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36th Congress of the
International Institute of Sociology
Beijing, 7-11, July 2004

LAW, ORDER AND IMPUNITY IN CONTEMPORARY BRAZIL

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To be presented at:

Session 93: THE AGE OF INSECURITY: SOCIAL CONFLICTS, VIOLENCE AND THE BUILDING OF PEACE IN EVERYDAY LIFE ON POST MODERN SOCIETIES, 36th World Congress of the International Institute of Sociology, Beijing (China), 7-11 July 2004. Organizer: JOSÉ VICENTE TAVARES DOS SANTOS (UFRGS - PORTO ALEGRE, BRASIL - ALAS - LATIN AMERICAN SOCIOLOGICAL ASSOCIATION). Preliminary version. Do not quoted without authorization.

Law, order and impunity in contemporary Brazil¹

ABSTRACT

Violent criminal offenses have been increasing in Brazil since the beginning of the 80's including the gross human rights violations. This growth was not accompanied by a proportional increase in the number of inquests and penal processes. Existing data suggest that the rates of impunity for these crimes are higher than other countries such United States. Despite the fact that impunity is expected to be very high, there are strong elements to suggest that they are groups far more vulnerable to arbitrary behavior by law enforcement agents. This presents a paradox: on the one hand high level of impunity that is contrary to a modern society based on the respect for the law, for a legitimate authority that is in itself the result of the social contract and on the other hand a bias in the enforcement of legal sanctions, the result of the application of punishment without due respect for legal constraints. The latter incompatible with democratic and the respect for human rights. What are the limits for punishment beyond which the exercise of power becomes arbitrary and abusive? What punishment is compatible with contemporary democratic order and with present policies of human rights? In order to answer these questions, this paper is based on ongoing research that examines a sample of violent criminal offenses. In order to measure penal impunity the research identifies the profile of cases that lead to impunity and to punishment based on police records, inquests, and judicial processes that took place in the municipality of São Paulo from 1988 to 1997. The data collecting is based on the *follow-up institutional model*. The research selects and tests variables searching for main effects on the judicial decision-making.

The sociological problem

¹ This paper summarized the main objectives and the main achievements of an ongoing project based on the study of penal impunity for violent crimes, especially deep human rights violations in Sao Paulo, municipality (Brazil). It has been sponsored by Fundacao de Amparo a Pesquisa do Estado de S. Paulo (FAPESP) since the Center for Study of Violence at USP has become a CEPID (Center for Research, Education and Innovation). The present team is composed by: Renato Oliveira de Faria, Mariana Mendonça Raupp, Cássia Santos Garcia, Cristiane Lamin Souza, Fernanda Emy Matsuda, Juliana Ribeiro Brandão, Ricardo Ferreira da Rosa, Tatiana Santos Perrone, Otávio Augusto Fiúza Albuquerque, Messias Moreira Basques Junior. Many thanks to Nancy Cardia, vice-director of NEV-CEPID/USP for your support to the english translation and edition.

The research project deals with the persistence of challenges to the full respect for human rights in Brazil, during a period in which the process of democratic consolidation overlaps with the growth of violent criminal offenses. This research seeks to fill in one of the main gaps in this field in Brazil to measure how much impunity effectively exists. So far there are only informed guesses. There is little research done in this field (Soares et al.; Adorno, 1994 e 1995; Pinheiro, Adorno, Cardia et al., 1998). What there is suggests that rates of impunity are higher in Brazil than France (Robert and all, 1994), the United Kingdom (Jefferson e Shapland, 1994), and the USA (Gurr, 1989; Donziger, 1996). Impunity is not evenly distributed some types of offenses seem to result in more impunity than other. For instance it seems that in Brazil gross human rights crimes (abusive use of lethal force by the police forces, lynching and death squad's) along with white-collar crime are the types of crime that result in even greater impunity.

