Police brutality or police torture

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Abstract Focuses on the issue of force by the police and points out differences between police brutality and police torture. Discusses the factors which can affect the levels of police brutality.

The issue of police brutality appears to be a recurrent topic of discussion and research related to policing, particularly in the USA and in the UK. Below some questions related to this difficult issue are analysed.

Many criteria have been used by police scientists to delineate various types of police brutality as a specific form of police misconduct: unnecessary violence, the unjustified use of force, the use of excessive force, the excessive use of force, physical or verbal brutality. James Fyfe, a leading authority on the subject, underlines the difference between police brutality and unnecessary force. He defines police brutality as extralegal violence and “the wilful and wrongful use of force by officers who knowingly exceed the bounds of their office” (Fyfe, 1995).

However, it seems to be particularly important to analyse police torture and to point out the difference between police brutality and police torture.

Brutality in general, and police brutality also, is an inhuman, cruel and violent behaviour.

Having in mind this statement, one could say that police are in some way authorised to be brutal: they are given the right to use force in some circumstances and it is widely known that the use of the chemical means of coercion, of the water cannon etc., could not be an act of gentleness. The legal authorisation to use force (and to be brutal) is somehow limited by the rule of proportionality.

Neither in law nor in police science is there a definition of police brutality that would be accepted on a large scale.

So the line is delicate and unfixed between brutality, on the one hand, and the legitimate use of force, on the other. Its establishment remains in the realm of police discretion, which appears to be the most important source of police brutality.

Police torture is a distinctive category of police brutality. It is committed when police use force with a view to achieving a task or design, most frequently to extort confessions or to induce compliance. It is practised upon persons in custody or under control, mostly (but not exclusively) on police...
Police brutality or police torture premises or in other hidden places. Although extralegal and illegal, it is a component of what is called police methods and it reflects the conviction that only force is efficient. It is known within the police organization and it is tolerated somehow. Battery or other inhuman treatments on police premises are evidenced as a serious problem even in countries of advanced democracy.

Torture in general and police torture as an act committed by police belong to the category of international crimes because it is present in the international penal law. In fact, the UN General Assembly has adopted in 1987 the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. In Article 1 of this treaty torture is defined as follows:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or confession; punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The prohibition of torture has become *ius cogens* inasmuch as international instruments prescribe it like the constitutions and laws of many individual countries. Several international mechanisms and bodies, both universal and regional, have been set up to deal with the problem of torture. The most important is the UN Committee against Torture established pursuant to article 17 of the Convention against Torture to supervise its implementation.

The above-mentioned definition of torture is internationally accepted and it has that additional quality of being precise enough. Therefore whenever this kind of brutality is discussed within police science, the notion of torture could helpfully replace the use of the notion of brutality that appears to be rather vague and euphemistic. In that way the evil would be called by its proper name.

Given the circumstances under which they occur, the cases of torture are very difficult to corroborate. The officers stick strictly not only to the “code of silence” that binds them informally, but also to the internal rules imposing secrecy. Rare (if any) are the cases of this type of police brutality, where the internal disciplinary mechanism is activated without a complaint or without another external requirement. A systematic (or automatic) punishing of the superior (together with the offender) in every proven case would therefore constitute a pertinent contribution to eradicating such practices.

On the other hand, the brutal proceedings can occur in everyday police work with no apparent necessity and without a clear purpose. There is widespread opinion that police needlessly offend a person, verbally or by using physical force, very often just with a view to establishing its authority by acknowledging its legal right to use force. Commenting on the overall circumstances that lead to police use of force, Albert Reiss pointed out “that many situations that provoke
police to use undue force closely resemble those that give rise to assaults by private citizens. In both cases, the force is exerted in quick anger against real or imagined aggression” (Reiss, 1971). Such an analysis is not applicable to torture.

As a rule this kind of police brutality has to be identified as police brutality. It occurs mostly in public places, on the occasion of searches and arrests, during protests, mobs, demonstrations.

Police brutality could also be explained by the conclusion that police work in itself is brutal and dehumanising, coupled with frustration, phobia and tension and the uncertainty about the outcome of an action or a conflict. The majority of police officers have no personal experience of violence. Stress is common in dangerous situations and it makes the self-defensive reaction of the police officer stronger and intensifies its brutality.

