion of delegative democracy is),⁴ which permit only the election of the rulers, require that voters must be completely unrestrained: that is the minimum core of ‘free elections’, without which it is impossible to talk about democracy at all.

Liberal democracies require more than that: they expect that every individual must be allowed by proper means to have a say on every fundamental issue, especially in those areas in which she is personally affected. Only a person who can act as a moral

³ Conf. Carlos Santiago Nino, “Ética y Derechos Humanos” (Ethics and human rights), Ed. Astrea, Buenos Aires, 1989. Pages 204-205.

⁴ Conf. Guillermo O’Donnell “Delegative Democracy?”, article available at <http://www.nd.edu/~kellogg/publications/workingpapers/WPS/172.pdf>, last visited on November 10, 2008.

agent⁵ is capable of acting as the kind of person required by a liberal democracy, that is, a free citizen.

To be more specific, the notion of democracy adopted with regards to the topic of this thesis is that known as ‘deliberative democracy’⁶, which places most of the weight of the legitimacy of the exercise of State power on procedural guarantees that allow a robust and wide debate on key issues, especially those that are related to the disadvantaged groups that too frequently suffer from expressive burdens. Even though the concept of democracy I chose is not a part of the arguments –and hence it will not be developed any further- it will guide the conclusions as a parameter for evaluating the depth of the impact of mistreatment on individual autonomy.

Regarding the second of the statements made in my opening paragraph, related to the scope of the consequences of police mistreatment, they are usually presented as problems of ethnic profiling, discrimination and efficient public policies, than problems about the further effects of mistreatment on those who suffer it. While the common scope tends to see mainly the practices themselves and the immediate impact on the rights of the individual, I purport to go further and discuss their impact not only at the immediate moments of mistreatment but somehow long after them. Moreover, I will try to reach a general conclusion in a more general level, not only related to the specific victims of Police mistreatment but to the whole system of institutional devices that are supposed to protect individual autonomy at large.

In sum, despite the broad field of theories about the restrictions to individual autonomy, police mistreatment is not commonly present in any analysis of those

⁵ That is, to be the author of her moral principles, to choose among them, to retain the moral authority over herself refusing to surrender it, to decide which moral rules are accepted as binding, and accepting the moral responsibility of those rules. This notion is further developed from page 12 on.

⁶ I rely here on Carlos S. Nino’s arguments on “The Constitution of a Deliberative Democracy”, Yale University Press, 1996.

restrictions; at the same time, Police mistreatment is often seen and explained from a number of perspectives, but notoriously not from the angle of its impact on the individual autonomy of the moral agents. The gap between both commonly untouched spheres is exactly where the following pages will try to build a theoretical bridge.

Regarding the way in which the information will be provided, this thesis presents three parts with two chapters each. The first part introduces a set of notions related to individual autonomy in order to present a general theoretical frame over which the rest of the thesis will circle around. The first chapter begins with the concept of and some special developments on individual autonomy, and how can it be duly restricted; while the second chapter provides some additional links with issues as self-esteem and human dignity, which altogether form the core that permits the exercise of autonomy.

The second part relates to the concrete type of restriction that I chose as an atypical example of a burden of individual autonomy, that is, Police mistreatment. This part begins with the third chapter of the thesis, devoted to the building of the concepts of police mistreatment and targeted populations; whereas the fourth chapter introduces a comparative analysis of the concrete practices of Police mistreatment as suffered by the targeted populations in Cordoba and Budapest.

Finally, the last part explains what happens with the victims of police mistreatment and which are the mid and long term consequences of it. It begins in the fifth chapter and describes the effects of mistreatment on human dignity and self-esteem of a group of citizens that have ‘naturalized’ their situation of deprivation of certain rights; and the sixth and last chapter intends to show that the social life of those who live under the condition of a diminished citizenry is marked by an ‘inauthentic’

moral autonomy. The conclusion tries to provide a basis for understanding how may all that have an impact on the core values of liberal democracies.

Regarding the methodological aspects of this work, the limits imposed by my education as a lawyer restricted the choices of methods to the ones I know best, as literature review and legal analysis, and a third one that meant the risk of the unknown, as interviews to key actors related to this topic. Part of the information was collected by my personal six-year experience as a private lawyer, helping rather frequently some persons who are part of the targeted groups -obviously those from my home city-, subjected to arbitrary detentions. And of course my participation as a legal activist on some cases dealt by the Public Interest Legal Clinic of Cordoba and also studied by a legal NGO named INECIP –the two organizations I work for-, have contributed to my personal interest in this topic. The participation in study groups, seminars and public activities related to security policies and human rights triggered some concerns about the impact of the unexpected effects of certain practices, on the groups that are addressed by those practices.

The practical value of this thesis is oriented towards the drafting of public policies related to security issues, which should take seriously into consideration the impact that some practices have on the individual autonomy of some groups of persons. As will be explained, practices as Police mistreatment have a disparate mid-term impact on the most disadvantaged groups, which alienate them from other policies oriented to provide them the support required to fully enjoy their status of citizens. By pointing out this impact, I expect policy makers to be sensitive about its negative

influence on other policies not related to security issues, as access to Justice, to health service, to education, to work, etc.⁷

To conclude this introduction, a warning has to be made about the authors and articles I quoted: some of them were found in their original versions in English, some others were found translated to English from their originals in other languages and others had to be translated by myself from my mother tongue –Spanish- to English. To make it a little bit more complicated, some authors wrote in other languages and were translated to Spanish, being that the way I found them. For that reason it is highly probable that some phrases and paragraphs quoted in this thesis may present some differences with translations made by their authors or other publishers.

⁷ For a brief but complete analysis of the problems faced by the Roma people, check the report “Decade on Roma Inclusion. Challenging centuries of discrimination”, Open Society Institute, New York, 2005, available at http://www.soros.org/resources/articles_publications/publications/osn_20051011, last visited on November 10th, 2008.

PART ONE: INDIVIDUAL AUTONOMY

CHAPTER ONE: The concept and development of individual autonomy

In this chapter I will present some concepts of ‘autonomy’, in order to find a working idea to explain its dimensions, its value and the consequences of certain restrictions on it. As any concept, autonomy is far from being an absolute element or the fortress of untouchable wills, in whichever sense we would attribute to the term; instead, it seems natural to accept some restrictions on autonomy to fulfill diverse aims. Which restrictions are legitimate or merely acceptable, and which are illegitimate or unacceptable is a question that has worried generations of philosophers, jurists and politicians. I will not try to cover such an extended topic, but instead, try to find some basic practical tools to explain the phenomenon of some particular kinds of restrictions on a particular kind –or understanding- of individual autonomy, namely, how is it possible to unduly restrict individual autonomy by means of the police mistreatment.

A) NOTIONS OF AUTONOMY

As any *polysemic* word, ‘autonomy’ relates to a number of meanings not always directed related among them. Thus, it applies to the unconstrained activity of persons and states, to the coherent elections made by an ‘authentic agent’ (that is, one that acts following his desires and wills), to certain conditions of the process and the result of those decision makings, and so on. From the various concepts of autonomy that have

been drawn by philosophers, the basic notion that best fits the scope of this thesis is that provided by Joel Feinberg⁸, who states:

“The word “autonomy” is obviously derived from the Greek stems for “self” and “law” or “rule”, and means literally “the having or making of one’s own laws”. In this sense therefore can be rendered at least approximately by such terms as “self-rule”, “self-determination”, “self-government” and “independence”.

Basically the author follows the idea that autonomy is the possibility of acting freely, that is, with a lack of undue restraints to the will of the agent. Which restraints can be deemed as due or undue depend largely on an insight on the normative world of the agent, which integrates legal, moral and traditional rules: according to this idea, whenever a person acts within those norms her actions are permissible, and only limited to her internal wills, desires or needs. Hence, her conducts can be deemed unlawful, immoral or wrong only in the case that they contradict those tenets. The existence of these heteronymous norms shouldn’t affect the condition of autonomy of an independent person, provided that those external norms follow an objective and legitimate aim **and do so** by acceptable means. However, this topic will be discussed later, when offering different sources of restrictions to autonomy and their subsequent impact on the free will of the agents.

Feinberg goes on proposing four meanings for that concept, namely: the *capacity* to govern oneself; or the *actual condition* of self-government; as an *ideal of character* derived from such conception; or as the *sovereign authority* to govern oneself. Corresponding to those senses of “autonomy” there are parallel senses of the meaning of “independence”: the capacity to direct one’s life responsibly; the *de facto*

⁸ Joel Feinberg, ‘Autonomy’, in *“The inner citadel. Essays on individual autonomy”*, compiled by John Christman (Ed.), Oxford University Press, New York, 1999. Page 27.

condition of self-sufficiency; the ideal of self-sufficiency; and the *de jure* sovereignty as the right of self-determination.⁹ For the purpose of this thesis what is relevant is the notion **of an** actual condition of self-government as the *de facto* condition of self-sufficiency.

Another concept of autonomy is provided by Gerald Dworkin¹⁰, including some dynamic elements. He has characterized autonomy as ‘...*the capacity of persons to critically reflect upon, and then attempt to accept or change, their preferences, desires, values, and ideals. The idea of moral autonomy is a particular case of this, and the rough idea is that persons are responsible for, and have the capacity for, determining for themselves the nature of the moral reasons, considerations and principles on which they act.*’ The new –and interrelated- elements are the critical reflection and the possibility of accepting or changing those preferences, desires, values and ideals (which could be summarized as ‘moral choices’). The notion that the capacity to measure, evaluate and approve or disapprove a certain idea depends on an individual, is what renders that person as a moral agent, that is, someone who acts upon her own set of rules. In this sense, then, to be a moral agent is to fully enjoy a sense of individual autonomy. What is more interesting, moral agents have the possibility of changing their preferences, due to changes in the context where they act or the different appreciation of the rewards or costs of every available choice. This possibility is due to the individual autonomy of moral agents, who are able to make those changes without any undue external interference.

Even though those options should logically follow the moral choices of the moral agent, it is the case that in turn, the factual circumstances in which she acts, may

⁹ Ibidem, page 28.

¹⁰ Gerald Dworkin, ‘Autonomy, Science and Morality’, in “*The inner citadel...*”. Page 234.

induce some variations of the reflective assessment of those items that conform the agent's moral choices. Is that feedback from the surrounding world and its potential impact on further moral choices, what shows how a moral agent may change them without falling into an inauthentic life: it is the critical reflection itself, as a product of an individual endeavor of the person what grants authenticity to the final product of both accepting or changing a moral choice.

Which are the constitutive elements of a morally autonomous person? Dworkin provides six *'possible characteristics of what it might mean to be morally autonomous.'* They are the authorship of her moral principles, being their originator; the choice of those moral principles by the agent; the ultimate authority or source of her moral principles lying on the agent; the fact that she is the one who decides which of them to accept as binding upon her; the acceptance of the moral responsibility for the principle she acts upon; and the refusal to accept others as moral authorities¹¹. Moreover, Dworkin plainly states that *'the failure to form one's own moral opinions, solve one's own moral problems, make one's own decisions is to fail as a moral agent.'*¹² Whether a moral agent requires all of those characteristics or can do without one or some of them it is a question answered by the author in a negative way. They seem to imply an intrinsic relation among them, as the steps of a multi-layered analysis.

One crucial element of autonomy is the identification with the decisions, that is, an attitude of assuming the rationale behind those decisions as one's owns, as part of our rational plan of life. This identification between an action and the will of the agent can in turn be split in what has been named a 'two storey' analysis: a first level of

¹¹ Ibidem, page 235.

¹² Marcus Singer, 'Freedom from Reason', in *"Philosophical Review"* 79 (April 1970), page 255, quoted by Gerald Dworkin, see preceding footnote.

identification with the act itself, and a second level of the identification with the reasons to act in that way. As H. Frankfurt stated, *‘To identify an agent’s will is either to identify the desire (or desires) by which he is motivated in some action he performs or to identify the desire (or desires) he will or would be motivated when or if he acts. An agent’s will, then, is identical with one or more of his first-order desires.’*¹³ As agents may have diverse reasons for acting, the author finds that *‘Somebody has a desire of the second order either when he wants simply to have a certain desire or when he wants a certain desire to be his will. In situations of the latter kind, I shall call his second-order desires “second-order volitions” or “volitions of second order”.’*¹⁴ In other words, a person may have a certain will capable of directing his acts, or have the desire of having such a will (whilst being directed by wills he may not identify with). Although those two orders of desires tend to assimilate when a person acts in a way she wants, and does so because of the reasons she freely wanted to have, it may be the case that they do not coincide. This typically occurs in coerced actions: the person acted in a certain way, but under motivations she did not choose as hers.

The author goes on asserting the centrality of those ‘second-order volitions’ to a concept of the human condition that is deeply embedded in the notion of autonomy: *“It is only because a person has volitions of the second order that he is capable both of enjoying and or lacking freedom of the will. The concept of a person is not only, then, the concept of a type of entity that has both first-order desires and volitions of the second order. It can also be construed as the concept of a type of entity for whom the freedom of its will may be a problem.”*¹⁵ The practical difference is that in the second

¹³ Harry G. Frankfurt, ‘Freedom of the Will and the concept of a Person’, in *“The inner citadel...”* (see footnote 7), page 65.

¹⁴ Ibidem, page 67.

¹⁵ Ibidem, page 69.

case the person may have to balance diverse motivations to act: on one hand his primal wills, and on the other, reasons that are external to his wills (and sometimes otherwise rejected) but that the person is compelled to follow, even if not physically coerced. This second and problematic “storey” of his concept of autonomy provides a useful insight for measuring the level of autonomy enjoyed by an agent: when a person chooses not to do something that she would have liked to do, for reasons that are at odds with her desires it cannot be said that the person had a free choice.

It would not be correct to appeal to a theory of rational choices in cases as these, because in cost-benefit choices the person is, by definition, free to choose and informed about the predictable losses and gains of his option: only under such conditions the person can predict the outcomes of his actions and select those that are closer to her rational life plan. Which is the difference between a decision taken against a person’s volition of second order, and a decision taken weighing unwanted results? There may be differences of two types: one related to the moral content of the decision and other related to the presence or not of second-order volitions. In the first situation, the options are both morally demeaning (walking around a certain square running the risk of being arbitrarily detained; or refraining to leave the slum in order to prevent arbitrary detentions) and hence the person loses in both scenarios. In the second situation (a cost-benefit choice) all the possible options have an equal moral content (buying a used or a brand new car) or they are morally neutral (walking around Andrassy Avenue or on the Marget Island) and hence the person may expect a better gain on one of them.

The second difference is related to the presence of second-order volitions, that is, the desire of having certain desires or motivations or, at the contrary, the moral rejection of the motivations to act. In the provided examples, the person may have

desired to have reasons others to stay in the slum (playing a football match or visiting his girlfriend) than the ones he had in mind (to avoid being embarrassed by the Police and detained); and would reject the idea of having to stay in his place only because of the fear of Police. In the second case, the weight of second-order volitions are related to decisions that are strictly material (spending all the available money in the car or saving something for the holidays trip) and do not need to resort to the motivations behind the motivations in order to deem the decision meaningful.

Individual autonomy is highly valuable for a number of reasons: it is clear that only autonomous agents are capable of making moral choices and then change those choices when the circumstances make it advisable; and is the main pillar of liberal democracies as a kind of political organization that purport to achieve together equality and liberty. On this regard, both of the studied countries have overcome authoritarian regimes which, despite their deep differences in length and ideological justification, coincided in a broad disregard of the value of the individual. The importance of moral autonomy for liberal democracy makes it necessary to protect individual autonomy by a number of institutional devices, as laws and remedies, among other protections. Protection against crime as an external undue interference fits precisely in this category, which includes potential crime and the need to prevent it. This is one of the most classical justifications of police activity, as described in the next section.

B) RESTRICTIONS TO AUTONOMY

Feinberg regards autonomy as *‘a good and admirable thing to have, not only in itself but for it fruits –responsibility, self-esteem and personal dignity. Autonomy so conceived is not merely a “condition”, but a condition to which we aspire as an*

*ideal.*¹⁶ However, as suggested above, Feinberg nevertheless rejects the idea of an ‘absolute autonomy’ which would be derived from the Kantian categorical imperative that lead to the principle that our will “can regard itself at the same time as making universal law throughout its maxim”; rather he emphasizes the presence of a ‘rational will’ –instead of a free will- that establishes a moral law which actually rules autonomous beings. As the positive law –among other norms- tends to (or should) reflect this notion of a moral law, it is to be followed by autonomous agents. Is in this gap where the rules concerning the use of public space should fit, and by doing so, where the only admissible restrictions to the will of individuals may be found and based.

But there are other restrictions that may take place, and which determine the agents to act in an undesired way, or refrain to act in a desired way. When a person is under the threat of an unlawful and undeserved harm, that person may act in different ways than that desired. It may be argued that in such situation, the person still acts by herself if she is not under any physical coercion, and since the person cannot be said to have lost autonomy, she should be held responsible for those acts performed allegedly freely. But such a cynical argument about the standing condition of autonomy should be dismissed, because under physical coercion the person is not acting at all, but being moved by inevitable external forces.