Despite the fact that impunity is expected to be very high, there are strong elements to suggest that if there is punishment it is directed to certain groups in society, in particular to groups most excluded from rights and from access to justice. This means that they are groups far more vulnerable to arbitrary behavior by law enforcement agents. In two previous research projects this trend was confirmed (Adorno, 1994 e 1995). Both studies identified the greater probability of punishment for Blacks, for migrants and for the very poor. Punishment seems to have a clear class bias and as such any have become a powerful tool for social control (Costa, 1995; Vargas, 1999).

This presents a paradox: on the one hand high level of impunity that is contrary to a modern society based on the respect for the law for a legitimate authority, the result of the social contract and on the other hand a bias in the enforcement of legal sanctions, the result of the application of punishment without due respect for legal constraints. The latter is incompatible with democratic and the respect for human rights.

What are the limits for punishment beyond which the exercise of power becomes arbitrary and abusive? How can we ensure the respect for the rights of the majority? How can we conciliate punishment with human rights and democracy? What punishment is compatible with contemporary democratic order and with present policies of human rights?

Theoretical Framework

The theoretical framework rests on three thematic perspectives: a) law and order; b) the state's legitimate monopoly of the use of physical force; c) punishment. The first perspective was explored, in a preliminary way, in a previous paper (Adorno, 1998). Through this period of the report further work was carried out through the seminars with Prof. Teresa Caldeira, Visiting Professor at the NEV/USP, when the political, institutional and cultural problems derived from the crisis and rebirth of the liberal tradition of Law, Order and Sovereignty were extensively explored. This second perspective has been further explored in a recent publication (Adorno, 2002; cf. copy 3.3). In this paper the author explores the Kantian tradition of the State and the impact this had on the famous definition of the State by Max Weber with its three essential components: the legitimate monopoly of violence, domination and territory. In modern society legitimate violence is that which is used, within the legal boundaries and limitations, to secure the sovereignty of the Nation State and or a threatened unit of the territory. Here legitimacy and legality overlap. This notion of a legality which is molded by the boundaries of a specific territory evokes the issue of governmentality as explored by Foucault (1989), for whom to govern is to establish a certain type of relations between people and things, between wealth and peoples and between the territory and the protection of life.

More recent literature has raised questions about the adequacy of the classic Weberian concept of state monopoly violence and present State. Michel Wieviorka (2004), for instance questions whether contemporary State, that has over and over failed to exercise full control of the economy: having to accept the informality of the labor market, of the shadow economy, illegal market, strengthening forms of infra and cross state solidarity and competition, regardless of whether they are exercised in a clearly delimited state territory or not. It is not unusual that States do resort to illegal forms of violence: " it is ever more difficult for states to adopt their classic functions. The legitimate monopoly of physical violence seems more and more fragmented and in practice, the famous Weberian formula seems less and less adequate to contemporary reality (Wieviorka, 1997, p. 19).

More and more often obituaries are written for the Nation State, based on the argument of the loss of the state monopoly of physical violence. Herbert (1999), in a recent paper produced a summary of the contents of such obituaries: the argument most often used is that internal and external pressures challenge the legitimacy of the contemporary Nation State. External pressures are the result of economic and social globalization that undermines the sovereignty of the State. Such pressures involve the dissemination of patterns of consumption and production that, while strengthening the power of multinational corporations, weaken local states' power to regulate the market and to prevent an abusive use of power by very strong groups against weaker ones. State power is also weakened by the dissemination of technologies that resulted in that capital, goods, information, peoples, concepts and ideas are now exchanged at rates never witnessed before.

The legitimacy of the Nation State is also internally challenged due to the cuts applied to the *welfare state* drastically reducing social safety nets. Such reduction would have multiple impacts; the realm of Law and Order would not be an exception to this. Budget cuts will have impact on Public Security policies as well. When different forms of highly profitable organized, transnational, entrepreneurial crime are growing, in particular drug trafficking, budget affect the efficiency of drug combat agencies. This can encourage sectors of organized crime to compete with the state over the dominance of territories, over the control of social organizations and even over social interactions at micro level. This exercise of dominance by organized forms of crime will be arbitrary and based on the instillation of fear. The loss of the state's monopoly of physical violence undermines the legitimate cornerstones of the sovereign Nation-State and this is visible in three trends: a) the growth of communitarian forms of policing; b) the growth of private forms of security; c) transnational police operations. Garland (1996, 2001) and Shearing (1992) are without doubt the most important analysts of this process.

