

# CRIMINAL POLICY AND REDEFINITION OF PUBLIC SECURITY

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## *Abstract*

Due to the new instruments on human rights, both constitutional and international, the redefinition on the concept of public security needs a new refreshing as a preliminary and required task to the criminal political analysis simply because the view over them, either narrow, wide or both at the same time, will affect its reach, content and success in accomplishing them. Thus, these actions may be part of the new legal contexts or could end up infringing them.

## *Keywords*

Human Rights. Criminal Policy. Public Security.

## *Summary*

1. Introduction. 2. Broad and narrow views. 3. Final note.

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## 1. Introduction

Over the last twenty years, the concept of public security has considerably changed its social and legal meaning as a direct result on the criminal rate increase and the latest ways it spreads along. Meanwhile, this change includes all kinds of transformations in crime social scenes affecting public issues and actions, specially rising repressive procedures legally accepted on behalf of social defense. From the legal point of view, public security and its preservation against any real or potential threat can only take place in a social rule of law (Carrión, 2005), so that any kind of actions, either punitive, preventive, dissuasive or others under the rule of law, cannot overlap or rule over constitutional and international laws.

>*Narrow view.* As to the changes in public security, from the point of view of its demolishing opponent –insecurity— (Daroqui, 2007) lowers its scope and meaning to one of its components at the expense of others, such as the access justice, accessibility to social and legal assets and guarantees provision, among others (Baratta, 1997; Sozzo, 2000; Pegoraro, 2001). Thus, the binomial “criminal policies- public security policies” has provoked a correlation between both terms and this is developed and slightly transformed by the legal concept of security centered in the social defense against crime, as mentioned here narrow view.

Consequently, the pairing security-insecurity has been attached together and made invisible from the rest of the components of the legal frameworks on security. It has also been excluded form crime policies and the agendas of the ones in charge.

Evidently, it is not a simple reductionist approach; it is a policy within crime policies or micro policies, from where crime stereotypes move and reproduce over the social defense frameworks. It becomes unfeasible and unrealistic in such a context where insecurity and the certainty about it does not work as a crucial element. Related to this, we become witnesses of the big social machine that controls and watches over individual

liberties and guarantees provided by the Constitution, ending up infringing rights.

As a consequence of this, crime emerges as *an area politically defined* (Morrison, 2006),<sup>2</sup> *maquinically built* can be easily reorganized by “the crime map” which has avenues, suburbs, habitants, natives and foreigners, hectic places and hot frontiers. As a consequence of this, a new social and political organization of public places (Deleuze, 2005; Foucault, 2006) arises and transforms it into a symbolic and discursive geography, where previously has been designed projects, movements, prohibited and allowed fates. According to a strict square, it also determines who can walk by or not thus infringing or affecting rights *the right to free movement in national territory*.... These internal borders or customs that open or close the way to those who can cross them or not give way to a new organizations assigning roles and status to the citizens ( first , second, third, fourth and so on) give way to a variety of implicit treats on behalf of control society and its “ social defense” over which the police has to reorganize public areas in terms of staying there or wandering about. Consequently, a young person usually poor, not Caucasian, with tattoos and piercings, in sneakers and sweatpants, gathered in groups for a period of time longer than half an hour in a public area is considered a *stranger* and *ipso facto* turns into unlawful association to the Police, who on behalf on the State ensure compliance over the rights acknowledged by the Constitution.

Consequently, Police practices have gained a scope of discretion and self-government which considerably enlarges its sphere of application giving birth to an informal and implicit penal subsystem only regulated by a

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<sup>2</sup> Morrison, W. (2006) *Criminology, Civilization and the New World Order*. (pp. 61). Citado por Zaffaroni (2010) en: Un replanteo epistemológico en criminología. (A propósito del libro de Wayne Morrison). Recuperado de <http://www.iuspenalismo.com.ar>

positivist characterology and anthropology of crime and exercised by police officers.

