

## **INEQUALITY, CRIME, AND SECURITY IN ARGENTINA**

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In this paper I will examine some of the practical and moral dilemmas posed by security policy in a country like Argentina where there is great social injustice and high levels of poverty and indigence with a sustained increase in violent crime against persons. Firstly, I will analyze certain economic indicators of the levels of poverty, destitution, and inequality that characterize social structure in Argentina. Secondly, I will evaluate the increase in violent crimes against persons. Thirdly, I will debate whether criminal prosecution of people who are destitute and excluded from the political system is justified. The thesis I defend is that the State has the duty to protect people from violent crime through the application of prison sentences, despite the injustice of the system and the exclusion of many who commit them. Without disregarding the structural nature of the security problem and the need to implement long-term policies for economic develop, income redistribution, education, and social integration, I will argue that the circumstances of exclusion and marginalization do not constitute a valid excuse for removing criminal responsibility from individuals who commit violent crimes against other persons.

### Selected Figures for Poverty and Inequality in Argentina

Argentina is a country with high indexes of poverty, destitution, and inequality.<sup>1</sup> During the economic crisis of 2002, the percentage of households beneath the poverty line reached 45.7% and the percentage of the population beneath it was 55%. The percentage of households

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<sup>1</sup> Poor is used to designate people whose family income does not cover the basic necessities of nourishment, lodging, education, and health. Destitute is used to designate people whose family income does not cover basic nourishment needs.

beneath the threshold of destitution reached 19.5% and that of individuals 25.8%. This implies that over half of the population did not possess sufficient resources to meet their basic needs and a fourth of the population lacked sufficient income to cover basic dietary needs. Its inequality index (the Gini coefficient) has been calculated as high as 0.534, indicating a very high degree of inequality.

In 2002, the richest 10% of the population earned 39.3% of the national income while the poorest 10% earned 0.7% of it. This means that the richest had incomes 54 times greater than the poorest.

Between 2003 and 2008, the Argentine economy grew at rates greater than 7% annually; the number of people living in poverty shrank to 31% of the population; and those living in destitute conditions to 7.8%. Despite these changes, levels of inequality remained high with a Gini coefficient of 0.513.<sup>2</sup>

Over the past 35 years, levels of poverty and inequality have increased markedly in Argentina. The phenomenon is relatively recent, as the country during the 1920s had the 7<sup>th</sup> greatest level of income per capita in the world. There was a high degree of social mobility and income distribution remained relatively stable during the 50s, 60s, and in the beginning of the 70s. Long periods of high inflation, the last military dictatorship, hyperinflation at the end of the 80s, the enfeeblement of the welfare state under President Carlos Ménem's administration,

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<sup>2</sup> To provide examples for comparison, European countries have Gini coefficients around 0.32, Chile 0.54, Brazil 0.57, and Mexico 0.55. The average is 0.405 (122 countries).

corruption, and the economic crisis of 2001-2002 are identified as the principal causes of the increase in poverty and inequality.<sup>3</sup>

In Argentina, poverty does not represent a passing phenomenon stemming from a drop in income and a rise in unemployment. There exists a strong nucleus of structural poverty that remains stable in spite of economic growth. The most obvious illustration of this structural poverty is the scale and growth of what are known as “informal settlements” (the slums also referred to as *villas miserias*) in large urban areas, especially in the Metropolitan Area of Buenos Aires (AMBA).

Approximately 17% of the population of AMBA resides in one of the more than 1000 *villas miserias* or settlements. The total number of people living in them increased from 327,930 in 1981 to more than a million in 2006.<sup>4</sup> In the last four years the population has doubled, topping 2 million people.<sup>5</sup>

These shantytowns (hereafter referred to as *villas*) are made up of irregular urban constructions interconnected by an intricate series of corridors where vehicles cannot generally pass. They are the result of the individual actions of their inhabitants and lack any state planning. The residences are very precarious and often lack adequate sanitation. Population density in the *villas* is high (corresponding to levels considered overcrowded) and they are usually located near centers of production or consumption where open land is scarce. A great majority of the inhabitants do not hold property deeds for their homes. Even though the inhabitants believe their

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<sup>3</sup> See “Distribución del Ingreso en la Argentina” (2001), L. Gasparini, M. Marchionni y W. Sosa Escudero, which develops a general analysis of distributive questions in Argentina and holds that there is evidence that the rise in poverty has more to do with the rise in inequality than the drop in per capita income.

<sup>4</sup> “Magnitud y crecimiento de las villas y asentamientos en el Área Metropolitana de Buenos Aires,” M. Cravino, J.P. del Río y J. Duarte, 2008.

