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**POSTMODERN POWER AND TRANSNATIONAL
POLICING: DEMOCRACY, THE CONSTABULARY
ETHIC AND THE RESPONSE TO GLOBAL
(IN)SECURITY**

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POSTMODERN POWER AND TRANSNATIONAL POLICING: DEMOCRACY, THE CONSTABULARY ETHIC AND THE RESPONSE TO GLOBAL (IN)SECURITY

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Abstract

This paper argues that democratic control of policing, transnational and otherwise, is problematic in the contemporary period because of the nature of the postmodern power system. It describes the parameters of the policing field and notes that its separate sectors have different ways of being accountable to different sets of interests. Further it describes the transnational policing regime as a global polycentric power system and argues that there is no point from which the policing field could be governed. The paper then describes policing at the 'hard edge of postmodernity' showing what is at stake. The paper advances a normative conception termed the 'constabulary ethic' and argues that this might provide a moral compass for the nascent transnational subculture of policing. The minimum social conditions necessary for the emergence of the constabulary ethic are described and the principles that provides its 'normative glue' are elucidated. The paper ends by citing some practical examples where something like the constabulary ethic has been achieved.

Preface

In the world of global finances, state governments are allotted the role of little else than oversized police precincts; the quantity and quality of the policemen on the beat, efficiency displayed in sweeping the streets clean of beggars, pesterers and pilferers, and the tightness of the jails loom large among the factors of 'investors confidence', and so among the items calculated when the decisions to invest or cut the losses and run are made. To excel in the job of the precinct policeman is the best (perhaps the only) thing state government may do to cajole the nomadic capital into investing in its subjects' welfare. The shortest roads to economic prosperity of the land, and so

hopefully to the 'feel good' sentiments of the electors, lead through the public display of the policing skill and prowess of the state (Bauman, 2000, p. 216).

Introduction

By now a somewhat old-fashioned term, the notion of 'postmodernity' has long suffered a blurring of meaning as it has been applied across the whole range of social science and humanistic disciplines (Rajchman, 1991). It has been suggested that the term is something of a linguistic gesture, a fashion statement with little analytic import, particularly as it has been subsumed into criminological discourse (Garland, 1995; 1999). There is a kernel of truth in this observation. The term lends itself to an elasticity of meaning that can be unhelpful, even as it is suggestive, and so we must be careful when using it. Insofar as the term has been used to help to explain contemporary developments in transnational policing, it has tended to focus on the fragmentation of social power (Sheptycki, 1995). According to this argument, policing, and especially transnational policing, is undertaken by a fragmented array of institutions; insofar as this fragmented apparatus undertakes patterned activity, that pattern "emerges from the folk-devilry it seeks to order' (ibid. p. 630). In the modern period, social and political science worked with a Weberian notion of power; in the postmodern period our thought has had to come to grips with the 'polycentricity of power' (Stenson, (1999). Weber's 'iron cage' metaphor worked well in a world of nation-states wherein territory was carved up into domains in which each state was sovereign. According to this modernist world view, law involves a 'coercive apparatus' the purpose of which is norm enforcement within a community or other social group and this activity is usually understood to be bound to a particular jurisdiction. The sovereign nation-state with its claim to a monopoly of coercive force on its territory is thus the quintessential modern institution (Jessop, 1990). The modern state was therefore, and quite simply, the apex of power. So entrenched was this way of thinking during the modern period that the legal philosopher John Austin could assert, without enduring much in the way of counter argument, that international law was improperly so-called. Austin's logic was that since 'international law' was neither set nor enforced by a political superior, international law was nothing if not chimerical. Modernist assumptions about the naturalness of the Hobbesean

state system made this mere common sense. The tragedy of the Hobbesean international order of modernity was that it was, all too often, a war of all against all.

Sociologists of the 'global system' (Sklair, 1991) and of social power in its historical sense (Mann, 1986; 1993) have etched out a rather different conception. It is not that sovereign states are not important power actors; they most certainly are, and never more so than during the modern period. Historically social power has been organised in many ways, however, and the hegemony of the state form is not ensured for all times and places. In the contemporary period these sociologists and others have argued that it is necessary to recognise that there are important non-state actors who wield considerable power both globally and regionally. Further states themselves are not monolithic entities but rather are sites where power is contested. The former observation encourages us to think about a world order that comprises not only states, but also large corporate enterprises, religious movements, non-governmental organisations and a whole range of other non-state actors who are capable of acting and organising transnationally. The latter observation encourages us to be aware that sovereign states do not always, or even necessarily, act as cohesive entities and that different departments of government may act at cross-purposes. Recognising this, scholars in the policing field have sought to analyse the transnational activities of private security agencies, security and secret services, public police agencies, the military, mercenaries and other institutions in order to describe the broad field of policing (Sheptycki, 2000). The empirical evidence shows that both globally and within specific state territories the field of policing is a complex set of power arrangements that does not fit modernist assumptions about the overarching power of the monolithic sovereign-state (Bayley and Shearing, 1996). Observing the polycentricity of police power raises profound questions about the 'public good', for as 'plural policing' develops the idea of a general public good underscored by peace, order and good government, seems to be put in jeopardy (Loader, 1997; 2000).