The arguments pro and against this thesis of a crisis in the political sovereignty of the Nation State vary according with how analysts understand the role that Kantian and Weberian traditions play in the constitution of modern state. Should the analysts consider that the tasks identified by Weber have all been fulfilled, new political and

institutional arrangements for crime control would be needed, moreover at this “new” era of globalization. Should this be the case the question pending would be in how far the growth of violence in the Brazilian context is the result of a loss of control over the territory and as such the loss of the state’s legitimate monopoly of physical violence? In how far government’s policies to regain law and order and the state monopoly of physical violence achieve progress in this direction? In how far are such actions coherent with policies that aim at the protection of human rights while enforcing law and order?

The third perspective is still being developed. It will explore the theme of punishment in modern society as pursued by the so-called classical Sociology. Beginning with a new reading of the two major works by Émile Durkheim (*Of the Division of Social Labor*, 1893; and *The Suicide*, 1897). The re-study of the latter work in particular has revealed a number of instigating problems of articulating theories of social integration and the empirical study of social anomie. This re-reading of Durkheim is also allowing a new approach to a number of methodological issues such as the critical assessment of the source of the data, the design of typologies, comparative and multivariate analysis and the issue of social rhythms and forces that will contribute to the project.

Recently this theoretical framework was improved by bringing in a contribution from Norbert Elias about the historical process of modern state formation and that of the role that legality and legitimacy play in this process and in particular the role of the legitimacy of the Penal Code. More literature is being reviewed on the role that daily routine and practices in a police station play in the process of legitimacy of this Code, as we suggest at the conclusions of this report.

Object and objectives

The research consists of a sociological study of impunity. It will measure criminal impunity or the surrender of penal sanctions for certain types of criminal offenses. The research follows the paths of cases within the different institutions in order to establish how and at what stage of the path impunity or punishment is defined. This implies in being able to isolate the circumstances, and or factors that favor the selective distribution of punishment as well as their causes.

The main objectives of the research are:

1. to draw the profile of the types of criminal offenses selected - whether violent crime or not, in the Municipality of Sao Paulo for the period 1991-1997 that have resulted in formal police investigation: the inquiry,
2. to draw the social and legal profile of the actors involved as they appear in the police investigations and in judicial processes,
3. to identify the paths followed by the cases as investigations are dropped or progress through the judicial path leading to either punishment or acquittal, measure the size of penal impunity as well as the causes of impunity.

Methodology and data collection techniques

The research universe encompasses five types of violent crimes and four types of non-violent crimes that took place in Sao Paulo between the 1st of January 1991 and the 31st of December 1997. Violent crimes under study are the types that grew most in the ten year period selected: intentional homicide, rape, robbery (including robbery followed by homicide) and drug trafficking. Three types of non-violent crimes were also selected, to compare the rates of impunity between violent and non-violent crimes: theft, larceny, and drug use.

It was necessary to restrict the area of geographical coverage caused by the enormous territory covered by the municipality. The area selected covers 14 police precincts and 2 specialized Women's Police Station. They cover an area, which in 1996 had 1.471.047 inhabitants which corresponds to 15% of the whole of the city's population. This area occupies the Northwest and part of South regions of the municipal territory, where there are poor and rich districts and where we can identify working and popular classes side by side with middle and upper classes. In the period 1991-1997, 18% of the police records for the crimes selected for this study were recorded in this area.

The sources used were the Police Book of Records of Offenses and the Police Book of Records of Inquiries. When needed, to complement information, the books used during the police shifts were also used. Another source of information is the books that register cases that are forwarded from other police precincts. As result the data collection not

only made full use of the recording tools but also covers the transit of cases between police precincts.