<sup>5</sup> This information is from the Department of Social Development in the Province of Buenos Aires and is based on a study done by the Universidad Nacional de General Sarmiento, according to which, the population of AMBA has risen 6.6% since 2006 and the population of the *villas* 57%.

stay in the *villas* will be temporary, the majority of them end up becoming permanent residents. The residents are unemployed or largely unskilled or informal workers and include people who have lived there for long periods, new migrants (from the provinces or certain neighboring countries), and indigent groups. Drop-out rates from schools are high, the heads of family possess little education, and the proportion of active to inactive members of the households is very low. Generally speaking, their inhabitants are stigmatized by vast sectors of society.

The overcrowding and precarious conditions in the context of extreme scarcity represent severe obstacles to the development of virtuous social practices. The structural poverty creates a vicious cycle in which all hope is lost for improving one's social condition through study and work. Surveys carried out in the *villas* of AMBA show that many young people lack any goals or ambition and are incapable of imagining a future for themselves.<sup>6</sup> The absence of projects for the future worsens the vicious cycle of poverty and adds a subjective and cultural component to the objective limitations imposed by reality. Family ties generally weaken, drug and alcohol use proliferates, and living takes place in an environment of distrust and hostility. The scant public goods that the State allocates often go wasted because of the very limitations that cause poverty. Drop-out rates and health problems reflect not only the scarcity of public resources but also the failure to make good use of the resources available.

After 25 years of consolidation, structural poverty in Argentina represents the greatest collective failure of democracy. Despite the attempts, however limited, of various governments to implement measure to reduce poverty, the objective results demonstrate that these measures have failed. Putting aside the possible conclusion that poverty constitutes an unintended effect of

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<sup>6</sup> In a survey conducted in one of the *villas* in AMBA (Localidad de Virreyes), the majority of respondents between 15 and 20 years of age were unable to give any response to the question of how they imagined themselves in 5 or 10 years.

public policy and collective action, the levels of poverty and injustice violate the moral principles that hold that people must be treated with equal consideration and respect (Dworkin) and that social cooperation must be organized equitably and to the benefit of those who possess the least (Rawls).

### Some Statistics Regarding Violent Crime against Persons in Argentina

According to the main opinion polls, insecurity has become the greatest worry for Argentines in the past few years, surpassing problems such as unemployment, inflation, and corruption. This concern corresponds with factual statistics that reveal a significant increase in crime.

Crime statistics in Argentina are not unequivocally reliable. They are calculated by the Ministry of Justice and Security on the basis of complaints filed. The problem is that many people, and especially the poorest people, do not file complaints when they are victims of crime. Meanwhile, filing complaints is often discouraged at the level of local police stations anxious to post better figures for crime prevention in their precinct.<sup>7</sup>

Official figures show that crime increased 245% between 1991 and 2007. The greatest number of crimes was committed in 2002 in the midst of the most severe economic crisis, when indexes for poverty and destitution also reached their highest levels. Following the crisis of 2002, crime rates dropped approximately 10% before beginning to rise again once the impact of the international economic crisis of 2008 was felt in Argentina.

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<sup>7</sup> The percentage of crimes that were reported in the city of Buenos Aires was estimated at 35% in 1997 and 40% in 1998. See "Crime and Victimization: An Economic Perspective" P. Fajnzylber, D. Lederman, N. Loayza, ECONOMIA, Fall 2000.

My interest in this paper focuses on violent crimes committed against persons; to be specific, homicides, assault and battery, rape and sexual assault, kidnapping, and armed robbery. Of the 1,218,243 total complaints filed in 2007, 518,269 were violent crimes against persons. Approximately 380 people are intentionally killed or injured every day, 29 are raped or sexually abused, and more than 1000 are robbed.<sup>8</sup> These figures would rise substantially if calculations were made to count the amount of crimes that actually happen and not only those for which complaints are filed.

In many instances of robbery, the amount of violence employed exceeds that necessary to dispossess the victims of their goods. Within the last year in the Province of Buenos Aires, someone dies on average every other day during the course of a carjacking. Numerous people are murdered for resisting robbers who then do not follow through with the robbery. Killings and injuries resulting from the robbery of goods of little economic value, such as cell phones, sneakers, or paltry sums of money are steadily increasing in number.

The security problem occupies a high rank in the public agenda, especially at the level of local government. Sentencing guidelines have been hardened and police resources augmented. Despite this, however, the percentage of complaints filed that result in prison sentences remains very low. It reaches 49% for homicides, compared to 1.78% for the rest of crimes committed against persons, 4.14% of robberies, and 12.76% of rapes and other sexual offenses. From 1991 to 2007 the prison population increased 55%, which constitutes a percentage that is significantly lower than the percentage increase in complaints filed over the same period.<sup>9</sup>

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<sup>8</sup> En el derecho argentino el robo incluye el desapoderamiento de bienes con fuerza en las cosas o violencia física en las personas. Las estadísticas públicas no distinguen los diferentes tipos de robos.