The origins and explications of police brutality that have been outlined are only exceptionally applicable to the torture.

The crime rate level has to be mentioned as an element, which, indirectly at least, can propel police violence in the sense that a high crime rate generates approval among citizens of police violence. A former Polish anarchist who is now supportive of a more brutal police as a means to impede crime, disorder and anarchy provides the most illustrative example. He even implored the bishop to bless the police’s right to be brutal. Almost simultaneously, over 5,000 citizens of a municipality near Paris signed a petition against the proposal aimed at restricting police officers’ carrying of arms.

Police brutality could be observed from different points of view. A frequent approach consists of envisaging this problem primarily as a result of organizational norms. The well-known prison experiments by Zombardo have proven the correlation between the mandate and structure of a situation, on the one hand, and the aggressiveness that leads to brutality, on the other. During the experiments carried out at Stanford University, students were divided into guards and prisoners. Those acting as guards proved to be exaggeratedly brutal upon their colleagues acting as prisoners.

Making a distinction between police brutality and police torture is justified and necessary because they differ from each another in their sources and motivations, in the difficulties of their uncovering, and in the recognised and admitted indispensability of their repression.

The responsibility is also dislocated. The repression of torture is chiefly the responsibility of the government bound by international instruments. Police brutality generally remains a problem of internal police leadership and local authorities.

The proposed distinction between torture and police brutality is quite useful for discussing the question as to whether or not the relationship between brutality and military status and spirit of the police can be established. The importance of this issue is enhanced by the conclusion on the rise and imperativeness of paramilitary policing throughout the European Union states (Wright, 1997).
Military status of police force has no substantial incidence on the volume of torture, which is evidenced within both the civilian and military models of police organization. Statistics are difficult to gather, but seemingly there are no grounds to pretend that torture has been practised by the Guardia Civil more than by the Cuerpo Nacional de Policía in Spain, by the Carabinieri more than by the Polizia di Stato in Italy, by the Gendarmerie more than by the Police judiciaire in France, by the Belgian Gendarmerie before its “demilitarisation” more than after that event, in Ireland more than in England and Wales.

The comparison between the current situation in some countries in transition and the situation that existed before the beginning of transition is not possible because of the differences in transparency. Within the so-called socialist system both police brutality and police torture remained hidden almost totally; the victims, as a rule, did not dare to reveal information, fearful of new suffering.

The situation is now changing, although slowly. As a result of new legislation in many countries, of the activity of non-governmental organizations and of a rise in police research, the brutality and the torture are starting to be unveiled and evidenced so that one would have the wrong idea of deterioration in this domain. As a matter of fact the tendency is opposite despite the fact that in many countries in transition the new authorities do not reach legitimacy, and they use and misuse the police (and the army). Such a situation is encouraging police brutality.

On the contrary, when police brutality is discussed, the propensity towards such behaviour is obviously intensified by the military status and spirit of the police. Not only is the rawness of the military profession expressed, but also the military model of the police organization reinforces the alienation and insulation of the police from the surrounding world. Police observance is diminished and the propensity for brutal behaviour is augmented compared to what could happen when the police act within an accustomed population.

The military model does not encourage contact between the police and the community; it is not suitable to community policing which could be considered as a deterrent to the improper use of force. The concern of the police for the overall wellbeing of a given area is rather lacking within such a model.

The militia model is opportune for police brutality and police torture being committed and remaining uncovered. The party whose regime they protect against the citizens covers the militia and its members. The law is enforced just to the degree that does not jeopardize the party’s policy and position. It should be stressed that the militia model can exist under the name of the police as demonstrated by the current situation in Serbia.

Racism, nationalism and similar phenomena, such as ethnic conflicts, producing and spreading collective hatred, which is inculcated in the minds of police officers, regularly generate police brutalities.

In addition ethnic conflicts are originating and nourishing the impunity, which constitutes one of the reasons for police brutality. In such conflicts everybody fights under the banner of an ethnic or a nationalist design and
presented as superior, believing themselves to be protected by the supposed superiority of the goal. Unfortunately this occurs frequently; ethnic or national solidarity covers professional solidarity and the wrongdoers remain unpunished. The Yugoslav conflict, now running for more than eight years, offers an inexhaustible list of tragic examples.