Restricting the idea of coercion to the physical imposition of an irresistible force deprives the concept of its very essence: the violation of a person’s will. Under such a notion the mere use of threats (as bearing guns) would not impair the free and voluntary

¹⁶ Joel Feinberg, op. cit., page 31. The relation of autonomy with responsibility, dignity and self esteem is also suggested by Robert Young in his article ‘Autonomy and the Inner self’, in “*The inner citadel...*” (see footnote 7).

condition of certain actions (as handing out money to an armed robber) as long as the threat does not turn into an actual force upon the ‘free choice’ victim... Equally, the menacing presence of Police officers in certain areas should not be seen as completely unconnected to the fact that some persons try to avoid those same places, as long as those persons have a clear idea of the risk they pose to their liberty and integrity. However extreme that comparison may look there are a number of relevant coincidences: a person acting in an undesired way; a threat to that person which is so strong that can break her wills; the lack of a physically relevant force to the acting person.

It was stated before that individual autonomy is not absolute, and it is frequently restricted by diverse means. In his classic essay “On Liberty” John S. Mills wonders about the possible justifications of interferences with the will of the individual, concluding that *‘...the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self protection. That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not sufficient warrant. (...) The only part of the conduct of anyone, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.’*¹⁷ Provided that the conduct of an individual can affect others’ autonomy, there are reasons to set some limits and impose some patterns of behavior preventing the unrestrained will of a moral

¹⁷ John Stuart Mill, “On Liberty”, Ed. by David Spitz, W.W. Norton & Company Inc., New York, 1975. Pages 10-11.

agent to affect the autonomy of third parties, principally other members of the same community.

Restrictions on autonomy may derive from a number of different sources, each of them affecting it in a considerable varied degree, according to the level of internalization of the type of what we may call ‘restrictive norms’. The main restrictive norms derive from morals, traditions, customs, religions and laws, each of them imposed in different ways and with different kind of consequences for contempt.

Moral norms are intertwined in formal and informal education and are imposed to children as self-evident, conforming a net of ideas that are seen as natural and hence people tend to be blind to recognize their influence at the moment of taking position in certain situations that compromise values more than goods. The failure to stick to moral standards brings about a sense of sorrow and embarrass to those surrounding the transgressor, who is bitterly exposed as a bad example for the ones still immature to make their own moral choices, and isolated to avoid ‘contamination’. Even though moral norms are not usually written, the informal mechanisms of enforcement are very harsh, especially in closed communities where the social status of a person depends largely on her social acceptance. Thus, the role of certain members of community (as women for instance) are usually clearly established, and any departure from the assigned role (engaging in more than one sexual partnership or refusing to give birth) imply an unbearable offense to the group that would be paid very expensively.

Liberal ideas have contested the overweight of moral norms, since they prevent individuals to freely exercise their own moral autonomy: if a person cannot be allowed to decide upon basic aspects of her private life, the value of her decisions is extremely reduced, because in order to do well, it must be equally possible to do wrong. It is

ironic that what was seen in the past as a ‘moral life’ was actually a life with no options, and hence a life with no morals. On the other side, as individuals have little or no opportunity to participate in the framing of moral norms, they constitute restrictions that are almost always completely alien to them, until the moment comes that they are either pointers of -or pointed for- wrongdoing.

Traditional norms are deeply related with moral norms, because both are repetitions of accepted behaviors and they both tend to be the foundations or the frame of the positive written law. However, traditional norms tend to be more flexible than moral norms since they tend to have a recognizable origin, related to particular circumstances that may change with time, allowing for a pragmatically accepted departure from what was established as traditional norms. For that reason those who depart from them may be seen as innovators instead of wrongdoers: the use of technological advances (even mild) in the way of producing certain goods by members of traditional communities wouldn’t render those producers as immoral members. Departure from traditions may imply certain social disapproval, but contrary to violation of moral norms, the abandonment of the group –as an extreme outcome- lies on the decision of she who decides to tear apart from traditions, instead of on the segregation by the former fellows. Thus, there still exists a place for the will of the moral agent, whether to remain in the group and follow traditional rules, or to break away from them and resign to a certain degree her membership to the group.

Customs are another strong regulator of behaviors, and hence a source of restrictions to the autonomy. They are very similar to traditions in the sense that are the reiteration of certain patterns of conducts which have proven to be good, useful or valuable, but they differ in that they are much less influenced by value statements. In

other words, even though customs are seen as intrinsically good, there is not an equally strong evil associated with their disregard. The raising in the age of marriage in many communities is an example of this: the need of higher educational standards and frequently of a good job for both members of a couple are factors that increase the age of marriage even in traditional communities, but those factors would hardly subject the couples to the treatment given to ‘immoral persons’ or even as a threat to traditions on their own.

Religion is one of the strongest regulators of individual autonomy, setting restrictions that tend to encompass all the mentioned norms: the reliance on a transcendent source of good and truth has created a set of moral, traditional and customary norms that are the secular reflex of the divine norms. Needless to say, the restrictions of autonomy due to religious reasons cover and influence each kind of human norms, to extents that are not always clearly visible. Religion penetrates pervasively every single aspect of the life of those who believe, framing several types of restrictions of individual autonomy in manners that are sometimes clear and visible, and sometimes subtle and unconscious. Given the mutual influence of religion and morals, traditions and customs, it is not frequently clear where is the source of a norm that triggers different reactions to the behavior of an agent, but what seems clear is that, among all of them, religious norms tend to bear the harshest consequences to violators.

Legal or positive norms are established and enforced by secular rulers, and they frequently combine to diverse degrees the religious, moral, traditional and customary rules of a given community, which give them a basic level of legitimacy. In occidental states, mostly of them democratic and liberal republics, the legal system requires additional sources of legitimacy, apart from the sources already mentioned: they are

supposed to serve secular purposes in overwhelmingly diverse communities. The recurrence to the general will in order to fulfill tasks as “*constituting the national unity, settling justice, consolidating the internal peace, providing for the common defense, promoting the general welfare, assuring the benefits of liberty...*”¹⁸ suggests the need for a broader set of reasons for restraining individual autonomy. Moreover, once that the foundational governments of any state have fulfilled those tasks, and under ordinary conditions, it may be arguable that the main task for governmental activity is to guarantee spaces of autonomy, or to *assure the benefits of liberty*.

Now, the classical justification for restrictions of individual autonomy described by John Stuart Mill acquires its full richness: liberty, as the condition for autonomous agents, can only be restricted, and only insofar as strictly required, for the purposes of securing that no one will unduly impair someone else’s liberty. Individual autonomy in this sense can be assimilated to a ‘raison d’etat’, being the ability of individuals of following a rational life plan, the base and the goal at the same time for a liberal democracy.

C) CONCLUSION

Individual autonomy is a crucial element of modern liberal democracies. Under the common understanding of it in the western culture, it implies a number of guaranties given to individuals in order to allow them to make their lives as they see fit. It is both a historical precondition for social organization and a political goal of the highest importance because it allows citizens to make fully informed decisions about almost any aspect of their lives. However, at the same time a number of restrictions have operated at different levels and with the most diverse justifications (moral,

¹⁸ Those are paradigmatically the general purposes of the establishment of constitutions, serving this fragment of the Preamble of the Argentine Constitution as a clear example of this.

traditional, customary and religious), but the only ones that have reached the recognition as applying to all, are the legal norms, which purport to achieve a number of secular tasks. Those restrictions should nevertheless be aimed at collaborating with the mentioned secular tasks, mainly to secure spaces of freedom.

What has to be discerned is whether the targeted groups are actually enjoying a sense of de facto self-sufficiency, or in other words, whether they do have the actual condition of autonomy as the concrete possibility of ‘designing and following their own rational life plan’. To answer this question it is necessary to identify the relation between individual autonomy and other elements that are fundamental to the development of a healthy and robust citizenry, as human dignity and self-esteem, which are the object of the next chapter.

CHAPTER TWO: Individual autonomy, human dignity and self-esteem

In this chapter I will provide some basic concepts about human dignity and self-esteem, and how are those concepts related among them and with the notions of individual autonomy provided in the previous chapter.

There seems to be an intuitive sense of self value of those who act as autonomous moral agents, basically because of the preeminence they give to their own desires and preferences about certain matters over any other consideration that would move their behavior. Furthermore, the continuous exercise of individual autonomy seems to embrace some key aspects of human dignity. How deep and constant this connection is, and how constantly sustained must it be in order to allow an observer to conclude that self-esteem leads to the levels of human dignity required for an autonomous life, are some of the questions that will find a place in this chapter.

Starting with an overview about the notions of self-esteem and human dignity, we will discuss at the end to which extent are they key elements of individual autonomy.

A) SELF-ESTEEM

An intuitive notion of self-esteem would describe it as a sense of respect and appreciation that a person feels about her self. It implies a conscious knowledge of all the valuable attributes, advantages and capabilities of that person that are required for a life plenty of worth. It implies as well the equal knowledge of the disadvantages, defects and limits, which, instead of having a demeaning effect, have the utility of placing the correct and realistic limits that will prevent that person from falling into the error of overestimating her capacities.

Self-esteem is mainly an individual element, even though it is usually applied to groups in order to underline a shared sense of worthiness or at the contrary, the lack of it. That, because of two main reasons: firstly, as far as we know, only individual human beings are capable of having feelings, ideas and desires; and secondly because both the ‘collective self-esteem’ or the lack of it, are better described as the feeling of the individual members of those groups raised by their sense of pertaining to that group. Thus, any policy intending to build or reinforce the so-called ‘collective self-esteem’ is in reality an attempt of providing the members of a certain (and by hypothesis disadvantaged) group and increased sense of dignity.

One crucial element of self-esteem is its dual formation, because it is based both on the image of herself that a person has, and on what she perceives as the image of others about her. To put it simpler, what others express about someone is as important to the formation of self-esteem as what that person feels about herself. For that reason, the influence of the surrounding world is absolutely relevant for building a notion of the self, and the treatment that someone received during the course of her life has a major impact over it. It is noticeable that any strategy to strengthen self-esteem works at both levels, at the psychological (trying to find and highlight the good aspects, and to resolve the weak or problematic ones) and environmental aspects of someone’s life (engaging in new and achievable social projects as well as avoiding harmful ones).

Another relevant element lies in its dynamic character: self-esteem is not an emotional statement given once and for ever, instead, as it was mentioned in the last paragraph it is build over the continuous succession of experiences lived by a person. This means that even if someone has had a terrible life experience, if she finds a proper field to process adequately all those events, the negative impact on her sense of

worthiness can be somehow limited; even more, overcoming harsh times may add a feeling of emotional and spiritual strength that surely build up a reinforced sense of self-worth.

On the contrary, an easy life, plenty of joy and deprived of worries may generate a sense of inferiority of that person if she compares herself with those who had a tougher life experience. Additionally, living ‘comfortably numb’ may weaken the ability of learning from the context and increase the vulnerability of someone who faces hardship for the first time, reducing her capacity to overcome frustrations.

Which is the practical ‘utility’ of self-esteem? There are two main fields where it acts: in relation to the self, providing a strong justification for making free choices following a moral agent’s desires and interests; and in relation to the exterior, where it sets limits to the influence of others.

In the first sense it is useful to remind Gerald Dworkin’s notion of moral choices¹⁹, that is, to critically reflect upon and accept or attempt to change one’s own desires, values, ideals and interests. To be able to act as autonomous moral agents is, according to him, to have the opportunity of making a choice, to select one’s own moral principles as the guide for our behavior. This pro-positive attitude requires, firstly, to have a ground of a deep respect for one’s points of views, to find one’s inner values as good enough to lead a life seen as the best possible. A person lacking self-esteem wouldn’t dare to find her values as fair and just, and her life as a plentiful one: even with the possibility of acknowledging the existence of values and ways of life that she feels superior in comparison to hers, she wouldn’t feel herself capable or good enough to have access to them. Thus, the possibility of acting upon those values seen as

¹⁹ See Chapter One, page 11.

superior would be undermined by overestimated perceptions of her weaknesses and limitations.

In the second sense, as the possibility of successfully refusing to accept others as moral authorities (that means, to let others the decision on which moral principles are acceptable and which are not), self-esteem reveals another practical aspect. Choosing one's own moral principles is but the first step in order to make an autonomous moral choice: after that is necessary to have the internal strength to resist any attempt of imposition of moral points of view. This is particularly true when related to all the diverse regulatory schemes that a person finds in her life: traditions, costumes, religions and laws, all try to introduce, to a broader or narrower extent, diverse moral principles. This is not absolutely problematic, though, because an autonomous moral agent should have almost always the possibility to challenge and change the values, desires, interests and ideals that are comprised in those rulings, at least on her private life²⁰.

However, a person must feel strongly enough the intrinsic worth of her values to accept the cost of sustaining them when they face opposition, because it doesn't help to make a moral choice that cannot be sustained later. Even when a moral agent has accepted some basic rules that restrict her autonomy, she must still be able to make, in time, a conscious departure from them adopting her own. To put it shorter, a moral agent must have the attitude of defending the right to be left alone with her views, whether if she has chosen them from the beginning or if she decided to set herself apart

²⁰ Even accepting the near impossibility of changing a law for example, some of the values that form it can be circumvented by a ritual application of the law. That would happen if a moral agent rejects some aspects of institutions as civil marriage and refuses to obey them, e.g., by allowing herself and her legal partner to have relations with different persons.

from them. It is clear that both operations require a strong sense of self-esteem in order to take place.

B) HUMAN DIGNITY

Few concepts in social sciences are so complex, omnipresent and elusive as the concept of human dignity. It is rooted so deeply in the basis of so many (and frequently so contradicting) systems of ideas and beliefs that, albeit every single thinker, politician or scientist would indulge in constant references to it, they would fail to present a coherent and ordered notion under the assumption that we all know what they mean. For religious believers it is defined in relation to the proximity to God, His church or His tenets; for egalitarians it stands for the equal condition of all human beings as entitled to certain material and cultural goods; for traditional liberals it is based on the free and unconstrained nature of human beings and so on. As a consequence, it is not rare that radical disagreements on many fields share crossed allusions to human dignity.

Only one of all the possible controversies over this topic will be explained here, because in taking parts on one side lays a fundamental support to an understanding of dignity compatible with a liberal democracy²¹. The controversial point is whether human dignity is ascribed to someone due to her belonging to a certain group within a given society, or at the contrary it is due to all members of such a society. In other words, if it is possible to offer rational criteria of moral correction, which would grant specific content to the concept of human dignity, or if only an interpersonal foundation of that concept is possible.²²

²¹ In which, I rather insist, there must be a substantial base of equality.

²² Conf. Ernesto Garzon Valdes, “Cual es la relevancia moral del principio de la dignidad humana?” (Which is the moral relevance of the principle of human dignity?). *Derechos Fundamentales y Derecho Penal* (Fundamental Rights and Penal Law), Compiled by Patricia Coppola, INECIP – Advocatus, Cordoba, 2006. Page 24.

On the first side, authors as Rhoda Howard stated *“I defined human dignity as the particular cultural understanding of the inner moral worth and his or her proper political relations with society. Dignity is not a claim that an individual asserts against a society; it is not, for example, the claim that one is worthy of respect merely because one is a human being. Rather, dignity is something that is granted at birth or on incorporation into the community as a concomitant of one’s particular ascribed status, or that accumulates and is earned during the life of an adult who adheres to his or her society’s values, customs and norms...”*²³ The author offers a view that may be sensitive about issues of cultural diversity, but even in diverse societies the indulgence to many forms of abuse and mistreatment legitimizes massive deprivations of fundamental rights to the particular groups who happen to be subdued within their groups. By relating human dignity to the communal status of a person (rather to universal standards), we are jeopardizing too many rights of too many people, that may end up becoming toys in the hands of those who have the power of saying what the morals (or the law or the costumes) are. In other words, under Howard’s theory, the human dignity (especially of those who occupy the lowest ranks within their society) depends entirely on the will of the powerful.

On the other hand, Ernesto Garzon Valdes places the view of a classical, Immanuel Kant, who assessed a universal understanding of human dignity, via his categorical imperative. In a Kantian view, *“Humanity itself is a dignity, for a person can never be utilized as a mere means (neither by other person, nor by herself), but has to be treated always as an end. Precisely on that consists her dignity (personhood) and*

²³ Rhoda Howard, “Dignity, community and human rights”, in Henry J. Steiner and Philip Alston, *“International human rights in context”*, University Press, Oxford, 1996, pages 221-223, as quoted by Garzon Valdes (see footnote 21).

in this manner she elevates herself over all other beings in the world who are not persons and can be utilized. (...) As she cannot give herself for a price (which would contradict the principle of self-esteem), neither can she act against the necessary self-esteem of others as persons, that is, she is obliged to recognize practically the dignity of human kind in every other person"²⁴. In this way, not only human dignity is an attribute of all members of a community (of all human kind, indeed), but implies the recognition of others as moral agents by respecting their ability to choose and follow their own moral principles.

I will not engage further in such an arduous debate, indeed, only a brief concept will be provided in accordance with the theoretical framework. As stated in the introduction, individual autonomy is considered as a key aspect of liberal democracy, serving both as a starting point and as a political goal of first order. For that reason, the concept of human dignity that will be used here is related to the achievement of individual autonomy and hence, somehow closer to Garzon Valdes' *neo-kantian* interpretation of the topic.