<sup>9</sup> Los porcentajes de sentencias condenatorias y de población carcelaria surgen de datos oficiales del Ministerio de Justicia y Seguridad de la Nación.

### Relationships between Poverty, Inequality, and Crime

The relationships between poverty, inequality and crime are complex. Insufficient empirical evidence, the presence of multi-causal relationships and the various factors that influence crime rates mean that any conclusion reached must be considered provisional. Research is based on statistical correlations between a number of factors and determined results and the causal relationships are very difficult to identify. The differences between the various crimes, moreover, means that factors that might favor an increase in one type of crime are different from the factors that might favor an increase in others.

The studies on the matter are generally economic, focus on particular crimes (homicides and robbery), and on the incentives for committing them.<sup>10</sup> Economic analysis overlooks questions that elude cost-benefit analysis, such as gender (94% of the violent crimes in Argentina are committed by males) or the devastating effects of ignorance, the use of certain drugs, humiliation, and disregard for injustice.

The relationship between crime and economic cycles is not at all clear. One question under debate is whether crime rates are counter-cyclical and increase in times of recession, and so whether an increase in unemployment leads to an increase in crime. Research carried out in the United States shows that robbery and burglary rates rise during recessions while homicide rates do not vary according to economic cycles. From an economic perspective, unemployment is seen as contributing to higher crime rates by reducing the opportunity cost of the time

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<sup>10</sup> De acuerdo al marco teórico desarrollado por Gary Becker, los índices de criminalidad dependen de los riesgos y castigos asociados con la detención (apprehension) y con la diferencia entre las potenciales ganancias del delito y los costos de oportunidad asociados. Ver G. Becker, "Crime and Punishment: An Economic Approach", 76 Journal of Political Economy (1968).

dedicated to crime. In psychological approaches, by contrast, emphasis is put on the “stress” or “frustration” produced by unemployment as the cause for the increase in crime.<sup>11</sup>

There is agreement, however, that recessions also reduce the opportunities for robbery because people are more disposed to defend their property and there is less demand for stolen goods. In the U.S., some statistical correspondence between increases in robbery and unemployment rates has been detected, although the correspondence does not hold for homicides.<sup>12</sup> Researches express doubts, however, over the interpretation of the empirical evidence and the direction of the causal relationships. It is unclear whether criminal activities disincentivize searching for jobs, with the subsequent result that most delinquents are unemployed, or whether it is unemployment that incentivizes crime. Likewise, results may vary due to other factors that influence crime indexes, such as alcohol or drug use and access to firearms, which tend to drop during periods of major unemployment.

Most studies concur that the principal indirect cause for violent crimes against property is a poor economic situation taken together with particular demographic surroundings and a certain propensity to be punished. Hence the conclusions that rises in income inequality cause criminality indexes to rise, that crime tends to be counter-cyclical, and that criminal inertia is significant.<sup>13</sup>

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<sup>11</sup> “Crime and the Business Cycle”, P. Cook and G. Zarkin, *The Journal of Legal Studies*, Vol. 14, N° 1, (Jan. 1985).

<sup>12</sup> “Identifying the effect of unemployment on crime”, S. Raphael and R. Winter-Ebmer, *XLIV Journal of Law and Economics*, The University of Chicago (2001), donde se constató que en los EEUU la disminución de un punto porcentual en el tasa de desempleo se relaciona con una disminución de los delitos contra la propiedad entre el 1,6 y 2,4%.

<sup>13</sup> “What causes violent crime ?” P. Fajnzylber, D. Lederman y N. Loayza, *European Economic Review* 46 (2002). En este trabajo se realiza un estudio empírico de varios países desarrollados, de Europa del Este, América Latina y Asia y se estima que un crecimiento del 1% del GDP estaría asociado a una reducción del 2,4% de la tasa de homicidios y que un incremento de un punto porcentual en el índice Gini a un crecimiento del 1,5% de la tasa de homicidios. Asimismo se indica que un crecimiento del 1% del GDP está asociado a una disminución del 13,7% de



Some authors maintain that social inequality has effects on crime rates similar to those of ethnic conflicts, especially when income polarization is produced.<sup>14</sup> Income polarization refers to the situation that occurs when the differences between the incomes of large, internally homogenous groups (in this case, the rich and the poor) lead to significant economic gaps between them. Cost-benefit analysis stipulates that inequality adds to the incentives to commit crime and reduces its opportunity cost.<sup>15</sup> The fact that most crime is committed by poor people against poor people does not throw doubt on the relevance of inequality because the characteristic profile of victims is not only a function of relative wealth but also of the distribution of security resources.<sup>16</sup>