The following information was collected for each of the selected types of criminal offenses: identification of the case; type of crime; attempted or perpetrated; person(s) responsible/accused; police procedures adopted; identification of the police inquiry; type of goods stolen, robbed; other relevant information: occurrence of more than one type of criminal offense; and whether there were other documents appended to the case.

Two data bases were built one for the data on police records and the other for the data from the police inquiries; all the data was checked and reviewed for consistency and new visits made to the police precincts to complement data; data from the two data bases were cross checked to identify which of the cases recorded by the police actually became police inquiries.

During data collection the team was trained to write a field diary. In this diary the team reported their observations of the police precinct setting: the physical environment, the furniture, the maintenance of the place, the routines of the precinct, the dialogues between the police officers and the researchers. The field diaries provide much material about the reactions of the police officers to the presence of the researchers, to the concept of researching as well as witness some embarrassing situations. Both the data collected and the diaries reveal that there is little or no importance given to a rigorous report of facts reported to the police and less so to the production of police statistics, one of the main reasons to register the cases with little care. The diaries reveal the first steps in the construction of criminal impunity.

Main achievements

Between the 1st of January 1991 and the 31st of December 1997, 603.083 cases were recorded in the police precincts in the 3rd Police Macro region, resulting in 76.291 police inquiries. This represents roughly 18% of all the cases registered in the same period in the city of Sao Paulo. Of this total 57,2% (or 344.854 police notices) refer to violent and non-violent crimes focused in this research. These resulted in 21.921 police inquiries corresponding to 6,36% of the total of police notices recorded for such crimes. This result suggests that some process of selection is in course. It also suggests that police

performance plays a key role in penal impunity. This percentage does not express the conversion rate of a police notice into a police inquiry.

In the period selected for this study the population in the area dropped, presenting negative growth (-0,33) while the population in the city grew by 2% but crime grew in the period by 22%, violent crime having grown by 43% in the period while non-violent crime grew by 10%. Crime grew more than the population and also grew in violence.

When compared to the city of Sao Paulo this area presents a crime rate per 100,000 residents that is much higher than that of the city. In 1996, in this region the combined rate for violent and non-violent crime was of 3.378,55 crimes per 100,000 residents. The violent crime rate for 1996 in the area, was of 1.350,53 per 100,000 residents and the non-violent crime rate was of crimes 2.028,01 per 100,000 residents a year. The city presented in the same year 2.132,67 violent and non-violent crimes per 100,000 residents and 1.066,33 violent crimes per 100,000 residents and 1.467,45 non-violent crimes per 100,000 residents.

The crimes reported to the police are non-violent crimes 61,44%, while violent crime corresponds to just over 1/3 of the crimes reported: 34,06%. Then same ratio is valid for the city and for the 3rd Police Macro Region as is true for the decade of the 1990's for both regions and for other large cities in Brazil such as Rio de Janeiro and Belo Horizonte (Caldeira, 2000; Lima, 2002; Soares et al., 1996; Soares, 2000; e Beato, 1998). Non-violent crimes also grew but reached their peak of growth between 1993 and 1994. In the following years there was a slight decline and then seem to have estabilized whereas violent crimes had their peak of growth between 1996 and 1997.

Robberies present a larger growth rate 93,5%. Homicide represent 4,19% of this growth and rape 1,39%. Other types of police notices: body found, death without known causes, resistance to the police followed by death, investigation on cause of death represent 4,5% of all police records, a percentage that is slightly higher than homicide. Part of these cases may have been re-classified as homicide once the post-mortem examinations were made. Drug trafficking is responsible for 0,57% of the violent offenses. Amongst the non-violent crime, theft is the most common 95,66%. Larceny is a much rare phenomena (3,69%) and so is the use of drugs (0,66%). In sum the predominant

type of crime in the region both in terms of violent and non-violent crimes is that of crime against the property.