In this sense, human dignity could be described as a condition of someone or something that deserves a particular kind of respect and deference, along with the possession of the broadest possible set of entitlements to act both in the internal or spiritual life and in the external or social life. As such it requires an attitude of acceptance of the limits imposed by a person over her own life and privacy as well as her desires and choices. At the same time, implies the recognition of that person as someone completely capable of developing any of the 'operations of the spirit', that means, to think, to feel, to plan, to decide, to judge, to criticize, to understand, to

²⁴ Felix Meiner, 'Metaphysik der Sitten', Hamburg, page. 38, as quoted by Garzon Valdes (see footnote 21).

forgive, etc. Finally, includes her ability to take part in all the possible events of a given society, of which she must be considered as a full member and where she must be able to perform and manifest all those ‘operations of the spirit’.

The concept of human dignity certainly includes an important aspect of liberty, because the manifestation of all the potentialities of the person requires her not to be unduly limited. Being said that, it seems logical that any restriction to that liberty will be *a priori* a burden to the enjoyment of human dignity, unless of course that the restrictions be imposed in order to guarantee the equal enjoyment of similar freedoms to other persons. It is important to bear in mind that restrictions to liberty do not constitute always a direct attack on human dignity, depending sometimes on the extent and depth of that restriction: a short stop to check someone’s identity with due respect would not interfere with her rational plans and hence would not harm her dignity, whereas a lengthy detention for no reason or for a futile reason clearly would; equally, being mistreated only a few times in a lifetime may not affect someone’s dignity as a constant harassment and discrimination would.

Even when human dignity and self-esteem share some elements they are not coextensive concepts. Both are partially based on self-perceptions and partially based on others’ attitudes towards a person, but while dignity lies on the person as such and is immanent to human nature in general, self-esteem is a feeling raised on every single person. Human dignity is by definition a necessary element of human beings, while self-esteem is contingent and attached in very diverse ways in every particular person. That’s why no one can be deprived of human dignity as such, while they may suffer from a lack of self-esteem: if someone is so severely brutalized that her feelings and desires are destroyed, her dignity was certainly affected, but not annulled or eliminated.

That explains why victims have a right to be offered compensation, in order to restore the full exercise of something they have but has been harmed. In other words, human dignity works as a protective shelter, while self-esteem lies at the core of personality.

At this point there is a close connection between the inner aspect of human dignity and self-esteem because both are experienced as perceptions of the self, but there still is a difference: a person cannot lack human dignity but she can lack self-esteem. Dignity can be felt as something that cannot be fully enjoyed in a particularly terrible situation caused by external agents (as during torture for example), but whose enjoyment should be restored because of its abnormality, and also by external agents.

How this concept relates to individual autonomy? Albeit human dignity belongs as a defining character to all humanity, it is enjoyed individually by each human being. When a single person acts upon the decisions that were taken as a consequence of the freedom inherent in her dignity, she is acting as an autonomous moral agent according to Dworkin's enumeration of requirements²⁵. At the same time, whenever those requirements are unduly burdened by others (or the State), human dignity works as a justification for taking all the decisive steps in order to restore the grounds for moral autonomy. In a way similar to the relation between individual autonomy and liberal democracy, the relation of human dignity with the former is both a founding concept and a goal: individual autonomy is one of the pillars of human dignity, and at the same time one of the objectives of the everlasting battle for a strong and workable notion of human dignity is to protect individual autonomy.

C) CONCLUSIONS

²⁵ We refer to the authorship of her moral principles, the fact of being their originator; the possibility of choosing those moral principles; the ultimate authority or source of her moral principles that lies on the agent; the fact that she is the one who decides which of them to accept as binding upon her; the acceptance of the moral responsibility for the principle she acts upon; and the refusal to accept others as moral authorities. These ideas were introduced in page 12.

In the previous pages the arguments about the influence of self-esteem and human dignity evolved in a gradual series of steps: we said that self-esteem as an inner feeling of self-value provides both a sense of worth that works to the outer side of the person by setting some limits to others, and at the same time it has an inner side effect of providing reasons and wills to act in a desired way. And the exercise of both the limits to third parties and the will of the moral agent bring about a feeling of human dignity, of a due respect that surrounds a moral agent every time she acts as such.

Turning back to some of the concepts brought in the first chapter, we can conclude that autonomy as such can be understood in a number of ways: as a normative status that grants some ability to choose between various options of equal or different value; as an actual condition of being capable of enjoying that possibility; as an ideal of character that should be present in every moral agent; or as the possibility of a collective body to govern itself (in this sense it equals with sovereignty). Of all those understandings of autonomy, the elements described in some depth in this chapter are present only in one of them: in the actual and concrete condition of the moral agent of acting upon her own desires and preferences.

That being thus because the first concept of autonomy is a prescriptive one, that only allows a space of non-interference, and hence the focus is put in the (self) constraints put to whatever agent that would prevent a moral agent of developing her autonomy. In other words, is a permission of a general and abstract character that applies to all those legally described as moral agents. The third aspect, as an ideal of character, would require having a basis of self-esteem and human dignity, but those concepts are so deeply linked with the individuality of a concrete person that it may be inadequate to ascribe those contents to an ideal. Finally the last understanding of

autonomy, as sovereignty, is an institutional and political construction, independent of the inner feelings of those who may take part in it.

For all those reasons, self-esteem and human dignity as categories that belong to the concrete individual should remain in the field of analysis of concrete individuals, despite the fact that they are studied as members of a group. To understand the pernicious effects of a certain way of restriction to individual autonomy, it must be clear that, even though the main reason (or excuse) for restriction lie in social motives, they manifest themselves in the concrete experience of each member of a group and it does so in different ways.

Recovering the sense of individuality of the affected persons will allow a better understanding of the concrete effects of the practices that will be described in the next two chapters.

PART TWO: POLICE MISTREATMENT

CHAPTER THREE:

The concepts of police mistreatment and targeted populations

To have a clear understanding of the phenomenon that is described in this pages, it is necessary to draft, in the first place, the concepts that are crucial to understand the mechanism of a peculiar way of state activity that affects certain groups. Hence, this chapter will firstly provide a basic notion of police mistreatment that would allow some comparison between a wide range of practices that take place in Cordoba and Budapest; secondly, it will offer an equally basic notion of a targeted population and its nuances in both cities.

A) POLICE MISTREATMENT

Also called ‘maltreatment’, ‘police abuse’ or ‘police brutality’, it refers to an exercise of violence on the part of Police officers, directed to a single person, a determinate group or an indefinite number of victims. It is clear that one defining feature of the police activity at large is the use of that violence, furthermore it has been stated that *“The role of the police is better understood as a mechanism for the distribution of non-negotiable coercive force employed in accordance with the dictates of an intuitive grasp of situational emergencies.”*²⁶ However, the use of physical coercion to stop ongoing wrongdoings is subject to a number of limits, mainly embedded in the principles of legality, proportionality and rationality.

²⁶ E. Bittner, *“The functions of the police in modern society”*, Oelschlanger, Gunn and Hain. Cambridge, Massachusetts. Definition provided by Prof. Istvan Szikinger at the Police Practices course of the Human Rights LLM degree at the Central European University 2007-2008.

The legitimate use of force will be that which is in accordance to law, in the sense that it should be permitted and regulated under certain clearly defined conditions. It must be proportional to the resistance offered by the wrongdoer, in the sense that it must be sufficient to break that resistance and to keep the offender under the control (both operative and physical) of the law enforcer. It must be rational, in the sense that it must be a sensible mean to reach a certain legitimate end.

When the violence displayed by the Police surpasses those three working limits it ceases to be legitimate and it enters into the realm of excessive use of force or use of excessive force. Those concepts are related but not coextensive: the first implies an overbroad use of violence that extends to situations that normally do not require resorting to force at all (as an identity check, for instance); and the second refers to the use of a quantity of force that is unnecessarily high because the offender has not offered a great resistance or has already been set down and the force used to keep him under the control is more than required.

Some authors differentiate between ‘police brutality’ and ‘police torture’, according to the objective that follows –or not- the use of excessive violence. Budimir Babovic²⁷, for instance, relies on the ‘instrumental and non-instrumental’ cleavage to analyze the use of violence. According to him, *“Instrumental brutality is committed when the police use force with a view to achieving a task or design, most frequently to elicit confessions or to induce compliance. It is practiced mostly on police premises or in other concealed places, hence upon persons in custody or otherwise in police hands”*. This kind of treatment equals to torture, as an illegal way of reaching certain objectives that may be deemed otherwise acceptable, as the resolution of a crime or the

²⁷ Budimir Babovic, ‘Police brutality and police torture’, in *“Police in transition”*, Andras Kadar (Ed.), CEU Press, Budapest, 2001. Page 231.

prevention of a possible offense.

On the other hand, the author describes non-instrumental brutality as that “...which occurs in everyday police work with no apparent need and without a clear purpose (...) police needlessly abuse people, verbally or physically, very often just with a view to establishing their authority by emphasizing their legal right to use the force.”²⁸ As opposed to instrumental violence, in this case it may take place openly in the public space, especially on riots-breaking and stops and seizures. Although the same author assumes that the line between both kinds of violence is rather blurring, it still has some practical meaning as to the agents to which resort in case that any of them take place. Thus, non-instrumental violence may be seen by the Police and other several actors as a mere ‘excess’ that require only a minor correction, whilst instrumental violence is one of the most serious threats to democracy and the rule of law, and for that reason it is hardly admitted by public officers, unless and until massive campaigns force governments to stop those practices.

Nevertheless, both kinds of violence may have a sound impact on the individuality of those addressed and reached by them in various ways. Moreover, it may be arguable that even non-instrumental violence, when is extended, persistent and reiterated, and focused on particular groups, can be as pervasive and demeaning as the instrumental type. It seems clear that it is not necessary to torture somebody to breach her moral self, and to exert coercion onto that person in impermissible manners.

It is undeniable that any abuse endangers at least the legitimacy of the task given to the Police, and may affect at diverse levels the whole governmental legitimacy. To avoid this effect, some barriers must be raised to arbitrariness, in the

²⁸ Ibidem, page 232.

form of preventing and sanctioning measures. As the Chilean professor Dominguez Vial sustains “*Police power deviations must be ethical and legally punishable, and any excess on the intervention of the public force erodes numerous fundamental rights and implies the anticipated -and lacking of due process whatsoever- application of a penal sanction*”²⁹.

B) TARGETED POPULATIONS

It is enough to pay a close look at the population of the places where the arrested are allocated, to find out that those persons look very similarly, as if belonging from the same social classes, ethnic groups or “urban tribes”, a phenomenon common to Cordoba and Budapest. We do not have to go as far as the descriptions of the prisons in Toscana, with which Cesare Lombroso³⁰ built the theories of the ‘*homo criminalis*’ to realize that prisons and police stations are filled with an overwhelming regularity with certain particular ‘types’. Over the years all the positivist theories that were the foundations of the classical criminology were defeated by more scientific approaches, and nowadays nobody in the realm of social and legal sciences would seriously sustain the predictability of the occurrence of unlawful actions based only in the external description of the suspect agent. Neither would it be argued that the inclination to commit crimes would be related to ethnic or racial constituent elements. Hence, it would be expected that the activity of Police officers would be ‘blind’ to ethnic, racial or other generalizing criteria at the moment of acting effectively on their basic functions of law enforcing.

However, it seems clear that despite centuries of criminological development,

²⁹ Andres Domínguez Vial, ‘El Estado Democrático de Derecho y el poder de policía’ (The rule of law and the Police powers), in “Policía y Sociedad Democrática” (Police and democratic society), *Pena y Estado Review*, Year 3, No. 3, INECIP – Editores del Puerto, Buenos Aires, 1998. Page 31.

³⁰ Cesare Lombroso, “Criminal Man” (*Il Uomo Criminale*), G.P. Putnam’s Sons, Michigan, 1911.

those patterns are still a working tenet for police activity, if not in the training manuals or the service orders, in those unwritten rules that make the ‘hidden curricula’ of that institution. The recurrence of the Police on arresting persons belonging to the same social classes or groups must have an explanation and the concept of “ethnic profiling” may provide, at least in Hungary, a suitable one. The concept of “ethnic profiling” that will be used and discussed here refers to the *“use by police of ethnic, racial or religious stereotypes (rather than individual behavior, specific suspect descriptions, or accumulated intelligence) as a basis for suspicion in directing law enforcement actions –in particular, discretionary decisions by officers to stop, question, and search pedestrians or vehicle drivers. This practice amounts to discrimination and is illegal according to international and regional standards and national laws in many countries”*, as defined in the Open Society Institute report titled “I can stop and search whoever I want...”³¹

In Cordoba the Police would select youngsters coming from certain neighborhoods, whom may share some basic external characteristics: most probably they will be rather dark-skinned, with dark hair and they would speak a typical slang. But it is to be said, that ethnic matters may not be strictly a trigger to Police profiling, for two main reasons: firstly, the Argentine society has evolved since its very inception as a melting pot of nationalities and cultures, with a rather high rate of blending among Spanish descendants with descendants from local aborigines and former African slaves. For the extension of that blending among inhabitants of Cordoba, ethnic lines may not be the best indicator of profiling since the targeted population has so many different origins. Moreover, due to decades of welfare policies since the beginning of the

³¹ *“I can stop and search whoever I want – Police stops of ethnic minorities in Bulgaria, Hungary and Spain”*, Open Society Justice Initiative, New York, 2007, page 25.

Twentieth Century, a massive process of social ascension allowed some of those persons to move upwards in the social scale and blend in turn with new currents of immigrants.

Secondly, is to be noted that also most of the Policemen -especially sub-officials, at the bottom of the two-scale ranks³²- would have similar origins as those whom they select as targets of their activity, because they are very frequently recruited among the lower middle classes. For that reason, it is not unusual that many times the policemen are relatives, neighbors and friends of those who would be arrested by their colleagues.

Concluding, however overrepresented a group may be among Police targets in Cordoba, the fact that their origins are blurred and they share their social identity with people belonging to diverse ethnic roots; along with the similar social class composition of the members of the Police, suggest that ethnicity may not be the most accurate indicator to explain Police profiling, and why other patterns are needed to understand this phenomenon.

The profile of the targeted would be more accurately built around gender, age, external appearance and dwelling. The typical "client" thus, is a male, teenager or young, dressed in a certain way and coming from the poorest areas of the city. Usually those boys would wear colorful clothes, baseball caps and flashy sport shoes of expensive brands, shown off as a mean of reaching a certain status among their peers³³.

³² The Provincial Police in Cordoba has a two-scale rank: Officers, coming mostly from middle classes and graduating after a two year course, and Sub-Officers, coming from lower classes and having just three month training. The scale is closed, in the sense that the members of each rank cannot enter into the other, something that affects specially the Sub-Officers, who will remain in that place for all their service years.

³³ This is described by psychologists as 'revenge consuming', that means, given that they acknowledge that they have almost no possibility of being included in the mainstream society, at least they show off certain material conquests as expensive shoes as a means of 'catching up' at least that little.

All those gadgets end up justifying -in the Policemen terms- the required profile: while the cloth make them clearly visible and easy to distinguish, the caps are assumed to be used to hide the bearers' face from the sight of the law enforcement officers, and the costly shoes raise suspicions that they are stolen, or that their owner got the money to afford them by illegal means. The particular slang spoken by the targeted is also a defining feature, thus, as they tend to speak loudly using certain terms to remark the sense of pertaining to a certain location or group, they put themselves into the scope of the Police.

Finally, as most youngsters of any social class, they would move around in groups, with the intention -among others- of avoiding robberies or attacks from other groups; however, this self-protective practice end up making them more prone to be detected, targeted, stopped and detained, sometimes with rather spectacular displays of power on the part of the Police, which may include two or more patrol trucks and a massive exhibition of weapons.

The main reason for such a targeting is due to the assumption that they are quintessentially the perpetrators of petty offences and misdemeanors. Those wrongdoings are assumed by the Police as the first step to crime, and as these boys are seen -and exposed- as more likely to commit those kinds of offences, the natural conclusion is that by arresting them, they are prevented to further their illegal attitudes. This presumption is by no means new or original from the Police officers from Cordoba: it was seen as the mere translation of the so-called 'broken window' theory, first developed by George L. Kelling and Catherine M. Coles, popularized by the

Manhattan Institute³⁴ and applied by William Bratton, the former chief of the New York Police Department during part of the administration of Rudolph Giuliani. Murray stated without hesitation that *“if small quotidian disorders are fought step by step, the great criminal pathologies will move back.”*³⁵

Murray (among others) assumed that if the broken windows of an abandoned building are left and not repaired, that works as an incentive for further misdemeanors and vandalizing. According to that theory (never empirically proven, by the way) it is necessary to provide the unpleasant inhabitants of depressed zones a harsh treatment on the part of the Police every single time they engage in misdemeanors. This is so, in order to reduce -by means of continued surveillance and instant and forceful reaction - their presence in the public space, thus calming down the fears of the upper and middle classes. The manner of doing that is by spectacular³⁶ interventions in the public space, combating acts as unrelated to serious crime as *“drunkenness, loudness, begging, attacks to costumes, mere threats and other anti-social behavior linked with the homeless”*³⁷.