Income inequality is generally associated with education inequality. This relationship between education level and crime is probably as significant as the relationship between inequality and crime.<sup>17</sup> Inadequate education, that is to say, reduces the amount of “social capital” that contributes to a drop in crime by facilitating communication and peaceful resolution of conflicts. This is why although the effects of education in reducing crime are under discussion, a positive correlation between the number of years of schooling and the property crime index has been observed.<sup>18</sup> The same study suggests that there is a positive relationship between regular attendance of church services and lower crime rates for poor youth.

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la tasa de robos (robbery) y que el crecimiento de un punto porcentual del índice Gini se asocia a un crecimiento del 2,6% de la tasa de robos. En un comentario al paper publicado en la misma revista se cuestionan estos índices.

<sup>14</sup> “Crime and Victimization: An Economic Perspective” P. Fajnzylber, D. Lederman, N. Loayza, *ECONOMIA*, Fall 2000.

<sup>15</sup> M. Kelly, “Inequality and Crime”, 82 *Review of Economic and Statistics* (2000).

<sup>16</sup> P. Fajnzylber, D. Lederman y N. Loayza, “Inequality and Violent Crime”, *Journal of Law and Economics*, XLV, University of Chicago, (2002).

<sup>17</sup> “Crime and Victimization: An Economic Perspective” P. Fajnzylber, D. Lederman, N. Loayza, *ECONOMIA*, Fall 2000.

<sup>18</sup> “Crime and Victimization: An Economic Perspective” P. Fajnzylber, D. Lederman, N. Loayza, *ECONOMIA*, Fall 2000.

It has been suggested that the increase in crime reflects the lack of “social capital” and some sort of imitative behavior that makes a person’s individual proclivity to commit crime is increased when that person’s peers commit crimes. People who live in areas where there is a high percentage of delinquents perceive lesser risk of arrest by the police.<sup>19</sup> Once a person commences criminal activity, the incentives to continue increase. Ex-convicts suffer discrimination in the labor market, reducing their opportunities to earn a living by legal means, and delinquents learn from experience, which reduces their estimation of risk and moral inhibitions. The existence of profitable criminal activities contributes to higher crime rates, as the drug traffic in some Latin American countries clearly illustrates.

The effect of security policies aiming at deterrence on acts of crime is one of the principal themes under debate in the literature. The analyses focus on the chances of arrest and the severity of sentences. Due to insufficient data, the number of police per 100,000 inhabitants is taken as the parameter. Research suggests that the impact of such security policies is especially difficult to evaluate with regards robbery.<sup>20</sup>

The research also shows a relationship between higher rates of violent crime and the production and consumption of drugs. The disputes that arise between rival gangs for territory and markets contribute to this rise. This is why the presence of drug dealing gangs corresponds to a higher rate of homicide but not of robbery. Robbery rates would increase, however, if there were more drug users who did not possess the means to acquire them.

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<sup>19</sup> “Social Osmosis and Patterns of Crime”, R. Sah, *Journal of Political Economy* 99 (1991).

<sup>20</sup> “Crime and Victimization: An Economic Perspective” P. Fajnzylber, D. Lederman, N. Loayza, *ECONOMIA*, Fall 2000.

The factors that lead to higher rates of violent crimes, in particular robbery and homicide, are all present in the social environments that characterize the most neglected sectors of Argentine society:

1. The type of urban development and the composition of the populations of the *villas* provides a bleak picture of the inequality and poverty that mark these sectors. Even though there is a great disparity of income in Argentina, with regards the destitute sectors it is possible to say there is clear polarization. The income polarization is worsened by the frequency with which the *villas* develop in proximity to high income areas. Furthermore, the unemployment rates in the *villas* are far greater than in the rest of the country. Demographic factors such as overcrowding, the high proportion of young people, and the high percentage of broken families are other factors considered to influence the crime rate.<sup>21</sup>

2. Structural poverty and the lack of education or a culture of work are factors that contribute to the lack of ambitions and expectations. Inequality refers not only to income but also economic opportunity and social mobility. The absence of life goals diminishes the aversion to risk that criminal activity usually entails. Similarly, the aversion to possible arrest decreases in areas marked by high criminality indexes. The fact that the majority of crimes go unpunished further reduces the aversion to risk.