The narrow or restricted approach to the concept of public security by virtue of which its legal institute is reduced to the component that links it strictly to criminality, is not only a theoretical approach or a way of conceiving public security among others, but an operation of political-legal-police recoding that has displaced, elided and made invisible the rest of the components to the benefit of the one on which the processes of selective criminalization are aggravated and in which arbitrary detentions and the violation of constitutional guarantees, etc. are authorized. The restricted approach to the concept of security has contributed to the significant expansion of criminal law in recent decades, even in areas where the State had withdrawn in order to guarantee the right to privacy, now invaded by a society of control and surveillance, which in the name of "public security" violates fundamental rights, even those contained and contemplated in the very same institute that is invoked.

## 2. Broad and narrow views

With the exception of a few academic descriptions, the broad approach to security according to the block of rights and protections it contains, has not been the subject of much analysis. Neither has it been opposed, so far, to the restricted concept, since, in much of the academic community, as well as in the executive and legislative branches, and among crime policy makers, and even in social representations, the link that connects "public safety" with "criminality" is not legal, political or epistemological, but "ontological" and, therefore, it is not appropriate to justify its status. This reduction of the whole to one of its parts, which has naturalized the binomial "public security / criminality", is at the basis of the foundation and legitimization of criminal policies, making constitutional and civil law matters, also contemplated in International Law, fall under criminal treatment, and including public security among the set of criminally protected goods. This criminalization of security, operated within the

framework of the extensions of criminal law, is one of the constitutive features of the society of control in which we find ourselves and whose most crucial paradox is perhaps the absence of control of those who exercise the power to control. Criminal schizophrenia? Legal psychosis? No. Global political agendas.

The identification and clarification of all the components that make up the conglomerate of citizen security, not only the one that concerns criminality, is of crucial importance when designing policies or implementing differentiated protection mechanisms. Indeed, public policies on citizen security must operate on the basis of precise distinctions between each of the components and legal assets that comprise it as an effective means of identifying the type of threats or conditions that could affect such assets, not only by the violating action of private individuals, but also by the State and any other legal person. We list here some of the components of citizen security according to the broad approach:

- a) Quality of life conceived as full access to the common legal goods protected by the Constitution.
- b) Legal protection of the psychological and physical integrity of persons and property.
- c) Equal opportunities
- d) Equal access to justice
- e) Social and economic inclusion
- f) Access to reliable information
- g) Freedom of expression and information
- h) Protection against environmental risks
- i) Personal fulfillment.

The following is a definition of citizen security developed by Beatriz López (2006) from the perspective of the broad approach: *“Set of public and private, national and local organizations that relate to each other acting in a concerted and orderly manner, coordinated by a law, a policy and principles or rules of action, with the function of anticipating and reacting to the problems of citizen insecurity, in order to reduce its causes and effects through instruments (strategies, plans and/or*

*programs, technical and human, logistical and material resources), to deliver sufficient and effective benefits to the states of social and individual need, as part of the civil and social protection system of a society”<sup>3</sup>.*

Certainly, the broad approach to the concept of citizen security proceeds from a differentiation between *the rights to* and *the rights of*, usually confused and from which, in turn, are configured; *the power to demand*, in the first case, and by means of which its holders are granted a claim on the State and *the power to act*, in the second, by which individual freedoms are materialized.

Citizen security, from the point of view of its legal status, thus brings together both types of rights, *the right to and the right of*, and both powers; the power to demand and the power to act. Therefore, criminal policies must identify which types of rights have been violated and which of the powers conferred through them have been blocked. In this way, the restrictive approach to security should be overcome, expanding now on the set of rights and on the powers (to demand and to act) that these confer on their holders. Therefore, the fundamental question must be: *What type of rights and faculties are violated when a state of citizen insecurity arises?*

Now, if the rise of criminality entails a flagrant violation of the *right to* citizen security and confers on its holders an enforceable claim on the State, as an obligated subject, should the rest of the rights that, in this case, are related to the exercise of individual freedoms also be included? Undoubtedly, the criminalization of citizen security falling under the exclusive jurisdiction of criminal law and criminal policies, as we see it emerging from the restricted approach to security, leaves out the rest of the rights and circumscribes state actions to the prosecution of crime. The broad approach to security, on the other hand, although it includes