However dull those misdemeanors may look, they are present within the punitive resources of the Police of Cordoba and used with an extraordinary frequency, almost always against the targeted group. Its main legal source is the Misdemeanors Code, which will be discussed in some depth in the next chapter. By now, it is enough so be sure that it is applied with such a consistency to a particular group and not to

³⁴ The Manhattan Institute is a conservative ‘think-tank’ financed, among others, by some security-related businessmen and companies, which are clearly interested in generating an intellectual climate more favorable to their trade.

³⁵ Charles Murray, *“Loosing ground: American social policy 1950-1980”*, as quoted and commented by Loic Wacquant in *“Las carceles de la miseria”* (Jails of Misery, or ‘*Les prisons de la misere*’ in the French original), Ediciones Manantial, Buenos Aires, 2000. Pages 28-29. (Translated by the author).

³⁶ The scenic use of the Police power has such a communicative effect that the use of that term is not a mere rhetorical resource.

³⁷ Wacquant, op. cit., page 29.

others, that it becomes clear that there are reasons other than coincidence to explain its scope of application: for the reasons stated before it may not be accurate to write about ‘ethnic profiling’, but certainly there is a case of ‘social profiling’. Moreover, that ‘social profiling’ leads to a consistent labeling of those who fall within the reach of the Misdemeanors Code: once a boy is detained under that Code, he is overwhelmingly prone to be detained again and again for no other reasons than having been recognized by the Police as a ‘client’.

When asked about the extraordinary number of persons arrested under the articles of the Misdemeanors Code³⁸, the former Chief Police of the Province of Cordoba, Of. Carlos Collino answered that “...*misdemeanors are ‘pre-criminal behavior’ and are applied to generate a frame of contention in the public space and commercial areas...*”³⁹, almost quoting verbatim the words of the Provincial Senator who introduced the project⁴⁰. Despite the absolute lack of any empirical proof of such an assumption -there is no evidence whatsoever that alleged marauders may indeed be just about to commit any crime-, the mere attribution of that behavior is frequently made by the Police officer under a complete arbitrariness, and the weak -and many times inexistent- possibility of challenging the following indictment ends up reinforcing the legal consequences of that labeling. It may not be a coincidence that the increase of the number of detained persons because of that Code overlapped in time with the visit of a representative of the Manhattan Institute to Cordoba, what triggered bitter

³⁸ The Misdemeanors Code can be downloaded (in Spanish, though) from this site: <http://codigodefaltas.blogspot.com/>, last visited on November 10th, 2008.

³⁹ Conf. article on the newspaper *La Mañana de Cordoba*, August 19th, 2005, no longer available on line. Soon after the polemic raised by the fact that every single officer was obliged to detain at least five persons every day (admitted by many Police officers), Chief Collino was transferred to a small city in the interior of the Province.

⁴⁰ At the Legislative session in which the Misdemeanors Code was passed, Provincial Senator Fernando Montoya said: “[B]ecause [marauding] means –and this is what I’d like us to have clear, to explain to citizenry– the immediate previous moment to the committal of a crime”, *Diario de Sesiones del Senado*, Province of Cordoba, 1994, N° 38, page 1978.

reactions on NGOs that work with the poor and the young⁴¹. Unfortunately, the agreements signed between the Provincial Government and that Institute are not available, despite the existence of laws protecting the access to public information.

The circle closes once more by selecting someone to be attached a certain pattern of conduct (marauding, for example), and by furthering that endorsement to a completely different type of conduct (attacks to property), ending up with the metaphysical conclusion that the natural consequence of all those conjectural operations (detentions even without a probable cause) do have an effect in the real world (crime deterrence).

Regarding Budapest, the external image of the targeted population is also important but as a way of identifying the Roma people, usually with darker skin than the average Hungarians. Police would also look at how are they dressed as well, though the membership to the ethnicity is often more easily distinguishable between women than men, because of the long, colorful dresses, the headscarves and the jewels that some traditional Roma women use. Skin color though, sometimes is not a completely reliable feature to select those to be targeted, since it may trigger mistreatment over people that -sometimes- are not Roma: it is not unusual that Indian, south Asian and Latin American people may be seen as suspect, until it is clear that they are not part of that group.

The association between external appearance and ethnicity is direct and explicit here, as it turns out after Iulius Rostas' description of his encounter with Police officers in the Orz Vezer Ter metro station, fully described in the report "Ethnic Profiling by

⁴¹ Conf. article on the newspaper *La Voz del Interior*, November 14th, 2005, available at http://buscador.lavoz.com.ar/2004/1112/politica/nota282884_1.htm, last visited on November 10th, 2008.

Police in Europe”⁴². That researcher⁴³ relates that he was singled out and stopped for a Police ID check, even though he was among a group of international friends. He recalls that the search had nothing to do with his Romanian origin, but the only word he could understand of Policemen’s speech was “*ciganyok*” (gypsies). During a later visit to Hungary, Rostas explained that he “...*had the occasion to watch what went on at Orz Vezér Ter metro station, and saw the police there consistently stopped only those with darker skin*”.

It is interesting to note that when a concrete person does not fit to the stereotype assigned to the particular group he belongs to, Policemen would see that person as an exception, an outsider, an abnormal case of an otherwise clear and knowledgeable group. Instead of assuming that stereotypes do have flaws and weaknesses as an epistemic device, they may decide that is the empirical fact what is wrong.

As several cases suggest, belonging to the Roma community raises not only immediate suspicion, but also a particularly harsh treatment on the part of the Police, leading to frequent abuses. The situation of the Roma is even weaker if we consider that, being they usual victims of unlawful abuses on the part of the Police (but also by other individuals), the Judiciary tends to neglect its obligation to provide investigation, remedies and redress to those situations of violence. As many of the cases involving abuse of Roma people are related to Police brutality, that people have to face a deep stress if they have to report the fact to their same attackers, which tend to prevent them to do so. But even if they do, and in the rare cases in which an investigation is launched, they may have to face several bureaucratic delays and burdens, amounting to

⁴² Iulius Rostas *et al.*: “*Ethnic Profiling by Police in Europe*”, Open Society Justice Initiative, New York, 2005. Pages 26 and 27.

⁴³ Iulius Rostas is the head of the “Roma Initiative” program conducted by Open Society Institute.

an effective deprivation of Justice.

There is a difference in the treatment the Roma people receive from Police officers and from clerks, though, that deserves to be remarked: the agents and employees of the Courts or the Prosecutors' offices do not tend to use aggressive and insulting remarks onto them. However, this may probably be that way due to the different socialization and educational training of those clerks as compared with Police officers, rather than because of a lack of prejudice. The general distrust of the Roma over the Justice system may well suggest that there may be a biased treatment of their cases.

A similar situation can be observed in Cordoba, where those victims of Police abuse are hardly willing to go back to the same stations to file a complaint. There is an office for complaints, but located in the very core of the Central Police Station and it is served by Police officers in uniforms as well, so, it is usual that those officers who have been accused of mistreatment, do have access to their files before they had any movement⁴⁴. From my own experience as a practicing lawyer, I've learnt that the victims should better go first to the Prosecutions Office to file a judicial complaint with legal assistance, and only later initiate the administrative process at the Central Station. Only in that way victims can avoid threats and reprisals of the accused Policemen, though probably because of the extension of social profiling to the Justice system, judicial complaints do not assure a satisfactory result, except on extremely grave cases.

Also in Cordoba the Public Ministry is in general reluctant to process the complaints against policemen, unless victims are killed or suffered severe bodily damage. There is not an explicit bias, but is a fact that victims without legal advice are

⁴⁴ After several complaints from victims regarding the location of this office, the Government was just about to change that location.

simply not taken into account, and their complaints are given the least priority.

C) CONCLUSIONS

Except from very particular historical situations (as revolutions or the first moments of a dictatorship), Police mistreatment does not seem to be ‘provided’ equally among all social classes. Rather, there seems to be an unequal pattern of relationship among the Police and the members of society according to their social and economic status, and how the different demands and expectations from those sectors are exposed by the “moral entrepreneurs”⁴⁵ and perceived by those who design and control the Police activity. As the pressure from those “moral entrepreneurs” focuses over a certain stereotyped group, the primary criminalizing agencies⁴⁶ react by designing diverse measures of surveillance and punishment for the actions they are supposed to display.

The Police are then provided with two concurring devices: a certain amount of legitimate power, with the expectation that it will be used under certain conditions; and also a general discretion, so close to arbitrariness that obscures the real use of that power. It may be the case that it is used as a means of social control but in a different way as it should be according to constitutional standards: far from limiting the use of punitive instruments to prevent damages to certain goods, it may be used as a means of subduing a group despite the fact that they have done something wrong or not.

The examples given about Cordoba and Budapest suggest that the Police power is directed against the most vulnerable sectors of society and it does so by means of

⁴⁵ By ‘moral entrepreneurs’ Prof. Zaffaroni means those groups who own diverse means of communicative powers (as the press, politicians, Police officers, religious groups, victims associations, etc.), and use them to reinforce the prejudices over which the punitive system acts. Conf. Zaffaroni, Alagia and Slokar, “*Derecho Penal*” (Penal Law), Ediar, Buenos Aires, 2002. Page 8.

⁴⁶ According to Zaffaroni, the primary criminalizing agencies are those which select in abstract some particular behaviors and outlaw them by attributing a punishment to those who commit it (typically the Legislatures and Parliaments), while the secondary criminalizing agencies are those which select concrete conflicts and persons and prosecutes and punish them (as Attorneys, Prosecutors, Judges, the Police and the prison system). Conf. Zaffaroni, op. cit., page 7.

stereotyping members of those sectors who may well serve as ‘escape goats’: the poor, the young, the visible and deprived of resources. We already know that the penal system at large suffers from an inherent selectivity; the previous pages indicate that it produces a state of vulnerability to those who are selected (or in our terms, targeted) who become more prone than the common to be affected by diverse acts of violence. Further, vulnerability is extended when the targeted are exposed as weak enough to be victimized by others than the Police, as is the case of the media, the Justice system, the education system and the labor market.

Whether the exposition of the targeted by the Police is a cause of their diminished social status, or a consequence thereof (or both at the same time), is not a determinant feature to take into account, at least at this stage. What matters is that as part of the State (and let me insist, under liberal democracies) the communicative force of Police mistreatment is enhanced by the fact that it legitimizes the production and reproduction of the same prejudices that the Constitutions of both Argentina and Hungary tend to erase.

CHAPTER FOUR:

Police mistreatment in Cordoba (Argentina) and Budapest (Hungary)

This chapter provides a descriptive enumeration of the practices related to police mistreatment as they are conducted in Cordoba and Budapest, as well as a description of the norms that are used to justify those practices. The aim is to reveal the possible similarities between the conduct of the Police officers in Cordoba and Budapest at the moment of facing suspiciously unlawful events, and at the moment of deciding a reaction to those events. Furthermore by analyzing the rationale that lies behind their reaction, it will be possible to assert whether the ethnic and social profiling is compatible or not with the constitutional standards that should inspire all public policies.

The practices described will be arbitrary detentions, insults and threats, beatings, forced labor and allocation in inhuman and degrading conditions, as they were found in several sources. As the purpose of this thesis is to describe the consequences of Police activities, the listed practices will include only those committed by Police officers. Thus, mistreatment by prison guards –either on pretrial detentions or on effective imprisonment-, as well as other public servants, will not be covered this time.

A) ARBITRARY DETENTIONS

A long established practice has been found in both cities regarding what we will call arbitrary detentions. For the purposes of this thesis I will consider as arbitrary those detentions that are unfounded or ill-founded, and that are the consequence of stops that take place in public spaces as the streets and squares. A detention is unfounded when there is no compelling reason for a Police officer to detain a person in the street, that is,

when there are no grounds for suspecting that the stopped person actually took part in a certain crime, is indeed committing a crime or is just about to commit a crime and there is no other way of avoiding the breach of the law, other than the deprivation of her liberty. And a detention is ill-founded when there is no reasonable connection between a certain crime that happened in the past or is actually happening, and the person that is stopped. In the first case then, there is no crime at all, and in the second, albeit there is one, the detained person is not connected to it. In both cases those principles apply to petty offences or misdemeanors that require Police action to enforce the law and restore order.

The reason for this extension of the principles is that in both cases there are persons who are deprived of their liberty, they are held in similar material conditions (and frequently in the same places) and for that reason they suffer similar consequences. To this extent, the conceptual difference between a crime and a misdemeanor is not relevant, because it does not lead to a substantially different treatment.

On the other hand, a detention is lawful if there is a probable cause against a certain person, be it because that person is reasonably suspected of committing a crime or misdemeanor, or was deterred while flagrant. Now the situation differs when the unlawful act is a crime or a misdemeanor, regarding the extent of the powers given to the Police. In the first case, the suspect is arrested and put in custody by the Police following directions of the Prosecutor, or either she is deterred from committing a crime and put under the Prosecutor (to be charged, to have the crime facts investigated as well as to be decided about whether she will be held in custody or will wait for her process in liberty).

But in both situations, the Police acts upon the Prosecutor, as the operative agents of the Public Ministry who directs and oversees that work. The key responsibilities will then, be in the head of civil officers instead of the Police officers, and any decision concerning the status of liberty of an arrested person can be challenged via the procedural guaranties of the due process of law that take place in pre-trial stages. All these situations are ruled by procedural codes that apply to the Judiciary and also to the Public Ministry -for those jurisdictions where prosecutors are not members of the Judiciary but of independent bodies-. Do note that the correct term to name these second kinds of deprivations of liberty is ‘arrest’, as a qualification for a detention that is related to a certain crime, whether the arrested is later held responsible for it or not. The term ‘detentions’ will thus be used only for those cases where there is no relation to any crime whatsoever, as it happens for identity checks, antecedents checks and misdemeanors.

One important element to bear in mind, is that if the arrested person is released after dismissal –that is, the finding that is not liable for any crime, or that procedural limitations prevent the Prosecution to reach a formal indictment-, she will be released and will never be bothered again for the same reason (except in the case that new facts or elements of proof become available). The same will happen, of course, if that person is acquitted –that is, when tried and found not guilty. In both cases, no record will be kept, and hence there will be no risk for that person to have this episode exposed to the public, to family, colleagues and eventual employers. This is a natural outcome of the principle of presumption of innocence, which states that before the law, every person remains innocent until the contrary is proven after a due process.

What about misdemeanors? Which is the difference in treatment compared to

crime-related arrests? Is there any relation between the kind of breach of law and the arbitrariness of the Police reaction? The core of this part of the thesis are the arbitrary detentions that take place in the realm of a different kind of procedures, in which the Police act no longer as the operative arm of a Prosecutor, but on its full powers as an autonomous law enforcement agency: the Police act as the (nearly) only and sovereign applier of the Misdemeanors Code⁴⁷ which grants them wider powers compared to those granted in the field of criminal causes.

As a previous clarification, it is to be noted that in Argentina there are not detentions for the sole purpose of identity and antecedents checks: in year 1994 they were banned from the Police traditional powers, in the context of a renewed preoccupation about human rights, in part to the constitutional amendment that took place that same year⁴⁸. This motive for conducting detentions was seen as a totalitarian remnant of the past dictatorship, and a useless tool in crime control policies, in part, due to usual abuses on the part of the Police. As a consequence, the Police was deprived of the use of that legal figure and had to find a new legal framework to justify detentions: they quickly found that they could resort to some of the figures of the Misdemeanors Code approved at the ends of that very same year⁴⁹.

This Code comprises several behaviors, some of them barely related between them, and that are supposed to create different kinds of dangers or harms onto social values, as tranquility, public order, good faith and collaboration with public officers.

⁴⁷ In Spanish: “Codigo de Faltas de la Provincia de Cordoba”. It is the Provincial Law No. 8431, passed in November 17th, 1994, and promulgated in December 07th of the same year. It substituted a misdemeanors code dating from the last dictatorship (year 1980). The code can be read (in Spanish) in the following link: <http://codigodefaltas.blogspot.com>, last visited on November 1st.

⁴⁸ The 1994 Constitutional Amendment in Argentina included, among several legal devices to assure the rule of law, a number of international treaties on human rights, which are listed in the Article 75, par. 12 of the National Constitution.

⁴⁹ Until that moment, detentions that could be labeled as arbitrary according to the principles proposed in previous pages were justified as identity and antecedents checks, and the existing Misdemeanors Code was barely used in this context.

Misdemeanors types are defined in that code in very vague and imprecise terms that require the contextual interpretation of the law enforcement agent to determine whether the banned behavior took place in a certain occasion or not. As we will see, this imprecision in the legal terms is a key to understand the way in which the necessary discretion of the law enforcement agents turns into open arbitrariness.

Sanctions applied under this Code are almost ‘automatic’, because the one that indicts a certain behavior as a misdemeanor and its author as liable thereof, is the Police agent who gets into contact with that behavior⁵⁰, and the one that decides about it as a ‘First Instance Judge’, is the Chief Police of the Station the agent belongs to⁵¹. In other words, if any Police agent sees a certain behavior, she can immediately take the decision that such behavior belongs to the category described in the Code as a misdemeanor. The supposed offender does not have any power to challenge that qualification or her liability. Needless to say, Chief Polices always confirm the indictments for the misdemeanors as alleged by their agents and impose to its author the corresponding legal sanctions⁵². There is the possibility of an appeal to a Misdemeanors Judge who is a member of the Judiciary⁵³ branch, where some of the few appealed cases are acquitted. But there are several burdens for the use of this right, starting from the ignorance of the detained about it, the reluctance of the Police officers

⁵⁰ Article 115 of the Misdemeanors Code: “The administrative authorities will act upon their own powers or upon request...”