The homicides were relatively stable throughout the period. Homicide recorded by the local police precincts grew more than the population in the area. While the population diminished in the period, police recording of cases grew by 15% between 1991 and 1997. From 1996 onwards, homicides change and there is a clear tendency to grow. In a single year reported homicide grew by 24%. Robbery grew three times as fast as homicide in the area, and in 1996 similarly to homicide, but more so robbery grew by 27% in a single year. The year 1996 is also the year in which drug traffic, that previously was a very low profile crime grew by 22% suddenly presents a negative growth of -17%. In the period (1991-1997) drug trafficking grew by 102%. Amongst non-violent crime drug use presented the most growth (14%), followed by theft (11%).

Except for “death without known causes” that grew by 183% between 1991 and 1997 all other suspicious deaths declined in the period: “bodies found” by -73%; “resistance followed by death” by -90% and “investigation on cause of death” by -14%. It is possible that police officers changed their definition of the events and grouped suspicious deaths under in the category “death without known causes”.

The Brazilian Penal Code draws a distinction between cases in which a crime was attempted but for some reason the action was not completed, either because the police intervened or because the victim reacted. This distinction also has an impact on sentencing; sentences should be lighter for attempted than for perpetrated crimes. As result of this distinction the crimes under study can be classified as attempted or perpetrated/completed. This is valid for all types of crimes, including drug trafficking. The vast majority of cases reported involves completed crimes: 96,12% of the violent crimes were completed and 98,19% of the non-violent. Homicide and robbery followed by death present lower percentages, indicating that some of the cases refer to attempted homicide or attempted robbery followed by attempted homicide and so on. The relevant information for the purpose of the research is that in roughly 1/3 of the cases involving homicide the victim was still alive at the time of the reporting of the case. The same seems to be true for robbery “followed” by death. Previous research in Brazil (Adorno, 1994) indicates that when victims survive there is greater likelihood that the perpetrators will be known, prosecuted and sentenced.

It is to be expected that there is greater incidence of attempted crimes than that of perpetrated crimes. This over representation of “completed” /perpetrated crimes indicates that: a) there is little incentive for victims of attempted crimes to report to the police, either because they do not trust the police would care, or because they are afraid. Since there is little victimization survey in Brazil we cannot ascertain why this happens, what we do know is that this overrepresentation occurs. It will be very important to see how this affects the flow of justice.

Crimes with unknown perpetrators or suspects or yet aggressors represent the vast majority of the cases reported to the police, regardless of the type of crime: violent or non-violent. In 93,3% of the violent crimes and 94,93% of the non—violent crimes reported to the police the aggressors are not known. Considering just the different types of violent crimes robbery is the crime in which most often the perpetrators are unknown to the victim -95,22%. This is followed by robbery followed by death in which 80,91% of the cases the person reporting the case did not know who the perpetrator was and by homicide 76,6% of informants did not know who was he aggressor. The few rape cases reported present higher levels of knowledge about the aggressor: in 42% of the cases the aggressor was known and in 57,14% unknown. Drug trafficking, as one would expect, is the type of crime in which the perpetrator is most often known: 97,32%, because in general dealers were caught “in flagranti delictus”.

Aggressors/perpetrators are also unknown for most non-violent crimes: in 95,63% of the recorded cases of theft and in 93,32% of the cases of larceny the authors are unknown. Nevertheless similarly to drug trafficking, in the case of drug use the offenders are known in 97,34% of the cases recorded. Not surprisingly, as there is no certainty that there is any crime, in the different forms of “suspicious deaths” the vast majority of cases has no information about suspects, 98,89%

In sum in the vast majority of the cases reported to the police, except for drug use and trade the culprits are unknown when the case is reported to the police. Although it is to be expected that in such large city, anonymity would ensure that crimes can be perpetrated without the immediate identification of those responsible. Also most crimes reported to the police whether violent or non-violent the main characteristic is that both tend to be crimes that were actually perpetrated and not attempted. Such crimes tend to result in major

damages (monetary, physical or psychological) to their victims. It would be reasonable to expect that the police should give priority to clearing such cases the police inquiry is the first step to carry out the investigation of the cases. Thus we can expect that cases in which a crime was actually perpetrated and in which the aggressors are unknown would result in police inquiry.