Police brutality against protestors is a distinctive subject. Problems of public order are the main cause of the resurgence of militarism within policing (Wright, 1997). Very often the police exert cruel and inhuman force against innocent people or against people who are using a constitutionally granted right. During the opposition protests in Belgrade in 1996-97, a high ranking official of the Belgrade police declared that the police could not beat selectively in such circumstances, they beat everybody in the way – women, children, etc. It may be deduced from his statement that police behaviour is comparable then to a stampede of buffaloes. A number of years before this declaration Brian Chapman had concluded:

When a police force moves to break up a riot unpredictable forces are released (Chapman, 1971).

The position of the police within the political system could be repercussive on the brutality issue. Obviously the police state is the most auspicious framework, since it ensures the role of the police as arbitrator. In saying this, one should bear in mind the factual insignificance of police autonomy today. David Bayley rightly emphasises that the most important effects police might have on democracy depend on the policies of regimes (Bayley, 1995).

Numerous factors may reduce police brutality. Related to police brutality in the USA, a publication (Dudley, 1991) has reproduced an anthology of articles debating, inter alia, how police brutality can be stopped or reduced. Various issues are suggested by the articles’ titles themselves: strong internal leadership, internal reform, encouraging contact between the police and the community, prosecuting police perjury, using police foot patrols, civilian review boards, stricter laws, both federal and local reforms, sting operations by private investigators. Obviously these suggestions can be usefully applied to the countries in transition, and to other countries.

It seems, however, that accountability and oversight could be considered as particularly important issues in confronting police brutality. All other means have been essayed already; their deficiencies and their scope have been evidenced.

There are two principal reasons for impunity: the “code of silence” in misconduct cases, and the dread of the police. The first reason is universal; the second is particularly characteristic of countries in transition because it is obviously linked to the degree of democracy. The dread of the police in these countries is very deeply rooted and it is very often difficult to overcome the fear as it is based on actual events. Hence the victims of police battery and torture frequently refuse the barristers’ proposal just to file the complaint with no
charges, for fear of further consequences. The dread of the police exists not only among ordinary citizens, but also within institutions including courts, and prosecution.

In conformity with the UN Convention against torture (Article 10), the prohibition and punishability of torture should be included in the rules or instructions issued with regard to police duties and functions, aside from the existence of this prohibition in international and national law. Moreover police officers should be repeatedly reminded that they are individually answerable when committing an act of torture; that the order from a superior officer or a public authority may not be invoked as a justification of instrumental brutality, or torture, according to the Convention (Article 2).

The impunity of police brutality could change in some way mostly as a result of the evolution of international penal law. The demands are more and more frequent at empowering international legal authority in a way that it could efficiently enforce fundamental rights.

The Pinochet case has been greeted as a victory for human justice versus the raison d'état and a historic about-turn for international law. Although it does not belong to the category of ethnic conflicts, the belated activating of the institution of international law in connection with an internal conflict where the international humanitarian law norms have been breached undoubtedly constitutes an important precedent.

The use of force by police may be an unavoidable and fatalistic, although there are voices demanding the extinction of this right[2]. More realistic is Jerome Skolnick’s conclusion:

As long as some members of society do not comply with law and resist the police, force will remain an inevitable part of policing (Skolnick and Fyfe, 1993).

This statement is probably quite appropriate; it could be applied when police brutality is discussed. But police torture is the reverse of humanity and it must be repressed much more vigorously, everywhere.

Notes

1. Apart from the UN Convention against torture, there are several other international instruments. International Covenant on Civil and Political Rights (1966) stipulates, “No one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment” (Article 7). The European Convention on Human Rights (Article 3) postulates the same prohibition. The Statute of International Criminal Court (ICC), adopted in 1998 at the Rome Conference, gives a slightly different definition of torture (“intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused” – Article 7, paragraph 2, subparagraph (e). For the purpose of the Statute, torture constitutes one of the crimes against humanity which are characterised as “acts committed as part of a widespread or systematic (emphasis added) attack directed against any civilian population, with knowledge of the attack” (Article 7, paragraph 1). Hence police brutality committed in “normal” circumstances would not be included in the jurisdiction of ICC.

2. For example Harvey Goldstein, in an article in New York Times, April 21, 1991.
References