⁵¹ Article 114.1 of the Misdemeanors Code: “To know and judge about misdemeanors committed in the - territory of the Province, competence will be assigned as follows: 1- To instruct and judgment of misdemeanors described in Titles I, II and IV of the Section II of this Code, the authorities of the Police of the Province in charge of Divisions, Stations or Substations, Precincts or Districts with a rank not lower than Sheriff in the Capital and Sub-sheriff in the Interior, corresponding to the place where the misdemeanor occurred.”

⁵² According to official information, the Police of Cordoba has detained 15.083 persons in year 2007. That means 41 detentions every day, or one person detained for each 87 inhabitants in the Province. Source: <http://codigodefaltas.blogspot.com/>, last visit on November 1st, 2008.

⁵³ Article 120 of the Misdemeanors Code: “Judicial Instance. If the indicted does not accept the sanction imposed by the administrative authority, the latter should immediately pass the files to the competent Judge file with all those arrested, if any, without making that sanction effective.”

to provide a due warning about this right, and finishing with open threats of later reprisals and even the denial of Policemen to allow detained persons to fully use the appeal system.

The fact that a public agent makes a statement of facts that implies certain consequences to the indicted person -who is liable of a sanction that may include a temporary deprivation of liberty-, makes the described proceedings one sort of punishment. In other words, the procedure amounts to a summary trial, which justifies the use of the word ‘punishment’ as the final outcome of the proceedings.

How does this Code operate in the field? How do the Police work with it daily? In Cordoba is usual to see the trucks of the CAP⁵⁴ or the cars of the CPI⁵⁵ driving slowly around certain squares and corners, in the city centre and close-by neighborhoods as Nueva Cordoba (dwelling of students and upper middle classes), Observatorio, Alberdi, General Paz, Alta Cordoba and other middle classes areas. Also they may take good care of Cerro de las Rosas, Cofico, Barrio Jardin, Jardin Espinoza and the many country clubs and closed neighborhoods (dwelling of upper classes), as well as the avenues that lead to those zones or those that have an intense commercial life.

They may patrol lower classes areas as well, but with a radically different attitude: in the first case, they would target those who do not seem to belong to the patrolled areas, and in the second, they would search for those who do seem to belong

⁵⁴ CAP or “Comando de Accion Preventiva” (Preventive Action Command). It is a special task force of the Police of the Province of Cordoba that patrols the streets as a way to generate general deterrence on crime and misdemeanors. Composed of four unarmed officials, was created in 2001, and even when it was officially dissolved in 2005, the fact that the Police use the same trucks and keep the same working routines, made people –and the same policemen- keeping on calling it “CAP”.

⁵⁵ CPI or “Comando de Persecucion Inmediata” (Immediate Persecution Command). It was created to replace the CAP, with smaller and more agile cars, and its task is to persecute and arrest offenders and suspects that are on the run. The way it operates is seen by neighbors as a normal patrol unit, without meaningful differences with the former CAP.

there. Also they may roam close to schools, stores and internet halls: those are the places where teenagers use to gather before and after going to school, and also where they may spend their spare time. Police officers are supposed to be preventing crimes and disorders and thus, enforcing law and order.

At the same time, it is usual to find in the signal lights on the corners of most avenues, groups of youngsters, teenagers and kids (in an age range of around 6 to 24 years old) that live on cleaning the windshields of the cars stopped by the lights, or selling candies or a diversity of cheap devices. Some of them –specially the youngest kids- simply beg some coins from the drivers. Others sell “La Luciernaga”, a small magazine that is written and edited by some of them. Most of the times they are respectful to the drivers, and they show gratitude when they can make some coins and resignation when they get nothing. Some people though, claim that they have been stolen their bags or other properties they had in their cars, by some of those street workers while stopped by the lights.

What happens when these two actors (the Police officers and the youngsters) run onto each other? Usually the Police officers may stop by them, get out of the truck and often in quite a rude way, ask those youngsters what are they doing there and ask them to identify themselves. As it still is mandatory in Argentina to bear one’s ID, the youngsters have to produce that; if they do not, they may be indicted by the same Police officers of breaching of the article 79 of the Misdemeanors Code⁵⁶ that sets the obligation of handing out the ID and provide any other required explanation. But if they do, and still the provided explanations about their identity are not found satisfying

⁵⁶ Article 79 of the Misdemeanors Code: “Denial or Omission of Identification. Those who, in an open place or in a place open to the general public, existing reasonable motives to be asked to identify themselves, refuse to do it or to provide the required information, or do it falsely, are liable to a sanction equal to a fine of 10 Fine Units or up to a 3 days arrest.”

enough by the Policemen, the youngsters may suffer the same punishment.

If they can identify themselves without any kind of doubt, but they fail to provide the Policemen a reason for being in that very place, that the officers may find reasonable, these youngsters may be arrested anyway for “marauding” under article 98 of the same Code⁵⁷. If the youngsters protest or express any kind of resistance to the procedure, they may be arrested under article 53 of “public scandal”⁵⁸. Further complaints or reactions to the activity of the Police can trigger far more serious consequences, as it can be immediately labeled as a criminal offense, that of resistance to authority⁵⁹.

Once the youngsters are detained, they are taken to the Police Stations where the acting officers serve. There they are registered, notified about the indicted misdemeanor and the sanction given by the Chief Police, and taken to a physician for a quick medical check. Beatings and insults on the part of the Police are usual in this stage, and when the medical staff control the detainees, they normally refuse to register any wound related to possible Police brutality, or they attribute them to an ‘unknown origin’. After this medical control, detainees are taken to the UCA⁶⁰, where the petty offenders detained in the whole city are serving the time of their punishment. Once

⁵⁷ Article 98 of the Misdemeanors Code: “Urban and Rural Marauding. Those who maraud in buildings or vehicles, agricultural or livestock establishments, woods, or mines; or remain nearby in a suspicious attitude without an acceptable reason due to the circumstances of the case; or provoking unrest among owners, dwellers, passers by and neighbors, are liable to a sanction equal to a fine of 5 Fine Units or up to a 5 days arrest.”

⁵⁸ Article 53 of the Misdemeanors Code: “Those who utter screams, make noises, or use other means, according to the circumstances, of causing scandals or disturbances to third parties are liable of a sanction equal to a fine of 10 Fine Units or up to a 20 days arrest.”

⁵⁹ Article 239 of the Penal Code: “He who resists or disobeys a public officer in the legitimate exercise of his functions, or the person who assists him under his request or upon a legal obligation, is liable of imprisonment from 15 days to one year.”

⁶⁰ UCA or “Unidad de Contencion y Admision” (Contention and Admission Unit). It works in an old jail that escaped demolition years ago, and now centralizes the imprisonment of those arrested for petty offenses and also minor crimes. Children under 18 years old are usually kept together with adults, in extremely unhealthy conditions and they are given no food or medical assistance (not to mention access to education). Until the family or friends of the arrested know they are there, they may have no aliments, medicines or shelter at all.

there, they may continue suffering from the same mistreatment on the part of the Policemen in charge of the Unit. Sadly, there are not specialized agents for dealing with petty offenders or the children allocated there: the Unit is run and controlled by Police officers with the same reluctance to respect the detainee's rights as those who first detained them.

The offenders may be urged to accept the measure taken against them, sign a form admitting their guilt and luckily be released in a few hours, or they may be forced to stay in for as long as the Police officers may want and the Code permits.

There are no clear and objective criteria for deciding how long every person is staying there within the terms of the punishment for each misdemeanor: up to 5 days for marauding, up to 3 days for refusal to identify, up to 20 days for scandals and so on. Hence, the opportunity for absolute arbitrariness is always present: for the same offence or "article" a person may spend just the time required for the UCA administration to obtain her files and check that she is not being chased for any criminal cause, or on the contrary, she may suffer several delays until the total time of the punishment is completed. Some times from the very beginning of the detentions they are told that they will stay for as long as the Code allows to. Up to the moment, no information has been released about bribes or other improper behaviors requested by the Police officers in charge of the UCA once the youngsters are in, but on the contrary, some youngsters acknowledged that requesting money for letting them go is rather usual on the part of the Police officers at the very moment of the detentions at the street. This suggests that at least bribery is not a factor for deciding about the length of the detentions within the system, as it is about the mere fact of being detained or just let go in the public space.

As for the situation in Budapest, it is important to take into account that the

occurrence of arbitrary detentions is far less extended than in Cordoba: according to Andras Kadar⁶¹, however extended the mistreatment of Roma may be, unmotivated deprivations of liberty are not the most usual of them. This legal activist sustained that, indeed, the recurrence of imprisonment of Roma is largely related to criminal causes, and hence they are usually arrested upon a Prosecutor's order due to the investigation of a crime, and for that reason the Police are not to blame for the selection of those targets. Nevertheless, the mistreatments that may follow those arrests do fall within the scope of this work.

There are two modalities of Police activity towards the Roma: stop and searches at the streets (either to pedestrians or to car drivers), and Police raids into slums, buildings or areas mainly inhabited by Roma. The stop and searches to pedestrians take place mainly in the metro, train or bus stations. Patrolling is quite looser and less extensive in the main streets and avenues, compared to Cordoba, but more intense and centralized in the aforementioned places. Also, is normal that they may focus in certain areas, where many members of the targeted population live, as the 13th District and the slums spread around the city. Those are the places where arrests may take place.

Police would stop Roma-looking people and ask them to produce their ID, and to provide factual explanations about what are they doing there. As we see, the procedure is very similar to that used by the Police of Cordoba in terms of reliance on external looks and the kind of questions made. Mistreatment on the part of the Police is quite usual as well, as it was reported by the report "I can stop and search whoever I want"⁶², which states that "*Roma respondents indicated a much higher number of*

⁶¹ This information was obtained at the lecture "Maltreatment and Discrimination by the Police and Law Enforcement Agencies", held by Andras Kadar at the premises of the CEU on April 30th, 2008.

⁶² "I can stop and search whoever I want ...", op. cit. Pages 36 and 37.

dissatisfaction with the Police than non-Roma groups...". This mistreatment may include insults, beatings and racist speech, which sometimes trigger bitter reactions on the addressees of that treatment. In turn, those reactions may be used as a justification to incarceration of the targeted, all of which is very similar to what happens in Cordoba too⁶³.

These stops may be far more frequent among Roma than non-Roma, in a 3 to 1 proportion, as revealed by the survey of the mentioned OSI report⁶⁴. This proportion may be extremely increased in Cordoba, where Police would hardly stop middle or upper classes passers by, and even less would arrest them unless with a sound reason as the commission of real misdemeanors or acting upon Prosecutors' orders. But even in these cases, the better positioned detainees may be held in custody only to identify them and to have signed the forms, being almost immediately released.

Car stops tend to be more frequent among Roma than among non-Roma. The overall quantitative difference may not seem high, according to the survey conducted by OSI⁶⁵, but this may well be explained by the car ownership, higher among non-Roma than to Roma (58 % and 35 % respectively). However, the reports do not mention further episodes as violent mistreatment or detention without a probable cause. In this regard, similarities appear with Cordoba, where car seizures hardly end up with imprisonment, unless better founded reasons emerge, as finding of drugs or illegal weapons, or effective resistance to authority on the part of the driver –a rare fact, actually, given the fact that car stops are rather unusual.

But where the arbitrariness raises to the utmost extremes is in the raids both

⁶³ See footnote 57 about Article 239 of the Penal Code.

⁶⁴ Ibidem, page 34.

⁶⁵ Ibidem, page 32.

against the slums of Cordoba and the Roma settlements in Budapest. By its own nature, raids imply an overall intrusion of a military character onto private dwellings, often indiscriminately or with overbroad judicial orders, that permits extensive groups of homes to be intruded. In both cities the Police would break in, often in the middle of the night or very early in the morning, and detain a number of people only related by a common age: mostly men between 20 and 35. The common assumption is that among the detained may be someone that the Policemen have been looking for certain crimes or offenses. After being conducted to the pertinent Police Station the detained may have to wait until all of them are identified and questioned for many different causes (frequently in a tough and rude manner), only to be released the following day or sometimes even later. That, in the case they were not the persons the Police was looking for.

B) INSULTS AND THREATS

In both cities the stops and eventual detentions of members of the targeted populations are usually followed by insults and racist remarks⁶⁶, as well as threats of beatings (not unusually accomplished). The mentioned complexity of the ethnical composition of the inhabitants of the slums and impoverished areas of Cordoba, as well as the similar ethnic composition of the members of the Police, should prevent them to engage in racially driven remarks. However, for weird it may be is easy to hear Police officers calling the darker-skinned poor people with the demeaning word “*negro*” (black)⁶⁷: many times the Police officers are just as dark-skinned as the detained are, or

⁶⁶ Regarding the Roma of Budapest, see the following articles and testimonies collected by the European Roma Rights Centre: <http://www.errc.org/cikk.php?cikk=1728&archiv=1>, <http://www.errc.org/cikk.php?cikk=637&archiv=1>, <http://www.errc.org/cikk.php?cikk=1515&archiv=1>, all accessed last time on Jan. 8th, 2008.

⁶⁷ Despite the color of the skin of the targeted population, the references to black people do not relate directly to people of African descent, since that influence –where existent- is extremely weak.

even darker. It seems clear that there is an unconscious identification with the racist prejudices that made part of the early positivism that flooded the national culture of the late XIX and early XX centuries in Argentina, and which was part of the ‘official common sense’.

The situation is literally clearer in Hungary, since ethnic Hungarians tend to be rather fairer skinned and haired than Roma. As long as most of the Policemen (at least in Budapest) are rather light-colored, the contrast with the Roma tends to be strikingly noticeable, as well as further ethnic features. The word “*cyganok*” (gypsies) may be used in the same pejorative sense as “*negro*” in Argentina, and also accompanied by other insults, mostly related to the alleged dishonesty, untruthfulness and inclination to burglaries of both Romas and “negroes”. Phrases as “stinking gypsies” are rather common in most of the reports on Police mistreatment carried on by the ERRC⁶⁸. It is to be mentioned that, although out of the scope of this thesis (restricted to males only), women belonging to both targeted groups may also suffer extremely offensive and lewd remarks from Police officers, based on deep gender prejudices.

Threats are also part of the verbal aggression that follows stops and detentions. At least in Cordoba it is not uncommon that Police officers would threat to kill the detained and make their bodies disappear, a clear inheritance of the years of the last Argentine dictatorship, grounded as well on the extended impunity that covered not only many massive violations of human rights, but also on ‘easy-trigger’⁶⁹ murders that took place in the years of democratic rule. Despite the fact that more than 25 years

⁶⁸ Check specially the following articles: <http://www.errc.org/cikk.php?cikk=1728&archiv=1> and <http://www.errc.org/cikk.php?cikk=637&archiv=1>.

⁶⁹ “Easy-triggers” are those Policemen who incur in usual abuses of their guns, frequently killing (willingly or not) the suspects they chase, or mere bystanders. A certain cult of courage among members of the Police includes a show off of violence, even when not necessary. The innocent victims of “easy triggers” are nothing but ‘collateral damages’ of events that are usually re-arranged to make them look as criminals or at least suspects, to justify their shooting.

passed since the restoration of democracy in Argentina, and that the trials against the military joints triggered a broad social debate on torture and massacres, a certain level of commitment with those practices seems to remain among Police officers. The engagement of Police with torture and killings can be easily tracked back to the first Argentine dictatorship in 1930, when that force performed –albeit in a smaller scale– the bloody role that was later impressively displayed by the military from 1976 on. Thus, any threat from a Police officer is clearly capable of causing a deep level of fear on the victim of such utterance.

The high levels of impunity of Hungarian Police officers accused of mistreatment to Roma raise the same question: any single expression from a violent officer is to be taken seriously, being that impunity a strong stimulus to fulfill any threat. Even when the Secret and Political Polices were separated bodies from the mainstream Police service in the Hungarian Nazi and Communist regimes, there was a sense of comradeship among members of those forces, at least enough to share the privilege of threatening citizens⁷⁰.

C) BEATINGS

As mentioned above, beatings are common both in Cordoba and in Budapest, in order to obtain something from the person subject to that treatment, or just as a mere imposition of violence as a means to convey a message of authority.

In Cordoba, even when detentions take place in public area, the behavior of Policemen tend to be rather serene, including exhibition of weapons, insults and subtle threats, but not usually beatings. But as soon as the detained are taken to the stations,

⁷⁰ This fact admits a nuance: the Communism suppressed discrimination towards Roma, not by resolving it but by denying them the status of a particular ethnic group. For that reason, at least during those years the anti-Roma speech was neither openly uttered nor used as a threatening device by public servants, including the Police.

and once inside the premises, the Policemen would start beating them for extended periods of times and diverse purposes. Sometimes they want to extract a confession or any other information of previous crimes they assume the detained are related to, sometimes they just want to make the point that they have all the power in that situation, responding with slaps on the face to any question or comment made by the detained. As already mentioned, any allegation of rights or complaint on the part of the detained may trigger even more violent reactions from the Policemen, combining beatings, threats and insults.