At first analysis this appears to be true: of all inquiries started in the period mostly were for violent crime (50,56%) when such crimes represented 34,06 of all police notices. While 61,44% of all police notices registered in the period under study, refer to non-violent crimes, just 42,53% of police inquiries are of non-violent crimes. In terms of other types of crimes since in this category are grouped a series of potential homicide cases or by accident since all involve suspicious deaths it is quite remarkable that despite the fact that in the period there were **15526 cases reported only 1513 resulted in police inquiry**. If such suspicious deaths were in fact the result of some foul play, the likelihood of punishment seems to be rather small. This suggests that though violent crime seem at first sight to be a priority of the police forces this is not a clear policy that encompasses all suspicious circumstances. Chances that a violent crime will be investigated are of 0,5056 whereas a non-violent one 0,4253; that is the values are very similar, suggesting that the other aspects of the case may be more motivating to police investigations than whether it is a violent or non-violent offense.

While police notices of violent crime grew in the seven year period by 43% police inquiries for violent crime grew 10%, there is a major gap between the number of cases entering the system and that of case being processed by the system. If we consider just the ratio between violent crime reported and police inquiries for violent crime yearly in the period², the growth in this gap becomes very clear: in 1991, police inquiries for violent crime represented 11,4% of the cases that entered the system, in 1997 this percentage had dropped to 8,74%. In the interval there were many fluctuations in this percentage but at numbers always inferior to 10%. By 1997 while police notices for violent crime totaled 20.771 cases, there were 1.815 police inquiries for this type of crime. This number of inquiries was greater than the one in 1996 when there were 1658 inquiries for 19867 police notices for violent crimes but the gap remained very wide.

² Keeping in mind that this is not the conversion rate

In the total period for 117459 police notices on violent crime there were 11084 police inquiries, this represents 9,44% of the cases registered. This percentage is better than the average rate for all crimes 6,36%, on the positive side there is nearly 50% more inquiries for violent crime than for crime in general. This percentage varies according with the crime:

a) for homicide of a total of 4918 cases there were 3418 police inquiries or 69,5% of the cases became a formal investigation;

b) for rape the 1631 cases reported resulted in 488 police inquiries or 29,92% of the cases

c) for robbery followed by death the 372 reported cases resulted in 264 police inquiries or 70,97% of the cases

d) for robbery out of 109866 reported cases resulted in 6242 police inquiries or 5,69% of the cases

e) for drug trafficking out of 672 cases, resulted in 672 or **100%** of the cases.

If this percentage is interpreted as revealing the police priorities in terms of investigations it can be said that the ranking of priorities seems to be: 1st place: drug trafficking; 2nd place: robbery followed by death; 3rd place: homicide; 4th place: rape; 5th place: robbery.

Homicide and rape both crimes considered to be extremely serious that should always be punished by the population (NEV-Cepid Survey) apparent are not given the same priority by the police.

As for non-violent crimes these resulted in 9.322 police inquiries in the period representing as mentioned before 42,52% of all inquiries. The breakdown of police inquiries for non-violent crime is the following: 7.326 or 78,58% are for cases of theft; 637 or 6,83% for larceny; and 1.359 or 14,57% for drug use.

Police inquiries for non-violent crimes also fluctuate. Thefts generate more police inquiries in the year 1993 when 1.231 police inquiries or 13,20% were opened for theft cases. But in 1995 this number starts to fall and when 1997 is compared to 1991 the number of reported cases of theft had dropped and so did the number of police inquiries. In fact the number of cases reported in the period fell by 18%. It must be kept

in mind that this is reported cases. It does not necessarily reflect a drop in the actual cases of theft but may be expressing the population's lack of trust that reporting will result in any police action.

Crimes that were fully perpetrated result in more police inquiries, both in the case of violent and non-violent crimes. Most police inquiries for violent crime refer to crimes that were perpetrated: 75,30%, while only 22,97% of the violent crime police inquiries refer to attempted crime. For non-violent crimes 73,72% of the police inquiries refer to cases in which the crime was actually perpetrated while 26% refer to cases in which it was attempted.