3. The factors examined reciprocally compound each other to raise crime rates. A feedback effect is produced that generates what is known as “criminal inertia.” Criminal inertia causes the mentioned factors to have long-term effects. Improved economic indicators does not necessarily

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<sup>21</sup> It is estimated that there are approximately 700,000 people in AMBA between the ages of 15 and 25 that do not work or study. Psychologists who work in Buenos Aires prisons report that a significant percentage of those imprisoned for violent crimes come from broken homes. One study indicates that one of the most important correlations of urban crime in the U.S. is the number of female-headed households. See Glaser, E. y Sacerdote, B. “Why Is There More Crime in Cities? *Journal of Political Economy* 107. 1999a.

reduce crime in the short-term because crime is much less volatile than economy. Similarly, increased crime causes people to take better care and the crimes end up being more violent for less gain. Access to cheap and very addictive drugs, like *paco*, increases the level of violence.<sup>22</sup> The unequal distribution of police and security resources means that the principal victims of crime are the poor.

### Poverty and Punishment

The justification for penal punishment in contexts of extreme inequality is problematic. On one hand, the poor are victims of a social and political system that excludes and marginalizes them. On the other, this marginalization together with the other factors examined generates incentives to commit crime. It is in the end difficult to precisely determine the degree to which criminal behavior depends on a person's will or on external factors such as the social or family environment they were brought up in or other conditioning contingencies. It seems obvious that if people guilty of violent crimes had been born in a more favorable environment or had not suffered from certain conditioning contingencies, most of them surely would not have committed their crimes.

The factors that contribute to increases in crime rates form part of the social structure, so eradicating them requires policy that addresses their causes. Penal sanctions have an effect in reducing crime but it does not address its root causes. The fact that the punishment consists of depriving people of a good as important as freedom, and that it imposes suffering on people who are already victims of social injustice, poses an arduous problem for those who wish to justify it

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<sup>22</sup> Paco (a paste based on cocaine) produces effects similar to those of crack. In the U.S., crime rates have been shown to rise significantly in areas of high crack consumption. See Groger, J. y Willis, M. "The Introduction of Crack Cocaine and the Rise in Urban Crime Rates" Working Paper 6353. Cambridge, Mass. National Bureau of Economic Research. 1998.

– particularly when prisons fail to meet the obligatory standards established by the Constitution for the cleanliness of the prisons and the health, safety, and non-punishment of the inmates.<sup>23</sup>

Policies capable of overcoming the causes that influence crime rate can only bear results in the medium to long-term. Their structural character, the social interactions they generate, and criminal inertia make it practically impossible to solve the problem in the short-term. Moreover, the absence of adequate public policy aimed at redressing these factors means that the situation will probably be long-lasting and worsen in the event of another economic crisis.

The question that arises is whether we can justify the punishment of persons whose crimes are closely tied to the injustices they have suffered. Argentina's Criminal Code, excepting some discretion in terms of the length of prison sentences, does not consider social factors that influence criminal behavior to be relevant.<sup>24</sup>

In response to this question, my interest is centered on justifying penal punishment for people who commit violent crimes against persons (homicides, robbery, sexual offenses), not those who commit less serious offenses (theft) or acts of social protest (demonstrations or blockades of streets or passage). My understanding is that when it is a question of offenses that do not endanger the lives or physical integrity of persons that the rights at stake and the public interest defended by penal sanction can be protected by means other than incarceration.

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<sup>23</sup> Article 18 of the Argentine Constitution stipulates that “the prisons of the Nation will be sanitary and clean, for the security and not for the punishment of the inmates detained in them ...” This constitutional precept is not met in Argentina and the prisons, except in rare cases, are in subhuman conditions. Far from re-socializing inmates they are submitted to all types of suffering. They end up being schools for delinquency, as the high rate of recidivism indicates.

<sup>24</sup> Article 41, section 2 of the Criminal Code establishes that the duration of the sentence will take into account, among other considerations, “the quality of the motives that drove the person to crime, especially misery or difficulty in earning the necessary income to provide for themselves and their family.”

Less serious offenses such as theft do not involve the same moral and practical dilemmas as serious crimes. In Argentina, petty theft is bailable, so in principle those guilty of it will not necessarily be sent to prison. Similarly, when dealing with theft committed to satisfy basic needs (e.g., theft motivated by hunger), the criminal code explicitly condones the state of necessity defense.

The enormous diversity of acts through which social protest can be expressed prevents a straightforward analysis. In spite of this, however, the most common acts of protest in Argentina – street demonstrations and blockades – do not constitute a security problem. Given that the actions in question are carried out in public, when they exceed reasonable limits and seriously affect the rights of others, there always exists an avenue for preventive action with as little violence as possible and without necessarily resorting to penal punishment.