As for Budapest, the mentioned articles insist on the frequency of beatings, but extended to the public space and even to the dwellings of the victims. Seizures are rather common against the Roma, and they are always a source of potential beatings. According to the reports by ERRC, the intrusion in Roma homes is almost always carried on in a violent way, beating, threatening and insulting anyone whom the Police may come across, be it women, elders or children. Even when the Police come upon request of neighbors, upset because of minor disturbances as loudly music and noisy familiar parties, they may attack the Roma with unnecessary violence. Beatings are also used to extract the Roma information related to the whereabouts of someone the Police may be looking for.

The described patterns of physical violence against the Roma and the ‘slummers’ in both cities, turns to dim the difference between the mere police brutality and police torture. This is so, because the instrumental use of excessive force happen in the same contexts, applied to the same persons, and may only differ in that in the first case the beatings in public space have the purpose of subduing the victim, and once in the Police premises, they serve to extract information.

D) FORCED LABOR

Regarding forced labor and servitude, it is not frequent to relate it to Police mistreatment, instead, it is more commonly understood either as a complement for the penal punishment of those sentenced to serve some time in prison, or as an excessive deviation of exploitative patterns of employment. Hence, those normally understood to play a dominant role in forced labor are the prison authorities and the private employers of pre-liberal economies. In the first case it is imposed by law, and despite how immoral it may be in any case, forced labor enjoyed a wide social legitimacy when seen as part of a set of corrective devices for the re-socialization of alleged criminals. In the second case, forced labor played a key role in the establishment of a proletarian culture: according to Foucault⁷¹ it was called to serve the ideal of ‘normalization’ of the lazy and unpleasant to the norms of commerce and industry at the dawning of the industrial revolution.

But for unusual it may look at a first glance, in some contexts the Police may use its powers over those arrested or detained to force them to work in varied manners. However, contrary to what was mentioned, the fruits of such a work are no more destined to society at large or to the economic sectors who would benefit from the upcoming of masses already ‘disciplined’ as workfare. In the case under examination, the benefits go directly to the Police officers, to be enjoyed on themselves or on the buildings and goods they serve at.

It is not usual that in Cordoba the Police officers may ask the detained to perform any kind of labor for them, except occasional sexual services asked to prostitutes to let them go. The only antecedent of forced labor, at least on a sustained

⁷¹ Michel Foucault, “Vigilar y Castigar. Nacimiento de la Prisión” (Surveillance and Punishment. The birth of Prisons), Siglo XXI, Mexico, 2000.

basis, was the service that some political prisoners were forced to provide during the last military dictatorship, when they were obliged to write diverse papers, as media reports or political analysis. But clearly that experience is outside the scope of this thesis, because of temporal, subjective, political and institutional reasons. The cases in which the inmates are forced to work are still so uncommon and isolated that they become irrelevant.

But it seems to be common in Budapest that the Police officers would order the arrested Roma to do some works as cleaning the station and sometimes their cells. As some of the testimonies collected by ERRC have shown, in occasions the Hungarian Police officers have demanded those labors. Sexual services may be asked to prostitutes as well, all of which amounts to forced labor and submission to servitude.

E) ALLOCATION IN INHUMAN AND DEGRADING CONDITIONS

Although in cases in which the Police detains a person for a misdemeanor or for any other cause not related to a crime-related Prosecutor's order, that person remains in the Police station for a rather short time, the actual condition of such a lodging may be fully scrutinized. Moreover, it is not exceptional that detentions that should take a short period end up consuming days and even weeks, and thus the condition of the cells in which those persons are jailed becomes indeed a major threat to human rights.

The extremely unhealthy cells in the Police Stations of Cordoba and in the UCA, are by their own a source of infections and diseases; plus the absolute lack of any kind of medical assistance, leave those who are hurt abandoned to themselves. The unfortunate occurrence last year of the dead of a young man in the UCA⁷², who was

⁷² The case was not addressed by the Government, but the Argentine Professor Horacio Etchichury provides a further analysis in his blog site (in Spanish): <http://radiotosco.blogspot.com/2008/01/lucas-19-aos-merodeador.html>. Also check

detained days before his death is by no means an isolated event. The extreme graveness of the case is that Lucas Maldonado –the victim-, died from meningitis, a highly contagious disease in the context of packed and infested cells. Such a disease was completely out of the possibility of manageability by the guards of the UCA and it still is for the reduced medical team that was introduced after that case reached the media.

In the case of the Roma, the same lack of sanitary attention in the Police Stations where they are allocated poses the same risk. Furthermore, in the cases in which they were wounded and bodily hurt, hospitals would refuse to provide due attention to them, again on the argument that they may lack some piece of personal documentation, and sometimes alleging that the Hospital is full and it cannot take any more patients. Again here, discrimination does not seem to be explicit, but disguised under misleading excuses.

Concluding, it can hardly be imaginable a harsher treatment of a human being, one that may have a deep and demeaning impact on her health, than being hosted for a certain period of time in conditions that would humiliate even the most elemental and narrow conception of human dignity.

F) CONCLUSIONS

The preceding enumeration shows that Police mistreatment has diverse ways of manifestation. Even more, some kinds of maltreatment are not directly comparable among Cordoba and Budapest: whilst arbitrary detentions on public spaces are overwhelmingly frequent in Cordoba, they are quite rare in Budapest; on the other side, whilst some cases of forced labor took place in Hungary that is not frequent in Argentina. The roots of this difference may lay on the differential impact of the

http://www2.lavoz.com.ar/08/01/13/secciones/sucesos/nota.asp?nota_id=152306, both last visited on November 15th, 2008.

discourses and prejudices that impregnate both societies, something that generates in their historical developments.

But however wide that diversity may be, the reiteration of the sources used to reveal it indicates that the infliction of mistreatment tends to combine more than one way: for instance, even a properly conducted detention in Cordoba imply the allocation in inhuman conditions. For that reason, the complexities of the violence exerted against the targeted groups, deepen and reinforce the consequences of one type of mistreatment when combined with others. To put it in other words, if each single beating is on itself a sufficient cause of physic and psychic pain, the insults and threats may reduce to zero the capacity to react to them. The same happens with forced labor inside Police stations: by definition it requires to break down the will of the victim, be it by insults, threats or beatings.

How this mistreatment would affect the inner status of the members of the targeted groups, as to constitute harm to their human dignity and individual autonomy, is a matter that will be discussed in the next chapter.

PART TREE: DIMINISHED CITIZENSHIP

CHAPTER FIVE: The building of ‘lesser citizens’

This third part of the thesis will explain which are the mid and long-term consequences of police mistreatment, that is, what happens with those members of the targeted groups some time after they are victimized by the Police. As stated in the introduction of this thesis, the focus here does not lie in the immediate effect of mistreatment as such, like the temporary deprivation of the freedom of movement of those detained or the damage in the health of those beaten or allocated in infested jails. Instead, it is centered in those feelings, attitudes and ‘common sense’ that affect the victims time after they recover their freedom.

In the second chapter a notion was introduced, that suggested that self-esteem is an element of human dignity and that human dignity is what justifies and explains at the same time the exercise of individual autonomy from the point of view of a moral agent. That argument was built like a succession of steps: self-esteem brings about a sense of human dignity that creates and reinforces individual autonomy. Now, after having a review of some concrete practices of police mistreatment is time to study how they affect that succession of steps, which is the impact of maltreatment on that conceptual chain that leads to autonomy.

A) UNDERMINING HUMAN DIGNITY

It seems altogether too clear that mistreatment at large has the feasibility of demeaning the sense of human dignity of those who are addressed by such a treatment. Starting from the beginning, the mere act of selecting a group to target its members as naturally depraved and for that reason dangerous, constitutes a justifying threshold for

any kind of attack onto them, not only by the hands of the Police or any other institution of the State, but also by other citizens, whether related or not with the targeted groups. The consecration of such a state of vulnerability is itself a pervasive cause of degradation for human dignity, but it is violently expanded when concrete incidents happen, affecting and inflicting various damages to the victims. From the information included in the previous two chapters, we can infer the kind of harm suffered by members of the targeted groups according to the specific kind of mistreatment.

The configuration of the social status of the suspicious (the targeted) is constructed through a net of relations and not only by mere economic, demographic or historic reasons: that's why a relational view⁷³ of how this labeling operates explains better the consequences of arbitrary detentions of slummers and Roma. As arbitrary detentions happen in the public space and mostly with a lot of people as –involuntary– witnesses, they place the targeted in the spotlight, exposing them as ‘natural’ or self-evident wrongdoers and thus reinforcing a chain of prejudices built around and outside the penal system at large. Hence, the relations between the targeted and the ‘non-targeted’, are prone to be developed in unequal grounds, where the ‘non-targeted’ are somehow justified if they grow discriminatory and prejudiced attitudes towards the targeted groups.

In the previous chapters we introduced the notion of ‘criminalization’ as the building of a stereotype associated with violent crimes, which places the bearers of it in the center of a state of suspect. As Zaffaroni puts it, “*The rudest actions committed by*

⁷³ Here I will follow Wacquant's understanding of Norbert Elias 'figurational sociology', one that instead of thinking certain spaces (as the American ghetto) in static and morphologic terms, thinks about them 'as a system of dynamic forces that intertwines agents situated in the interior and the exterior of the perimeter' of the field of study. That explains my emphasis on the social exposure of mistreatment. Conf. Loic Wacquant, “*Parias Urbanos*” (Urban Pariahs), Ed. Manantial, Buenos Aires, 2001. Page 107.

*persons without positive access to communication, end up being exposed by it as the only crimes committed, and the selected persons as the only possible criminals. (...) The stereotype ends up being the main selective criterion of secondary criminalization...*⁷⁴ Be the targeted guilty or not of committing misdemeanors or crimes, that is an irrelevant fact, because the social perception of their guilt was already set and the State operates following that presumption. Later, if the State does, so does the rest of social forces in some sort of ‘consensus against the escape goat’ that will modify in a negative way the attitude of neighbors, workmates, schoolmates, etc., of the targeted.

The affectation on the public image of those who are frequently detained for no reason has a negative impact on that part of self-esteem built around the perception of a person’s image kept by others. It seems evident that if a person feels that everybody around thinks that she is an inimical person, someone who’s unpleasant presence engenders feelings of fear and unrest, and that she deserves to be treated as a potential criminal, the sense of worth of that person is instantly eroded. For strong that the self-perception of a person’s value may be, it cannot be enough to counter the negative impact of her social image once it is built on the basis of an unfair stigma. Only superb characters could overcome that, and there are no reasons for expecting that the members of vulnerable groups should be at the same time some kind of moral heroes.

Even more, given that social stigma and the invisible limits it imposes over the targeted, they may feel prone to stand up to their label, creating or perpetuating patterns of conduct that confirm the prejudice. Labeling, as Zaffaroni states, “*provokes a selective distribution (...) that reaches only those who have low defenses against the*

⁷⁴ Zaffaroni et al., op. cit., page 9.

punitive power and become more vulnerable because a) their personal features do fit the stereotypes, b) their training allow them to commit only gross illicit actions, easy to detect, and c) because labeling produces the assumption of the role corresponding to the stereotype, making their behavior [of the selected] correspond to it (like a self-fulfilling prophecy)”⁷⁵. Whether or not labeling creates itself patterns of illegal actions may be beyond doubt, given the fact that many of the members of the targeted groups end up committing misdemeanors or even crimes after they were reached by the punitive system for the first time. To what extent they differ to those committed by members of other social groups, may not be the case to analyze here, though.

Foucault went even further to asses that prisons do create criminals: *“The circuit of delinquency is not a sub-product of a prison that, when punishing, is not capable of correcting; it would rather be the direct effect of a penalty that, in order to administer the illegal practices, would introduce some of them into a circuit of ‘punishment-reproduction’ of which the prison forms one if its main elements.”⁷⁶* He meant that there are some sort of illegal practices that are allowed, and some others that are punished, mainly as a way of concentrating the attention of the media and the society at large, so as to hide or disguise the permitted illegalities. It seems fair to extend his criticism of the prison system to the whole judiciary, to which he attributes the selection of only some kind of illegal practices as *‘materia prima’* of its corrective discourse, while keeping in the shade some other illegal practices that are in the foundations of the social and economic systems. The targeted groups then, are nothing but the source to which the whole system resorts in order to have ‘cheap illegalities’ to process and expose; moreover, they may be so much needed that if the punitive system

⁷⁵ Zaffaroni, op. cit., quoting Thomas Merton (“Theory and social structure”, page 204). Page 10.

⁷⁶ Foucault, op. cit., page 283.

does not have suspects of real crimes or misdemeanors, it has to ‘invent’ them by addressing conducts that may not be truly dangerous or harmful. Remember here that at least in Cordoba Police officers are obliged to detain at least five persons every working day, just to fulfill the charts.

Apart from the initial damage of the image of the targeted persons due to arbitrary detentions, the mere deprivation of liberty of movements, even by a short time, constitutes an unjust constraint on the exercise of autonomy. The moral integrity of someone who is unduly burdened is easily eroded, given the fact that liberty of movements is one of the most fundamental features of the notion of freedom, a fundamental attribute of human dignity.

Regarding other types of mistreatment, one would intuitively select beatings, insults and threats as the most obvious attacks to human dignity. The body as the scenario on which maltreatment takes place is perhaps the utmost frontier of that sense of selfhood that is endangered. It is not a coincidence that except from expulsion from the land, all the history of punishment is the history of the use of the body as a communicative tool: it is the place where most strongly the power among individuals is exerted and communicated. Any kind of treatment to the body of someone is a direct message to her most intimate condition, one that does not admit any kind of mediation. It is not a surprise then that the only moments in which human beings accept the pain caused in the body by someone else, are instances of extreme weakness and risk of life (as when treated by medical assistance), or in such conditions that it is not possible at all to resist it because of cultural reasons (as mutilations on ears and genitals).

The kind of pain inflicted in the body of the members of the targeted groups is not the kind of pain tolerated for cultural or religious reasons: it is a message of mere

demeaning of the human condition of the victims. For that reason the affectation of the self-esteem of those who suffer it seems evident: they are treated as nothing but a mix of flesh, bones and skin that can be harmed to satisfy desires of revenge or to extract data. Once again, Foucault would go even further, as to picture it as the frame of relations of power and wealth: “...*the body is also immersed in a political field; relations of power operate over it an immediate oppression; it is surrounded, marked, domesticated, harassed, forced to work, obliged to certain ceremonies, some signs are extracted from it.*”⁷⁷ The body is, for the French philosopher, a road through which the power of a society circulates in the form of numerous ways of violence: being the body the prisoner of a soul that “*is born from proceedings of punishment, of surveillance, of pain and of coercion.*”⁷⁸ The infliction of bodily harm is then a way of damaging the soul, the inner self, the core of self-esteem and thus, a way of degrading the human dignity.

The recent trials against some of the military leaders of the past dictatorship in Argentina⁷⁹ exposed once again the psychological effects of those who were tortured in the concentration camps. According to those unfortunate survivors, the impossibility of resisting physical aggression had the effect of destroying their sense of worth, generating the feeling of moral ‘non-existence’ of those who endure it. Under that sense of non-existence they explained how they were converted in “fingers”, that is, a prisoner that is used to point out and identify places and persons belonging to the political groups or activities they were in before being captured. At a different scale,

⁷⁷ Foucault, op. cit., page 32.

⁷⁸ Foucault, op. cit., page 36.

⁷⁹ The trials took place in the provinces of Cordoba and Tucuman, where the main local leaders of the past military dictatorship (1976-1983) were convicted in July and September of 2008. As with the trials against the Military Junta in the early democratic years, the whole Argentine society was shocked by the testimonies of those who survived the concentration camps, triggering public debates about a number of issues, especially security policies.

that feeling is also shared by the slummers and the Roma, with the same sense of dissolution of their human value when they are frequently and hopelessly beaten up.

Insults and threats that in other context would be nothing more than a mere offense become, when accompanied by beatings, the verbalization of the hatred implied in physical aggression. Moreover, they create harm to the moral integrity of the addressed in explicit and implicit ways. The impact of insults on someone's self-esteem does not require a complex explanation: as self-esteem is partially built on the perception of someone's image in others, when those others use degrading remarks what returns to the person is a sensation of a devaluated self. At the same time, insults make explicit the type of moral attributes that are adjudicated to the members of the targeted groups: thieves, depraved, deviants, lazy, indolent, disrespectful, sexually 'animalized', cheaters, liars, nasty: lesser. The self perception thus starts to take a concrete form under the meaning of those words used to undermine the insulted.

The damage to the self-esteem of those thus treated operates in two levels, firstly by assigning them a role, and secondly by stating the implicit presumption that they can be no other thing than what was uttered. The criminological theory of the 'labeling approach', already mentioned, can now execute its full effects, since the targeted have a name given to their moral condition and a set of actions corresponding to that condition, ready to be performed to fulfill the role.

Threats have also at least two working levels: at the first one they impose the certainty of a harm to be suffered by the addressee and in the second one they consecrate the assumption that she is weak and coward, and is moved to act by nothing else than fear. Regarding the first level, the statement of the probability of suffering pain is itself a source of sorrow and fear, but in the case of those who are frequently

mistreated –as it is the case of the members of the targeted groups-, it is expanded to an unbearable certitude of an imminent harm. The sense of vulnerability of a threatened person is a moral damage on itself, that will affect her life at multiple levels, and one may think that the moral damage is worst as more unfair is the bodily harm (or any other kind of harm used as a threat).