In attempting to come up with answers about how we can best ensure that the power of policing contributes to a global order based on justice, basic liberties and human rights it is essential that we do not fall back into the 'sovereignty trap' (Walker, 199?). In this context the 'sovereignty trap' is a conceptual space wherein the social power of the sovereign state and of policing are deemed to be not merely coeval, but coessential. The aim of this paper is, partly, to show that modernist assumptions

about the comprehensive social power of the nation-state system do not work in the transnational era. In order to understand the implications of polycentric power in a global system we need to eschew the older vocabulary that simply assumes that the state qua state is the principal (or indeed only) repository of policing capacity.

General discussion about 'postmodernity and its discontents' raises many complex questions about the nature of governance (Bauman, 1997) and even the (im)possibility of governance (Ericson and Stehr, 2000). This paper has a more limited focus. Here we are interested to look at the transnational practices of policing. These are emblematic of global governance. Transnational policing practices are a crucial instance of polycentric social power in the contemporary age, since they impact on other aspects of social ordering in fundamental ways. In trying to understand these transnational practices and catalogue them more accurately we confront a key question of global governance: how is it possible to render such power democratically accountable? The answers have a direct bearing on the more general question as to what counts as democratic governance in the transnational age? The discussion that follows will first consider the complexity of the policing field and second the fragmented nature of the transnational political regime. Together these two expressions of polycentric social power raise profound questions for democratic governance in the transnational era. The paper aims to examine the normative dimension of policing subculture and advance a notion of the 'constabulary ethic'. It will be argued that the constabulary ethic can only take root in the new transnational system in the wake of certain developments in transnational civil society. In order to demonstrate this point in concrete terms the paper examines some hard cases: policing in so-called 'failed' or 'weak' states and the policing of 'divided societies'. To use the terms is already to fall back into the sovereignty trap. In order that we do not do so, it is essential to remind ourselves not to adopt a 'centre-periphery' view of the global system. Regions of the globe characterised as 'weak states' are not peripheral; neither is there a single place recognisable as the 'centre' of the global system. Concrete examples of policing from the bad edge of the postmodern state system are not peripheral because the system is polycentric. The creation of a constabulary ethic within a transnational civil society predicated on human rights norms is an issue of global importance, not least because without them transnational practices of police agencies will indeed conform to the dour prognosis of Zygmunt Bauman quoted at the beginning of this paper.

The Policing Field and the Transnational Political Regime

Before examining specific issues in transnational policing it is useful to rehearse what we mean by the terms. The idea of 'policing' is not self-evident. It can be contrasted with other terms, for example 'regulation' or 'law enforcement', and indeed many prefer to use these alternatives. On the other hand, the term 'transnational' is another potential source of confusion. For example, what is the difference in meaning when we refer to 'transnational' or 'global' processes? I wish to focus the matter more clearly by referring to the 'policing field' and its relationship to what I refer to as the transnational political regime. The point that will be emphasised at the outset is the evident ungovernability of the enterprise through traditional (ie. modernist) means of democratic accountability. Thus the weakness of the seductive promise made from within the confines of the sovereignty trap – that a state, or even a compact of states, can unequivocally direct transnational policing to democratic ends – is exposed.

To begin with, let us try to come to grips with the field of policing. Policing is generally understood to consist in some formally designated agents of social control who are invested with the capacity to legitimately muster coercive force in the maintenance of social order (Reiner, 2000). The police patrol officer is most visible expression of 'the state' (Bittner, 1967, 1980). Since the (US) President's Commission on Law Enforcement and the Administration of Justice, published in 1967, the social scientific study of uniformed public police has grown to something of an academic cottage industry in democratic countries the world over (Bayley, 1994). There can be no doubt that this is an important sector in the policing field and the numerous field studies that have charted the work-world of these policing agents have contributed to a degree of transparency that would not otherwise be the case.¹ However, policing is not merely the prerogative of these public police agencies. David Bayley pointed out that the public(s) in many countries of the developed world have developed a degree of pessimism about the degree of security that they can expect from public police and that one "indication [of this pessimism] is the growth in the private security industry" (1994, p. 10). The private security sector has come to dwarf that of the public police