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<sup>3</sup> TUDELA, Patricio & LÓPEZ, Beatriz (2006) Guía para la Evaluación del Sector de Seguridad Ciudadana BID-RE1/SO1 Estudio Políticas Públicas de Seguridad Ciudadana. Los casos de Argentina, Chile y Uruguay”. pp.12

criminalization procedures limited to criminally protected goods, is projected onto the rest of the rights, and in this case, criminal policies must be articulated within a strategic, institutionally integrated action focused not on the consequences of criminality, but on the field of forces from which the phenomenon emerges. Moreover, the fundamental component of the broad approach to security, as opposed to the restricted approach, lies in the fact that it is not limited to sanctioning violations of citizen security inflicted by the rise of crime and perpetrated by the perpetrators of crime, but is projected onto "non-violent" violations such as the right to truthful information, the right to physical and psychological integrity of persons and their property, economic rights, the right to free expression, etc., which are not necessarily perpetrated by the subject of the crime, but by legal persons, individuals and even the State itself.

Without prejudice to this, it is sufficient to observe the majority of criminal policies in our region based exclusively on the *security-repression* binomial with the express exclusion of any action or strategy aimed at transforming the socio-economic conditions involved in the reproduction of criminality (Baratta, 1997). By means of this cutback, an attempt is made to give consistency to the treatment of security in the sense of a systematic defense against those who have been previously identified as a 'public threat' to its preservation. In this way, a new social management of public space emerges (Deleuze, 2005; Foucault, 2006) within the framework of a control society based on social defense against criminals, from which all sorts of techniques and procedures are derived, such as the expulsion from the social-urban space of social groups considered to be dangerous. The polarization of the social-urban space is not only territorial, in the terms defined by Deleuze (2005)<sup>4</sup>, but also discursive and

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<sup>4</sup> Gilles Deleuze (1925-1995), one of the most representative French philosophers of the twentieth century, argues that urban space is not only architectural or building, but symbolic, ideological, discursive and in which different ideological trajectories and their social and subjective carriers intersect and overlap, generating 'central discursive spaces' or monopolies in whose arrangement are located marginalities,

symbolic, since in that polarization are based repressive and intimidating practices by which the framework of constitutional guarantees is replaced by the primacy of a hegemonic conception of criminality and the subject of crime as a "producer of insecurity" (Daroqui, 2007), and with the character of "enemy" of the social sphere.

### 3. Final note.

The methodological weakness of the tools of analysis, evaluation and measurement of the phenomenon of criminality that characterizes Argentine public policies should not be attributed to state indolence, but rather to the primacy of punitive criminological models, as the only support and legitimizing framework of criminal policies.

It must be said that criminalization processes focused on vulnerable groups have an impact in the form of ruptures in their social cohesion and identity processes (Soldano, 2003), provoking situations of de-structuring that, at the same time, return to all social strata since, as a result of the rise of criminality and the violence associated with it, civil society rehearses different defensive responses against the 'new urban enemies' according to a range of options ranging from entrenchment, private security, to the carrying of weapons and self-defense. The latter introduces a second rupture in social cohesion, causing polarization effects and destroying spontaneous solidarities between different social groups through a generalized distrust that favors the application of social control procedures and the proliferation of vindictive penological discourses.

And so it must be concluded that although there is a common consensus among experts about the components that make up citizen security, conceived, in its broad sense, as a set of rights and protections of

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*peripheries, the dangerous, the safe, the inhabitable, the uninhabitable, etc. In: Anti-Oedipus. Capitalism and schizophrenia; also A Thousand Plateaus... Cfr. Bibliography).*

immediate compliance to which the social and democratic rule of law is obliged, among them; human and constitutional rights; the security of persons and property; access to justice; the level and quality of life; equal opportunities, and the institutional quality of democracy and its governability. Nevertheless, there is a restricted conception of security as a social defense against criminality, while the broad approach seems to be confined to academic circles, and the challenge for those of us who have some responsibility in this regard is to disseminate another view of the problem more in line with a necessary comprehensive State policy with a clear interdependence of the human rights of all citizens

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