At the second level, the presumption that the threatened person reacts only to the promise of a given harm implies that she is weak enough to be unable to resist the supposed harm, making it an unavoidable reason to act in the required way. Also, that she is so morally negligent and/or that her wills are so irrelevant that she is not able to overcome the threat and keep her wills. For any of those reasons, a threatened person is radically excluded from the enjoyment of her moral autonomy, be it because she is too weak, too negligent or her wills are not deserving of any respect.

Again, the shadow of the ‘labeling approach’ is somehow around: a specific expectation is imposed onto someone with such a strength that the threatened person may find varied motivations to act in the required manner, be it explicit (as when threats are about a concrete and imminent damage) or implicit (when they are rather abstract but there are contextual reasons to take them seriously).

For paradoxical it may look, forced labor may not be as pervasive an intrusion into the self-esteem of a person as it feels at the first glance. The imposition of some tasks to be done by a detained person requires that she was put in a situation of inescapability, of a strong constraint of movements in a way that tends to be rather temporarily short. The testimony collected by ERRC of some Roma who were forced to clean the Police station shows that they were released shortly after that, and if we consider that those tasks took place during a detention we can conclude that outside the

station those practices are rather infrequent. Only in the case of prostitutes and transvestites who work in the streets there may be an exception, because the sexual labor required from them may be done also in the public space or in the Police patrols (albeit that may also happen in the stations). More importantly, it may be the only case in which forced labor takes place time after the victim was detained or stopped or somehow deprived of her liberty.

In other words, it may be the case that the victims of this kind of mistreatment be released from it soon after they did what they were obliged to, and may not continue to do that even later. However, the impact on the moral integrity of the person may be somehow equally affected if she spontaneously offers to perform the tasks once required (as may be the case of prostitutes). As explained in the previous chapter, forced labor is at a certain point common in Budapest when the detained are Roma, but uncommon in Cordoba when the detained are slummers: as we explained at the beginning, other subjects of Police mistreatment as women and sexual minorities are not part of the targeted groups as framed in the introduction of this thesis.

Finally, regarding allocation in degrading conditions it is noticeable that, however short the term of detention may be, it has a sound impact on the integrity of the members of the targeted groups. The overpopulation of places like the UCA of Cordoba engender a sense of danger that put into alert those who are allocated there, because of the violent reactions of the detained, who are forced to struggle for some space. The promiscuity of places where teenagers are allocated together with adults is always a source of risk of sexual abuse: the fact that the harm may come from other inmates and not from the policemen do not release the Police from their responsibility, because they were the only ones who had the power of making the decision of

detaining that person and keeping her there. An additional source of danger to the detained is the almost always infected sanitary conditions: the risk of catching any kind of diseases and wounds grows exponentially every single minute, because of the lack of properly cleaned premises.

The allocation in such places affects the self-esteem of those who are taken there because in the collective imaginary places like the UCA are seen as reservoirs of the unwanted, the unacceptable; nothing else than a human trash bin. Being sent there is like ascribing the host the category of a non-person, someone who is so lowly ranked as a human being that does not deserve any other treatment. Moreover, despite the actual name given to the prisons (at least in Cordoba), they cannot escape the fact that they are intended to produce pain in the form of deprivation of liberty, but also in the form of all other kinds of constraints to several rights.

Additionally, the potential harm that the detained may suffer in the form of wounds and diseases deserve the same kind of considerations as the beatings previously exposed: the body of the victims is used as a communicative device that conveys a message of submission and reification. The combination of the effect of merely being sent to a jail, with the stress suffered by those who are packed in such reduced spaces, and the bodily harm that so frequently affects the detained; has an impact on their self-esteem. This impact may be so deep, that it may well be the sum of all other kinds of mistreatment.

B) CONCLUSION

As was exposed, any single kind of mistreatment has a different impact on the self-esteem of the victims. Sometimes it affects in similar ways the slummers of Cordoba and the Roma of Budapest, and sometimes it does not. But notably there are a

number of features that are repeated: the inescapable assumption that the members of the targeted groups are misbehavers, the deprivation of the possibility of choosing among different consequences for a supposed wrongdoing (because the supposed offenders are not given a chance of any other treatment); the concrete impact on their self-esteem because they are treated in a humiliating way; the adjudication of a moral condition and the expectation of fulfilling the role of the reproachable.

Considering that the erosion of self-esteem suffered by the victims of Police mistreatment affects their possibility of having a different view of themselves, we can conclude that they are placed in a role they can barely escape. Acknowledging the subsequent impact on those practices on their dignity, it seems fair to conclude that they are allocated in a subdued societal place corresponding to somehow ‘lesser citizens’: groups of persons deprived from the basic respect for their human condition. How is that restriction impairing a fair and complete exercise of moral autonomy is the matter of the next chapter; by now, it seems clear that the members of the targeted groups enter into the second stage of our analysis in a very compromised condition.

CHAPTER SIX: The consequences of being a ‘lesser citizen’

In this final chapter we will go in depth into the consequences of police mistreatment, focusing in the way that this demeaning experience may determine or not the future behavior of the victims, time after they came across any of the described patterns of maltreatment.

In the previous chapter it was explained how do police mistreatment affects self-esteem and a basic sense of human dignity; in this one, the interest is put in showing how do the targeted groups react to their situation given those facts. Centrally, it intends to shed some light into the manner in which that reaction affects individual autonomy. Firstly I will expose the concrete affectation on individual autonomy using as a conceptual framework the ideas presented in the first chapter, specifically from the notion of what I call ‘avoidance behavior’; lastly I will suggest that such a pattern of behavior, when combined with structural and systemic discrimination, grows a sense of particularity that leads to the building of a ‘ghetto culture’ that reinforces undue restrictions to individual autonomy.

A) REACTING TO MISTREATMENT

Which are the consequences, if any, of the described patterns of unfair treatment? It can be argued that the targeted groups become, after a long period of repeated mistreatment, somehow reactive to Police practices that constitute unfair deprivations of their human dignity. Following this presumption, they should either get accustomed to it, or instead react bitterly against it. But this presumption falls short if we exclude the consideration of other behaviors that may be directed to the avoidance of mistreatment.

In the first scenario, the members of the targeted groups may just endure passively all what they have to suffer, restraining themselves to react against the constant aggression they get. It is hard to depict a situation more at odds from any known tenet of human dignity, and perhaps the only case that asks for such a resignation are those linked to religious feelings, where the unfairness that has to be suffered is taken as a proof of faith. Apart from that hypothesis, it does not seem permissible to expect that someone would freely accept –even tacitly- such treatment, even less on secular States where the pain inflicted has also secular purposes.

In the second case, a possible reaction would be to react in a bitter, outrageous manner, that is to say, opposing violence to violence. An exalted defense on the part of the members of the targeted groups would only deepen the abyss that nowadays they find between them as a community and the mainstream: that would be like declaring some sort of low-intensity civil war against the police and the justice system at large. The violent incidents that surrounded the trial against the murderers of Rodney King, shot by the Police of Los Angeles, U.S.A., will remain fresh as a warning of what may happen when an entire community reacts against what is felt as a ultimate act of aggression from the governmental agencies.

It is by no means unreasonable to think that the legitimacy of the state as the institutional arrangement put forward to protect and enhance the public welfare may be compromised when the perception of some groups is that they are so unduly outlawed, that they no longer belong to the same community in any sense we may attribute to that term. Moreover, a sensation may appear that they are just inhabitants of an occupied territory: the places they have always lived in, converted into something like a battlefield (the war on crime) and any single episode of Police abuse, just a casualty of

war. The use of the metaphor of war is not, let me insist, just a rhetorical resource, since the mere operative procedures used against the targeted groups, as well as the speech frequently used by politicians eager to show their concerned determination against criminality, remind too much the epic tone of wartimes⁸⁰. Moreover, the dramatic overtones of that epic are often supported by heavy symbolic policing tactics, like stationing fully armed patrol trucks in the entrance of some of the ‘city neighborhoods’⁸¹ to stop and search those who enter and leave the place.

A third, and more common reaction is to avoid systematically all the opportunities of coming across the policemen in the public space. The members of the targeted groups may skip those places where they may encounter the Police; they may refuse to use the public transport and resort to other means of transportation; they may no longer do certain things that may attract the attention, however legally permitted they may be. Even more, they may refuse to make claims for their violated rights. Should we draw a pattern of classification of those avoiding behaviors, it will include at least those three attitudes: avoiding places, avoiding conducts, avoiding claims.

Walking around the city of Cordoba would give an observer the impression that there are some places that seem to be ‘poor-free’, paradigmatically the avenues Rafael Nuñez crossing the high class neighborhood of Cerro de las Rosas, Hipolito Yrigoyen

⁸⁰ A personal anecdote might make this point clearer. Some years ago a close friend of mine was a volunteer of an educational assistance program for the people living in a huge slum in Cordoba, organized by the students union of the University. Once, in a casual after-class chat with one of the boys she assisted, he said something like “*don’t get confused, we are not all the same. It’s all right with you personally, but it’s your side and our side. It’s us and you all out there. Now you are in our place and it’s all right because you come to help us, but this is not your place: you belong to the outside and we belong to the inside*”. The boy was less than a teenager, but he had clear enough how should he expect to be treated if he adventured out of the slum.

⁸¹ In the last 5 years some of the slums of Cordoba were eradicated from areas that are close to downtown, and their dwellers transferred to neighborhoods built by the Provincial Government. Those housing plans often lack proper educational, sanitary and transport infrastructure and are located outside the highway that surrounds the city. They are given the name of ‘cities’: ‘City of the dreams’, ‘City of the Cuartetos’ and so on.

crossing the neighborhood of Nueva Cordoba, and the Buen Pastor Square bordered by Yrigoyen Ave. Those are among the most elegant places of the city and preferred by upper middle-classes and upper classes to walk around, sit on a patio cafe and do some shopping. The Police surveillance is constant, as described in Chapter Three, though subtle; not surprisingly, slummers are not visible there.

According to an interview to a poor, young guy done by the magazine La Luciernaga⁸², he wouldn't go to those places because every time that people like him tries to go there, they are detained. The interviewee described the experience as shameful: "you can't go there, even if you don't do anything bad the Police detains you and treats you like a criminal in front of everybody, it's very embarrassing." Teenagers that look like coming from the slums are not even allowed to enter the main private shopping centers, so they have to buy at stores in downtown, but that is not easy though. If they go alone to the downtown pedestrian zone, Police officers would stop them and ask the whereabouts of their presence there: as already commented, if they have new shoes or garment they are treated as suspects of having stolen them, if they just have the money to buy those, they are asked whom they stole the money from. So, to skip detentions many of them come to the city center accompanied by their mothers, never alone or in groups with fellows anymore. Girls who may look like coming from the slums have to bring babies with them, so they show they are harmless and skip being detained too.

In Bauman's words, *'ghettos and prisons are the two varieties of the strategy of "tying the undesired to the field", of confining, and immobilization In a world in which mobility and easiness of transportation have become main factors of social*

⁸² Conf. magazine "La Luciernaga", No. 95, May, 2005.

*stratification, it becomes a weapon of extreme social exclusion and degradation, of recycling of the low classes and the poor in general onto an underclass”*⁸³. His concerns can fully explain the effect of those surveillance and deterrence policies described above: slummers are tied to a certain territory by being prevented to enter others, what renders them as lesser people with less rights (at least regarding freedom of movement).

Staying at their places is not that secure neither, because they can be detained as well if they gather with friends in the square of their neighborhood, or even in the front of their houses: for ridiculous it may be, it is not unusual that youngsters from the slums are detained for ‘marauding’ their own houses, or at the corner of their houses, or in the way to and from school and work. Sometimes they are not allowed to enter their houses to look for their ID so they are detained for denying identification, at the very door of their houses.

They do not complain or ask the Police officers for explanations, because if they do they risk to be beaten. They could appeal the sentence they are given, but then they can either be held in the Police Station for longer time, supposedly waiting for their records (something that cannot be controlled: there is no way to know if their records are already at the Police Station or at the UCA or not) or can be detained more often. Placing a complaint at the disciplinary unit for the policemen is neither a good idea, because their complaints come to be known by the same officers they point out; and they risk suffering reprisals if they do.

Regarding Budapest, it is noticeable that Roma people are not frequently seen around avenues as Andrassy or at Varosliget Park or Margaret Island, not to say big

⁸³ Zygmunt Bauman, “Comunidad. En busca de seguridad en un mundo hostil” (Community. Searching safety in an insecure world), Siglo Veintiuno de Argentina, Buenos Aires, 2003. Page 142.

malls as West End, Arkad or the brand new Arena. Having spent almost a year in that city, I left with the sensation that also in Budapest there seem to be places of restricted access to the Roma. It may be said that it is natural that groups that suffer economic deprivations at rates much higher than non-Roma, may not find affordable to shop or to have a coffee at those places, and exactly the same can be said about the slummers in Cordoba. But this statement forgets that not all the persons who stroll along those places are consumers, many of them are just passers-by or are just having a walk around.

Concluding, there may be reasons other than just economic ones to explain the under representation of Roma people in certain places of Budapest. As stated in the Third Chapter, arbitrary detentions were not as usual there in comparison with Cordoba, but it was clear too that the Roma were more prone to be stopped and searched in the public space than the non-Roma, that being a probable reason for the members of the targeted groups to avoid certain places.

The statistics on Roma are admittedly not very precise because many members of the community may not admit their belonging to that ethnic group: according to official data, in 2001 there were 190.046 members of the Roma people living in Hungary, but the estimations raise up to 550.000/600.000 persons⁸⁴. Whatever the explanations may be for hiding away one's own ethnic belonging, there are not many reasons to believe that such a gap was reduced in a relevant way in the recent years. But there are plenty of reasons to believe that assuming a Romani identity may be burdensome in aspects as work, education and health service. It is hard to find a more

⁸⁴ Conf. report "Roma Inclusion. Lessons learned from OSI's Roma programming", Open Society Institute, New York, 2006. Page 8. Document available at http://www.soros.org/initiatives/roma/articles_publications/publications/inclusion_20060605, last visited on November 15th, 2008.

intrusive and demeaning avoidance behavior than that of untie oneself from the net of community partnership we were born in, and with broader impacts on the rest of one's life. Denying or hiding that someone is a Roma implies restricting the use of Romanes language in the public space, as well as wearing more occidental garment instead of typical dressings, two choices that are not always based on freely accepted cultural assimilation.

The Roma people have also troubles to use the public transport system of Budapest. The already quoted testimony of Iulius Rostas⁸⁵ regarding the way that the Police officers overwhelmingly prefer Roma people over non-Roma to stop and search them at the Metro stations suggest that the Metro is quite a dangerous place for them. Noticing that not many persons from the Roma community resort to that means of transportation, it is feasible that the reason for opting for others is precisely because of the major exposition to Police searches. As found by Prof. Istvan Pogany⁸⁶, they prefer to use their own cars, because then they skip interferences from the Police or the bad faces from non-Roma particulars with which they would otherwise share the transport devices. That may not be a definitive solution, since the Police prefer to stop older cars in need of repair, instead of newer ones that go unnoticed. Those cheaper cars are more frequently the ones that the Roma can have access to because of elemental economic reasons⁸⁷.

B) AVOIDANCE BEHAVIOR AND INDIVIDUAL AUTONOMY

Early in this thesis an emphatic dismissal was made of the idea that those who switch their normal and legal behavior to avoid the risk of police mistreatment, are

⁸⁵ See footnote 45.

⁸⁶ Istvan Pogany, "The Roma Café. Human Rights and the plight of the Romani people". Pluto Press, 2004. Page 135.

⁸⁷ Conf. report "I can stop and search...", see footnote 29.

making just a simple choice. It was stated then that such a “choice” does not fit into a rational election frame for a number of reasons: both options are morally demeaning and the motivations of an externally unconstrained action are distorted. For those reasons it is pertinent now to check how is the theory of individual autonomy introduced in the first chapter affected by the avoiding behavior.

When a moral agent acts in a way she may have not chosen if she were completely free, we would say, in H. Frankfurt terms⁸⁸, that she is not acting according to her desires of second order or second-order volitions. Starting from the beginning, an impartial observer would not be able to identify her desires of first order or first-order volitions, because the agent would be acting in a way she would rightfully reject. At the second level or “storey”, the observer would not be able to assess whether the moral agent would want to have that desire, or would have the desire of making that first-order volition her own.

To put it in simpler terms, a member of the targeted groups would act in an unwanted way (displaying avoiding behaviors), just to skip police mistreatment. That person may have the desire of acting in a different way (continuing her regular life) or may have the desire of choosing to act as she does for reasons different than those more compelling for her physical and moral integrity.

Going on with Frankfurt’s arguments related with the central role of second-order volitions, it is the freedom of choosing the reasons to act what determines whether a moral agent is autonomous or not. Only when the reasons for acting are the ones that were freely -and previously- selected, we are in front of an autonomous moral agent who acts upon her wills, but also who chooses which wills, among many, are

⁸⁸ As quoted and explained from page 12.

those she will act upon. In the case of this thesis, the main idea is that when somebody has to choose reasons to act that would be otherwise unacceptable, morally demeaning or contrary to the most elemental aspects of human dignity, that person lacks individual autonomy.