The essence of the problem under analysis regards violent crimes against persons. Arguments that are erected against the use of state coercive power against marginalized individuals are based on the danger that this power be used to maintain an unjust social structure in circumstances where it is not morally acceptable to apply coercive norms to marginalized people who do not genuinely participate in the political processes that establish those norms and where the marginalized sectors do not possess the necessary conditions to fully exercise their right to defense in trials.<sup>25</sup>

The complexity of the problem requires an analysis that incorporates empirical evidence, normative judgments, and the predictable consequences of the various courses of action possible.

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<sup>25</sup> R. Gargarella, SELA 2010, “La coerción penal en contextos de injusta desigualdad”.

The issue of the legitimacy of coercion must go beyond the sphere of legislation into that of the judiciary and of the institution charged with carrying out sentences.

The democratic conception of legitimacy is based on the idea that a norm is legitimate when it is the result of a process of debate and constructing consensuses by majority in which the interested parties have participated on equal footing. This is why legitimation occurs through a collective procedure that tends to identify a common interest once mutual respect is demonstrated for the distinct individual perspectives of everyone involved.

The degree of political exclusion or marginalization of the marginalized sectors of Argentina is a question whose factual basis is not easily evaluated. Notwithstanding the right of these sectors to political rights including the vote, the social situation they find themselves in limits their capacity to influence public policy. Rawls<sup>26</sup> explains that one of the “requirements of rationality” that must be met in discussions of social morality is the indetermination produced by distinct experiences stemming from disparate social contexts. Accordingly, he suggest that, to some degree, the form in which we ascertain proof and balance moral and political values is prefigured by our total experience, that is, the entire course of our lives and experiences that are without doubt different. The abysmal gulf that separates the life experiences of marginalized sectors surely has some part in their eventual failure to be duly considered in the democratic debate. Similarly, the limitations of political representation often allows the interests of marginalized sectors to be relegated when making public policy decisions.

The importance of democratic participation and inclusion is fundamentally tied to the values of equality and autonomy that undergird democratic procedures. They are constitutive

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<sup>26</sup> J. Rawls, “Political Liberalism”, (Columbia 1993).

values of democratic practice because they cannot be ignored without neglecting democracy itself.

The values of autonomy and equality integrated into democratic process give shape to a regulative conception favoring decisions that promote freedom and equality. This is so because those values demand mutual respect of people as free and equal. Put another way, the ideal that posits society as an association of free and equal persons requires democracy in order to be something other than just a postulated ideal and become part of practical reality.

The fact that there is social injustice in Argentina and that its democracy has not promoted equality does not deprive legal norms for the punishment of violent crimes against persons of justification. These offenses violate the most fundamental premise of the system of values which is the dignity of the life and physical integrity of individuals. The value of life is a premise to the values of equality and autonomy. It implies that no one can reasonably justify an attempt against the life or physical integrity of another because they have been excluded from the political system or treated unfairly. Violence against persons is not only morally unacceptable but is also incompatible with democratic practice and the policies guided by the regulative idea of equality.

The fact that marginalized sectors have been excluded from democratic debates does not settle the problem of justifying state coercion against them. In this regard, it must be recognized that the value of equality does not satisfactorily answer the question raised in political discussions of what the proper norm to apply in such cases is. Moreover, not only did the marginalized sectors not take genuine part in the political process, but it also must be kept in mind that it is possible that those who did failed to foresee the state of deprivation in which these



sectors would find themselves. Equality requires that all relevant circumstances of the question are taken into account and this is not easily achieved in democratic discussions because of the degree of generality that generally characterizes them.

By virtue of this limitation of democratic debate I mean that the justification for the use of state coercion must find its material expression in the legal decision that rationalizes each coercive action. It is in the legal process that all of the relevant circumstances can be evaluated. It constitutes an instance where the person submitted to the process has the opportunity to question the democratic decision embodied in the law by challenging its compatibility with the premised values that justify democracy itself. In this instance, the right to defense should be conceived of as complementary to political rights. By its exercise, individuals can propose revisions of democratic decisions arguing that the legislators failed to impartially consider their interests or rights in all of the particular circumstances of the case. Namely, for example, that their marginalization from the political system or state of deprivation was not taken into account.

The legal process, seen in terms of its general aspects, is a sort of broader democratic debate in which judges and defense lawyers reevaluate in concrete cases whether the use of state coercion is compatible with the values that justify democracy and legitimate legislative decisions.

It is my thesis that there are differences between the justificatory reasoning of general norms and the reasoning employed to justify applying a norm in a given case. Since norms are justified in accordance with general criteria that are abstracted to a good degree from the particular circumstances to which they will be applied, especially when dealing with the most

disadvantaged sectors, it is necessary to ensure that there is a process for incorporating perspectives that were ignored during democratic debates that allows them to set out the particular circumstances of the person who is the object of the process.