The fact that at the time the crime is reported there is some knowledge about who committed it seems to be a key factor in determining the formal start of a police inquiry. Whether it is a violent or a non-violent crime it seems that police inquiries are started only if there is some information on which the culprits are. Out of all violent crimes 93,33% were perpetrated by known persons and 5,19 by known aggressors. The distribution of police inquiries for violent crime is the reverse of this distribution: it reveals that 2/3 of the inquiries are for crimes with known aggressors (68,53%) and only one 1/3 for cases in which the aggressors are unknown (30,09%). This bias is worse for non-violent crimes, here it seems that basically only cases in which information about culprits are reported at the time the notice of the crime is registered result in a police inquiry: in 87,85% there is information about suspects and in 11,04% no information. It seems that the police is willing to investigate only that which is already known.

Rape follows the same trend above: 79,26% of the inquiries to investigate rape are for cases in which the perpetrator is known, and 17,63% are unknown. It must be kept in mind that in nearly 60% of case of rape reported to the police the aggressor was not known. Rape is already a type of crime for which there is much underreporting. According with the latest victimization survey in São Paulo only 7% of victims of rape in a year reported to the police. When the police only investigates the cases with known aggressors, it further encourages rape victims not to report, further ensuring impunity.

Not surprising robberies follow the same trend: police inquiries for robbery are overwhelmingly for cases in which aggressors are known: 83,25%. When only a small percentage of cases of robbery in which the perpetrators are unknown result in starting an investigation

robberies are de facto demoted to a position of non-violent crime. Drug trafficking the only crime for which all police notices result in police inquiries refer almost in total to known authors 98,81%. This should not surprise for, as mentioned before most cases seem to be of dealers caught “in flagranti”.

Homicide cases represent a rupture in this pattern for in the case of homicides most police inquiries refer to cases in which the assailants are unknown at the time of the crime report: 60,245 of the inquiries refer to cases in which the perpetrators are unknown and 37,01% are known. Similar trend is that of the cases of robbery followed by death in which 65.91% of the police inquiry are for cases in which the perpetrators are unknown and 33,72% known. The “other types of crime” category which contains mostly “suspicious deaths” follow the same trend as that of homicide, the very few police inquiries started for this type of death refer mostly to unknown perpetrators as expected 90,22%, as the investigations are a key step to define if a crime was committed in the first place, it does not surprise that perpetrators are not known.

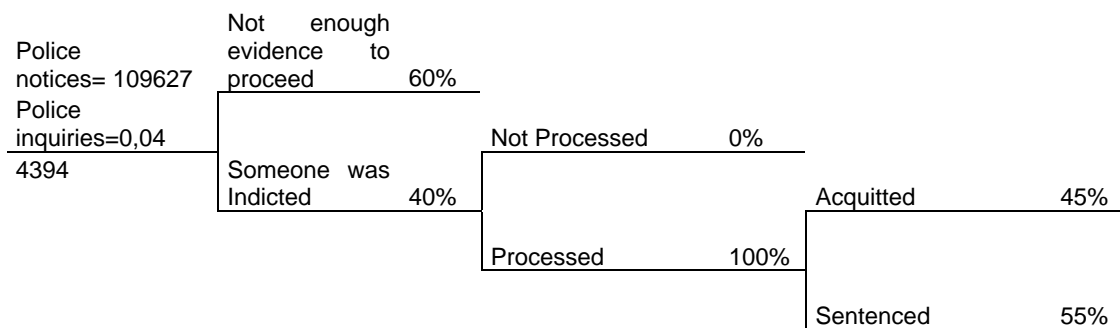
Among the non-violent crimes drug use is the crime that most results in police inquiries, and similarly to drug trafficking, most inquiries involve known authors (98,89%), followed by theft, the type of crime that least results in inquiries and when it does is for cases with known perpetrators: 85,80%, the same is true for larceny 88,06%.