Using an example of the first chapter, if a Roma or a slummer chooses not to go to the neighboring square to meet her friends, not to wear in a certain fashion, or not to claim for her rights, all that for reasons other than her inner preferences or desires (i.e. because she wants to stay at home to watch a particular TV show, she wants to look neater or does not want to spend some time in a public office), then that person is not acting as a morally autonomous agent. Indeed, she is acting in accordance to someone's own moral viewpoints, whether are they explicit or even conscious, or not.

Who are the authors of those other moral viewpoints? They may be originated in the discourse of “moral entrepreneurs”⁸⁹, they may lay in the collective imaginary about a given group as a dangerous one that has to be as restrained and controlled as possible, by any means, or may simply be the unwanted effect of the search of a sensation of security. The fact that those moral viewpoints are not always built in a coherent way or even translated into words is irrelevant, provided that, as we stated in chapter two, some kinds of restrictions to autonomy are not necessarily given the form of explicit norms. Morals, traditions and customs are not always consecrated in any form of organized body; they are usually permeating the conscience of people, going frequently unnoticed. This is not meaning that they are not built on practices carried on by majorities, whom in certain times would seek to find the way of enforcing them by informal institutions.

⁸⁹ In the sense used by Zaffaroni, as quoted and commented in footnote 43.

Restricting the freedom of movement, action and expression of the Roma of Budapest and the slummers of Cordoba, and substituting their second-order volitions for those built upon the pressure of the mainstream, equals to transfer to the mainstream the authorship and sovereignty of their moral principles. That is so because having volitions of second order is what makes a person an autonomous moral agent, and because when that person is deprived of exercising that second-order volitions she has to assume someone else's desires or preferences.

All those features constitute a critical attack onto Gerald Dworkin's six characteristics of moral autonomy, what happens as follows: the authorship of the moral principles of the members of the targeted groups is either expropriated by the mainstream or by other moral source, or distorted in a way that they are no longer recognizable; they are no more their originators because the origin ceases to be the will of the author; they cannot chose their own moral principles anymore because those were imposed by external forces; they lost the authority of their moral principles, which is transferred to an intangible ruler; they cannot select which moral principles are binding upon them because even in the case that they agree with the content of some of them, they lost the possibility of rejection; they cannot accept the moral responsibility for acting upon principles that are not their own; and they could not refuse to accept others as moral authorities.

Two objections can be made, at least that I can quickly notice at a first glance: firstly, that simply being constrained to act in an undesired way is not necessarily annihilating the moral autonomy of that person; secondly, that there is nothing visible acting as a 'supra-individual' moral autonomy. The first objection misses the point that moral autonomy may not be completely lost when a person is coerced, simply because

under coercion we are in presence of a suspension of moral autonomy. In other words, when a person is forced to do something or not to do it, her wills are somehow ‘put between brackets’, and does not act but is ‘acted through’ by the one that exerts coercion. That is the reason why penal laws exclude the punishment of those who are forced to move or stand still in the event of a criminal action.

The nucleon of the distinction is that we shall not confuse freedom of movement with individual autonomy: whilst freedom of movement is a part of autonomy, this latter concept includes a vaster realm of application, including other moral actions that do not require any physical movement at all. But it is entirely different when someone keeps on doing something or not time after the physical coercion ceased: removed the necessity of freedom of movement from the concept of autonomy, the mere change of behavior caused by unwanted wills is itself a case of impairment of autonomy.

Regarding the second objection, the lack of an explicit formulation of a given moral viewpoint, or even the fact that there may be a number of differing and sometimes contradictory moral mandates, do not exclude the fact that certain consequences derive from them. Moreover, one of the main issues of this thesis is that restrictions to individual autonomy may surge as unwanted or unexpected consequences.

The very concept of ‘discrimination as applied’ –referred to laws- explains that a given norm may cause the effect of discriminating or in any other way burdening a certain social group. Despite how facially neutral that norm may look, it is long established that the courts have the power of dismissing that norm as unconstitutional because of the unequal impact on different groups. If a law passed in good faith can be

deprived of its normative power and therefore of the moral relevance of its application, it seems obvious that a set of practices that have the effect of determining unduly restraints on individual autonomy can be equally pointed out as unjust, however spread and subtle they may be.

C) CONCLUSIONS

This last chapter purported to show the relations between the first part of the thesis, consisting in a rather abstract conceptual building around individual autonomy and its due and undue restrictions, as well as related concepts like self-esteem and human dignity; and the second part, comprising a brief theoretical elaboration on Police mistreatment and some patterns of it in Cordoba and Budapest. Then I pretended to show that Police mistreatment consecrates a subdued condition to those who are part of the targeted populations, because the impairment of their self-esteem produced by an unfair treatment leads to an attack to their human dignity. That develop conducts that are understandable as a means of reducing the risk of pain and fear, but which in no way can be accepted as the exercise of moral autonomy on the part of those who endure systematic mistreatment.

The relevant point at that stage is to acknowledge that acting in a way that was not desired and –even with the lack of physical coercion- guided by reasons that the agent would have never follow if given the choice, and that prevents an agent to fulfill any of the requisites of an autonomous moral agent, is what renders the slummers from Cordoba and the Roma people of Budapest as ‘inauthentic agents’. It is pointless to claim that being inauthentic was not chosen by them; instead, that circumstance shows to which extreme the moral condition of a person depends on environmental and contextual relations.

It is precisely the influence of the surrounding net of others' experiences, prejudices and practices on the development of a person's moral autonomy what transfers a heavy part of the attention to society. Being careful not to overestimate the context, it seems clear that the development of spaces of responsible autonomy for members of the targeted populations will depend to a substantial degree on the way the State institutions and public policies are designed, operated and controlled. In sum, it is a matter of understanding the depth and extension of the democratic frame once chosen by the Argentine and the Hungarian nations.

CONCLUSIONS AND RECOMMENDATIONS

Public policies have explicit and implicit objectives, which lead to results that are most of times expected, but they have also some other results that are neither the explicit, nor the implicit goals that gave a justification to those policies. Some particular types of security policies put an overwhelmingly high pressure on certain groups -already disadvantaged- with the aim of addressing specific and completely acceptable goals, but disregarding other consequences.

The need of security came in the last 15 years to tackle the sense of vulnerability that surrounds persons who are no longer part of the great narratives of a broader human experience, lived through the concepts of religion, nationalities and ideologies. A German word was found by Zygmunt Bauman to describe that feeling: ‘Unsicherheit’, that means at the same time ‘uncertainty’, ‘insecurity’ and ‘non protection’⁹⁰. I could not find a word, neither in English, nor in Spanish or Portuguese, to convey those three meanings at the same time. It is understandable then, that this sense was articulated as a political demand that turned into policies that tried to provide security to citizens that had to face, perhaps for the first time, all the fears of the limited endeavor of a life that is now disconnected from the great narratives described above.

We can understand security policies as a part of a State’s public policies that try to assure two main issues: the level of crimes in that society, and the societal fear of crime. Both have a negative impact on the life of the members of society, and need to be addressed to provide a minimum space of certainty to allow people to live their own

⁹⁰ Zygmunt Bauman, “En busca de la política” (In search of politics), Ed. Fondo de Cultura Economica, Buenos Aires, 2001. Page 13.

lives: that was the justification of restrictions to autonomy for the classical liberals as John Stuart Mills.

But in ever changing and complex societies, an increased care has to be taken by policy makers not to overburden certain groups that have always been seen as sources of unrest. It may be true that most of the small crimes against private property, as well as some other behaviors that cause unrest, are committed by people coming from the slums in Cordoba, and by the Roma in Budapest. To be completely explicit: it may be the case that the members of the targeted populations are responsible for many of the crimes or misdemeanors they are indicted for. But it is also true that those are not the only crimes or misdemeanors committed in both cities. Moreover, by definition those are not the type of crimes that create a really serious social harm, or endanger the basis of social life: terrorism, State terrorism, massive drug dealing, human and weapon trafficking, massive frauds, environmental crimes, are not the kind of illegalities that are prone to be perpetrated by the slummers or the Roma. They may engage in more visible illegalities, easy to detect, suffered by a lot of people, but few of their victims may end up dead or seriously injured, and none may go bankrupt.

However important is the task of providing for safe public spaces where community life takes place, when the agents of the State narrow their scope to those who are already pointed out for small criminality, they run two risks. On one side, they deepen the perception of those groups as evil, perpetuating the patterns of exclusion thereof; and at the same time, they may loose ground against serious crimes, because they are spending precious time and resources searching, detaining and harassing marauders and prostitutes.

An additional problem for this is that it is unavoidable to find patterns of ethnic profiling, what erodes the legitimacy of the Police work. The abyss between the mainstream and the diverse minorities and impoverished majorities grow deeper, making more difficult everyday to provide common grounds for any sustainable policy that requires a narrow cooperation between the State and the citizens. That includes, dramatically, security policies whose success depends too much on the cooperation of the inhabitants of certain problematic areas, as well as members of certain minorities.

Moreover, some of the conducts that trigger an event of Police mistreatment, be they arbitrary detentions, insults, threats, etc., are not really dangerous ones, but just typical forms of expression of –some of- the members of the targeted groups. Being loudly, dressing in a certain way, drinking a beer in the corner or even smoking light drugs in the square are not intrinsically dangerous behaviors. Some of them may be prohibited by administrative laws, some may even be included in penal codes, all of them can create fear and unrest on some neighbors, but they are not directly and inevitably a source of severe danger. By criminalizing that kind of conducts, sometimes an entire way of life is criticized and deprived of its value.

I stated in the introduction that this thesis was about individual autonomy, and not about security policy. I tried to demonstrate that Police mistreatment has an impact on individual autonomy, given that the members of the targeted groups are forced to change their ways of life, abandoning certain practices and customs that are harmless but concentrate the fear of surrounding people. I tried to expose that the members of the targeted groups are demeaned in their human conditions, in a way that resemble the Roman term '*capitis diminutio*': a class of people with less rights than the rest, a group

of human beings who are not yet persons. Is there any consequence on this? Is that deprivation of individual autonomy a serious problem?

Of course that it can be argued that this conclusion is by no means a novelty, since there were always groups of people in any society who were considered of less value than the rest. But it happens that both countries, Argentina and Hungary, have made strong commitments to at least the most basic requirement of equality as necessary for the principles of liberal republics; they did it in the past when their constitutions were written and they reinforced that commitment as part of an international community based on the respect of human rights.

Both countries have endured hard decades in which the value of human life –not to say dignity or autonomy- was dependant on the political or social affiliation of the citizens. Both have chosen to live in such a way that the dignity of the entire nation is equal to the dignity of every single citizen. Both have made constant efforts to provide public policies (including those related to security issues) that support, enhance and deepen the respect for and the exercise of individual autonomy as one of the founding pillars of their way of life.

But sadly, both have self-defeating particular policies that weaken the consistency of their democratic commitment: the key idea of this thesis is that the architecture of democracy is endangered by detrimental practices that are not still completely eradicated, and the destroying effects of those practices are far more pervasive and harmful than what seems at a first glance. The problem is not the existence of isolated events of Police mistreatment: the problem is what seems to be an extended tolerance of apparently systematic patterns of mistreatment. It is hard to imagine how would the State be an agent of welfare, of security, of protection, if the

first –and frequently the only- branch of it that reaches an extended part of the population is a punitive system that finds problems to restrict itself to the cases and situations where the State violence is truly needed.

What has to be done to restore the original values of democracy, those founding pillars of which individual autonomy is the central one, while at the same time complying with the legitimate requirements of life security that allows precisely, the enjoyment of individual autonomy?

As Gargarella suggests⁹¹, having chosen a representative democracy instead of a more direct and extended democratic system has some problems of legitimacy that can only be solved by a robust public debate, in which the voice of those systematically disadvantaged should be specially taken care of. Those who are now portrayed as the bearers of all evil should be considered firstly in their whole human dignity; and in such character given a voice to participate in the public debate. Secondly, an effort should be made to reconfigure the symbolic language related to those groups, in order to ascribe them the status of plentiful members of the public realm. This should include strong efforts to work with the Police in two correlative directions: to build a different and more humane perception of the groups they have been targeting; and to provide better tools for effective policing, excluding ethnic and social profiling. Thirdly, building community networks that are able to create confidence where there was suspicion and hostility. As Bauman states, *‘if there has to be a community in a world of individuals, it can only be (and has to be) a community intertwined from sharing and mutual care; which tends to and takes responsibility of the equal right to be humans,*

⁹¹ Conf. Roberto Gargarella, “El derecho a la protesta, el primer derecho” (Right to protest, the first right), Ed. Ad-Hoc, Buenos Aires, 2005. Page 59.

*and the equal possibilities of enjoying that right.”*⁹² This is far more than just recognizing equal procedural rights to the targeted groups: it requires specific policies addressed to highlight the human conditions of the Roma and the slummers.

I acknowledge that both targeted groups have deep and crucial differences, so any proposal should be clearly aware that it is not possible to apply exactly the same tactics in Cordoba and Budapest. The fact that the Roma are an ethnic group, even considering the broad cultural and socioeconomic differences among ethnic subgroups, allow to provide specific programs as the “Decade of Roma Inclusion”⁹³ by several Central and Eastern European nations. Those programs may focus on the cultural heritage of the Roma and how enriching can be for the countries they live in to fully integrate them, with due respect for their internal diversity and their cultural tenets. Given the key importance of education on individual and communal development, strategies based on school desegregation may well be a workable starting point. For instance, the Hungarian School Integration Program was launched as a governmental initiative oriented to support Romani children and families, as ‘step-by-step’ teaching assistance tailored to the needs of every child, financial assistance to schools with Romani children majorities and extracurricular activities oriented to prevent dropouts.⁹⁴

The same strategies are not directly applicable in Cordoba, because the slums are a historical consequence of decades of socioeconomic exclusion of vast segments of society, as well as unsolved immigration problems that prevented immigrant workers to

⁹² Zygmunt Bauman, “Comunidad...” (see footnote 88). Page 175.

⁹³ For information about the Decade of Roma Inclusion programs, please check http://www.soros.org/initiatives/roma/articles_publications/publications/inclusion_20060605/Roma-Inclusion-WEB.pdf, and http://www.soros.org/initiatives/roma/articles_publications/publications/roadmap_20060101/equality_20060606.pdf, both visited last time on November 09th, 2008.

⁹⁴ Conf. Viktoria Mohacsy, ‘Government initiatives: Hungary’s School Integration Program’, at “Separate and unequal. Combating discrimination against Roma in Education”. Public Interest Law Initiative – Columbia University Kht, Budapest, 2004. Page 242 – 248.

legalize their status. It is not easy to draw a line to define who belongs to the groups that should be addressed by specific policies, and who does not. The targeted in Cordoba are more closely related to poverty than to the membership of a given ethnic group, which requires a different scope.

However, experiences as the magazine La Luciernaga, written, edited and sold by children who work on the streets of Cordoba, have contributed substantially to reduce the prejudices against them that come from other inhabitants. Moreover, the foundation that supports the magazine has helped a lot to take working children out of the streets, providing them with medicines, informal school backing, training for self-help entry-level businesses, and even medical help to overcome illnesses or addiction problems. According to an informal interview sustained with one of the program's lawyers, some arrangements have been made with the Police so that they do not detain the sellers of the magazine (at least not arbitrarily). At the same time, by giving them the opportunity of having a fair and legitimate job, some of them who used to indulge in minor crimes against property had the option –perhaps for the first time in their lives- of choosing other ways of making a living. It constituted a space to legitimize their very existence and provided the basis for building self-esteem and a sense of human dignity that leads to autonomy, very much in the line of the planned cultural programs for the Roma in Hungary.

It is interesting to observe that too frequently the most successful experiences related to security, both objective and subjective, come from strategies and initiatives that had nothing to do with them, at least at a first sight. In Castel's words, *'there is no doubt that insecurity must be combated too, and at a great degree, through a struggle against social insecurity, that means, developing and reconfiguring the social*

protections.”⁹⁵ We cannot think of a strongest condition for safety than active participation in the resolution of whatever problems any society may encounter. However, a deliberative reconstruction of the problem of the Roma and the slummers should include not only the members of the targeted populations, but centrally the Police as an institution and its men and women as workers, as citizens, as neighbors.

A certain bias towards the Roma and the slummers may be perceived in these pages, but I refuse to engage in binary settings: after recovering democracy and in the mission of enhancing it, too many activists and key actors still bear a ‘friend-enemy’ vision of social conflicts. Under a deliberative frame all those involved must be taken into consideration, and at this point I want to emphasize that also the members of the Police do have several restrictions to participate in a robust and open debate. If the level of dignity of a whole society is equal to the dignity granted to its lower ranked members, the level of democratic strength of a State is equal to the democratic rights conceded to the members of its more vertical institutions.

Building the conditions for debates related to security policies as one of a State’s policies, in such a way that it explicitly includes all those addressed by them, is far more than a smart operative decision oriented to efficiency. It is the way of reconstructing the bases for a truly democratic society and closing the corrosive threat of practices that grind down the legitimacy of the State, and is also the way of taking seriously Mill’s notion that individual autonomy can only be restricted for the sake of liberty.

⁹⁵ Robert Castel, “La inseguridad social. ¿Que es estar protegido?” (Social insecurity. What is to be protected?, Ed. Manantial, Buenos Aires, 2003. Page 116.

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