The duty of judges is to visualize the necessary preconditions for impartiality in terms of the particularities of each concrete case. This might call for, in certain cases, a declaration of unconstitutionality of a law in order to ensure that legislative decisions do not infringe on constitutional rights. The judicial process can be seen as a complement to the political process that broadens the discussion by enabling those who considered themselves affected by a law to express their point of view and contest the application of the law in light of the particularities of their cases.<sup>27</sup> Similarly, the judicial process allows justice to be done in concrete cases by taking into account the particularities of each case. In this way another avenue is opened for debate over the legitimacy of state coercion.

Just as someone engaging in justificatory discourse of general norms, then, must attempt to prove that their position is acceptable from the point of view of everyone involved, so must judges, when deciding to apply a coercive measure, reevaluate whether the general point of view reflected in the norm is acceptable from the point of view of the person contesting it in the concrete case in light of the underlying values of the constitutional principles.

The preceding affirmations should not lead us to the belief that the justification for a particular coercive measure requires the consent of the person upon whom it is imposed. The

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<sup>27</sup> The argument that the marginalized sectors are not capable of fully exercising their right to defense does not convince me. Even though in every institutional activity there are deficiencies and errors, the structure of the judicial process ensures marginalized sectors more impartiality than the political process. The point of view of the accused is indispensable in passing sentence, the independence of the judge is guaranteed, the right to defense and the constitutional protections are respected, the public defenders are generally well-prepared and the right to appeal makes it possible to correct mistakes.

process of legitimation through the processes of democratic deliberation and its judicial counterpart presupposes some consensus and certainty. Reasonable persons do not doubt certain things and cannot ignore the underlying values of this form of argumentation. The purpose of the debate that results in a coercive order does not imply affirming the truth of certain principles but rather demonstrating that the argument of the person against whom the order is directed is not reasonable and must be dismissed. Put otherwise, the justification of coercive measures must be carried out until the argument of the person risking coercion no longer presents reasonable grounds to counter the coercion.

Following these lines, my intuition is that those who commit violent crimes against persons face great difficulty in advancing convincing arguments to justify sparing the sentence prescribed for those type of offenses. Whether that person has been treated unjustly or has been denied their most basic social rights does not constitute sufficient justification for violating the rights to life and physical integrity of others. Clearly the value of life and of physical integrity is so fundamental that the challenges to the application of the laws that punish violations of this value on the grounds that the democratic procedure put in place to express it must fall short. As P. Soper explains, when sufficiently plausible arguments are put forward to connect the situation in which one finds oneself and the requirements for obedience and the one's own values, then authority can be granted, not because any personal consent is given, but rather because the rationality of the argument and the shared normative commitment is recognized.<sup>28</sup>

From a more general perspective the same conclusion is reached. As H. Hart and A. Sacks<sup>29</sup> maintain, the conditions of interdependence in which social coexistence develops

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<sup>28</sup> See Philip Soper, "A Theory of Law", 1984.

<sup>29</sup> "The Legal Process", manuscript consulted in Yale Law School Library.

inevitably creates a need to respond to matters of common interest. If this does not happen, coexistence is impossible. Allowing conflicts to be resolved through private violence would prevent civilized social progress. Equality as a regulative idea to provide guidelines for living in society cannot become reality without a prohibition of private violence. The fact that for practical purposes prohibition is impossible without penal sanction does not leave any choice but to punish violent crimes against persons. Here we face a decision of tragic dimensions in which we must opt for the lesser evil.

I realize that punishment constitutes a wrong and that sentences should be no stricter than is necessary to deter new crimes.<sup>30</sup> Although there exists practically no empirical evidence in Argentina to determine the dissuasive effect of prison sentences,<sup>31</sup> the fact that incarcerating an individual prevents that same individual from continuing criminal behavior is objectively apparent.

In addition to the deterrent effect of prison sentences, it should be noted that empirical evidence indicates that in Argentina, the majority of the victims of violent crimes belong to the same marginalized sectors.<sup>32</sup> Social inequality results in an unequal distribution of security resources which ends up displacing the crime from the richest segment of society to the poorest.

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<sup>30</sup> The scope of this paper prevents me from entering discussion of the justification for punishment. My thoughts are that punishment can only be justified in utilitarian terms for preventive purposes and reintegrating delinquents.

<sup>31</sup> In one study carried out in the U.S., it was supposedly determined that a 100% increase in prison population would reduce violent crime by 40% and property crimes by 29%. See S. Levitt, "The Effect of Prison Population Size on Crime Rates: Evidence from Prison Overcrowding Litigation", *Quarterly Journal of Economics* 111 (1996) y "Why Do Increased Arrest Rates Appear to Reduce Crime". *Economic Enquiry*, 36, 1998a.