So far the data presented here are the result of straightforward comparisons between police notices registered and police inquiries according with a number of variables. In theory every crime reported should result in a police inquiry but this utopia as no criminal justice system ever achieves this performance. Despite this it is legitimate to expect a smaller gap than the abysmal performance seen so far when less than 10% of the crimes reported result in a formal police inquiry. As mentioned previously the conversion rate refers to the probability that a crime-whether violent or non-violent will result in a police inquiry. the cases involving violent crime with a known perpetrator present the higher probability of resulting in police inquiry with a probability of 0,81, very close to 1,0 the maximum value. This is followed by non-violent crimes with known perpetrators with a probability rate of 0,69. As for violent or non-violent crimes for there is no information on perpetrators the probability that reporting the crime to do the police will alter this is

very low as the chances that a police inquiry will be opened is of 0,04 in the case of violent crimes and 0,01 for non-violent ones.

All the evidence point to the fact that what guides the law enforcement agencies and determines the functioning of the criminal justice system is whether some one can present at the moment of reporting the crime, some information about the identity of the culprits. It is the existence of such information that seems to determine whether the police will continue to invest their energies and resources in the case and will seek punishment. If this is the case we can estimate the probability that a violent crime, for which no information exists at the time the crime is reported, will result in punishment.

Figure 1: Hypothetical projection of punishment for crimes with no information on perpetrators.



In this projection more than half of the police inquiries (60%) will be dropped before indicting some one while only 40% will result in an indictment. We are also estimating that roughly 55% of those indicted will be found guilty and sentenced and 45% acquitted. If this is the case only 22% of the initial police inquiries should result in sentencing. In the end 0,88% of violent crimes with unknown perpetrator at the time that the crime was reported would result in some one being sentenced.

In the case of homicide by unknown perpetrator if we use this model 10,77% of the cases reported to the police would result in sentencing. In this period 3767 homicide cases with unknown aggressors were reported to the police, 2050 of which resulted in police inquiries. If again only 40% result in the indictment and if 90% of the indictments are accepted by the judicial system and if again 55% of those that face

trial are sentenced, 19,8% of the policy inquiries for homicide would result in sentencing. Apparently this represents a better outcome than that for crimes in general but keeping in mind that homicide is a very serious crime rates are still very low.

Summary of conclusions

The data presented highlighted the importance of having information about the offender is at the time the case is recorded by the police– if he/she is known or unknown. While most of the cases recorded by police refer to crimes committed by unknown offenders police inquiries give priority to violent crimes committed by known offenders. So, the police focus falls over a set of habitual criminals part of everyday activities of the police station. The police seem to limit their activities to the knowledge accumulated in the institutional network built around traditional practices of “hunting known delinquents” ignoring investigations. The data presented reveal that the police goes after the obvious and in so doing is liable to gross mistakes. Attending to what seems “easy” to solve, ignores the massive numbers of cases with unknown perpetrators reinforcing fear in society and impunity, which in turn will most certainly encourage potential or effective perpetrators to commit more crimes.

This model of police action is ridden with gross human rights violence and completely inadequate to the modern profile of crime in Brazilian contemporary society and to the new modalities of crime organization. Furthermore this type of police action fosters fear and impotence in the society and in the limit may encourage people to support drastic measures to contain violence some of which may represent further violations of human rights. Violence and violent crimes in our society are placing new challenges to the rule of law and to the democratic society based on the respect of human rights that the police forces seem to be ill equipped to meet.

We presume that this neglect of crimes committed by unknown perpetrators is not the result of random decision making but reflect a sociological and institutional process: the social production of non-knowledge. In terms of Bourdieu theory, this kind of phenomenon signals to the existence of a symbolic power (in case, of the police agency) that determinates what must be investigated and what will not be investigated regardless of what is expressed in the Penal Code.

This reiterates their need for secrecy (such as studied by Simmel), as well as the need for the control of social body by discipline and punishment (Foucault), or the lack of transparency on the police proceedings that compromises the democratic institutions of law and order (see Dahrendorf and Arendt) contributing for the weakness of the state monopoly of physical violence (see Garland) or, in terms of Elias, preventing the transit to the private monopoly of violence to the public and state monopoly, one of the most important requirements to a modern peaceful society.

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