<sup>32</sup> "Crime Distribution and Victim Behavior During a Crime War" R. Di Tella, S. Galiani y E. Schargdrosky" (2009), which indicates that official statistics in Argentina reveal that crimes committed against poor people increased 1.5 times more than crimes against the rich. This displacement meant that the entire rise in crime produced was absorbed by the poor.

It has been shown that the security investments and resources of the rich, public as well as private, generate a negative externality for the poor who become the principal victims of crime.<sup>33</sup>

The fact that the poor end up being left unprotected by the State puts them in a position of even greater exclusion that further aggravates the situation of inequality in which they are. The reality of the situation is that in most cases, crime turns out to be a problem of poor against poor. The duty to provide security to the poorest segments brings about a situation in which the justification of punishment in this context does not affect equality.

### Conclusion

Justifying penal coercion in unjust societies forces us to make tragic choices when those who end up being punished come from marginalized sectors. Aside from being unreasonable to hold that this punishment implies exploiting the poor as means to satisfy the interests of others, experience does show that the causes for violent crime might not lie so much in personal aggressivity as in the social injustices that unleash aggressivity.

Punishing people who commit crimes as a consequence of the unjust and marginalized position in which they find themselves does further harm to people suffering from serious hardships through no fault of their own. At the same time, not punishing violent crimes against persons is morally unacceptable and incompatible with civilized living. There is every reason to believe that many young men from the marginalized sectors will continue to commit violent crimes as long as the injustice and deprivation they suffer is maintained. Thus no policy aimed at reversing these injustices can be successful if it does not deal with criminal inertia, suppress violent crime, and educate and reintegrate delinquents.

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<sup>33</sup> “Crime Distribution and Victim Behavior During a Crime War” R. Di Tella, S. Galiani y E. Schargdrosky” (2009).

In this type of dilemma, practical decisions must take into account empirical evidence, normative judgments, and the predictable consequences of the different possible courses of action. In light of these factors, the conclusion that must be reached is that the political process capable of liberating the marginalized sectors from the deprivation and injustice they suffer requires the use of state coercion in order to prevent and punish private violence between persons. The regulative idea of justice cannot find concrete, practical expression if violent crimes are not prevented. Democracy and the development of public policies aimed at eradicating poverty and inequality will fail if the State does not step in using its coercive power to protect the life and integrity of people. Civilized life is not possible unless the State inhibits violent acts between people.

Given my understanding that the purpose of prison sentences is limited to preventing crime and the social reintegration of criminals, I feel the length of sentences could undergo revision. Because of the high rates of recidivism found in Argentina, this revision must take into account the need both to suppress social factors that augment crime and to provide real possibilities of reinsertion to people incarcerated.

In this respect, a successful precedent can be found in Uruguay, where a law was approved to establish a system of provisional early release.<sup>34</sup> The economic crisis of 2000 caused a significant increase in crime in the country. Through the law just referred to that was passed in 2005, once the crisis was past, a system for reduction of sentences was implemented. Among other benefits, the law requires that 5% of the workforce of companies tendering bids for state

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<sup>34</sup> Law N° 17.897 on provisional and early release commonly referred to as the prison humanization law.

contracts must be laborer or similar positions reserved for ex-convicts. According to available data, the rates of recidivism for people who took part in this system have dropped markedly.<sup>35</sup>

Another precedent that stands out is the University Center that operates in the Villa Devoto prison in Buenos Aires. This experiment also demonstrates substantially lower rates of recidivism for inmates who undertook university studies while in prison.<sup>36</sup>

These examples provide empirical evidence that shows that when the social factors that contribute to crime are overcome or when inmates are adequately prepared, then maintaining the regime of detention can become unjustifiable.

The moral and practical complexity of the problems surrounding the criminal responsibility of those who commit crimes due to injustices suffered requires deliberation that is also complex. The question cannot be answered by focusing only on the process of democratic debate, but rather the analysis must also include consideration of the judicial process and the manner in which sentences are imposed and carried out. In the same way, the problem cannot only be thought of in purely theoretical or moral terms, but also requires that practical factors be taken into consideration. If in the analysis no evaluation is made of empirical evidence and the social consequences that may ensue from different courses of action, then we are left with a partial and incomplete appreciation of the complexity the problem poses.

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<sup>35</sup> According to public information from the President's Office in Uruguay, recidivism rates for those who participated in this program was 18%, compared to an overall recidivism rate of 55%.

<sup>36</sup> The recidivism rate for students of the Devoto University Center is 3%, compared to an overall recidivism rate of 70%, according to Argentina's Department of Education.