¹ The degree of democratic accountability of these public police agencies is difficult to gauge. On the one hand, there is a definite historical trend in western democratic societies towards external review and monitoring, and the activities of social scientists is only one aspect of this (Goldsmith, 1991; Goldsmith and Lewis, 2000). On the other hand are the increasing centralisation and legal powers of national police systems which appear to make such police agencies less publicly accountable (see for example, Reiner, and Cross, 1991; den Boer and Doelle, 2000).

in many places (Johnston, 2000), and thereby greatly extended the terrain of the policing field. That the police field extends across the public-private divide has raised questions (Loader, 1997) about its governability that have not been fully answered (Bayley, and Shearing, 2001). Some policing scholars are pessimistic about the potential for democratic policing on both sides of this divide:

At present there seems to be a danger that we may end up with the worst of all possible worlds: increasingly large and centralized police services with ever-growing powers, alongside the anarchic emergence of unregulated self-help and private 'police' or 'security' services in the hands of sectional local interests, (Morgan, 1994; quoted in Bayley, and Shearing, 2001, p. 29)

However, the public-private divide is not the only feature of the policing field that makes democratic accountability problematic. Policing is also a set of practices that can be characterised as aimed at preserving either the 'general' or a 'specific' social order (Marenin, 198?), that is it may be either 'low' or 'high' policing (Brodeur, 1983). Political policing is the policing of interests specific to one group. Such specific interests are not confinable to those of a group at the helm of one state or other, although they may certainly be that. Be that as it may, under conditions of global neo-liberalism, political policing is not merely state policing. Organisations such as the International Federation of the Phonographic Industry are illustrative in this regard. The stated mission of the IFPI is "to secure and expand a global competitive environment for investment in recorded music". According to reports in Network ifpi – the 'newsletter of the international recording industry' – the IFPI has been successful in its pursuit of 'recording pirates' in countries as diverse as Malaysia, Switzerland, Israel, Hong Kong, Bulgaria and Mexico. According to IFPI newsletters, regional affiliate organisations reportedly undertake sustained surveillance operations, both static and mobile on, 'organised crime groups', that is: 'recording pirates'. The 'evidence' thus gathered is subsequently passed on to local state police for action. Seizure of goods and machinery are considered a good result, arrests are less frequent and all the more applauded for all that. The so-called Echelon scandal, wherein the United States National Security Administration (NSA) was alleged to have used highly sophisticated electronic surveillance to appropriate the intellectual property of a number of European firms and, further, to have placed that privileged

information in the hands of private interests in the United States, is another case in point (Sheptycki, 2000, p. 13).

These examples stand in stark contrast to the general service policing that characterises the activities of uniformed patrol officers. And so we have come full circle in the policing field, so to speak. This field can be delineated along two dimensions, one distinguishing between the public and private and the other between the 'high' and 'low', as in the following typology:

	State-Based Policing	Private Contract Policing
High Policing	<i>James Bond</i>	<i>The Man From UNCLE</i>
Low Policing	<i>Bobbie on the Beat</i>	<i>Pinkerton Man</i>

This two-fold typology lays out the four quadrants of the policing field, each characterised by a facetious label. The facetiousness is deliberate and is intended to caution the reader that this is an analysis using ideal-types and not a claim about the characteristics of empirically existing institutions. These are analytical distinctions and they are made to illustrate one point about police accountability. For the purposes of this analysis, this typification of the policing field demonstrates well that each of these stereotypical policing agents is 'accountable' in rather different sets of ways. James Bond is 'on Her Majesty's Secret Service', the Man from UNCLE is 'the spy for hire', the Bobbie on the beat is but 'the citizen in uniform', while the Pinkerton man is the first-of-the-line in 'rent-a-cops'.

The purpose of this analysis is to demonstrate that constructing an accountability framework for policing is requires a degree of complexity that constitutional theorists in this field have found difficult to grapple with (Goldsmith, 2001; Shearing, 2001; Walker, 2000). However, the accountability of policing is not made difficult simply because of the diverse nature of the policing field. It is made even more manifold by the wider transnational political regime in which it is placed. The term 'transnational political regime' is used to try to capture a particular sense of the 'machinery of global governance'. In the terms of classical political philosophy, it is akin to the notion of a 'polity'. In Ancient Greek political thought, it was conventional to speak of the demos, that is 'the people' or 'the commons'. Its attendant notion, democracy, denotes a

state in which governance is vested in the people as a whole. The 'polity', in contrast, is merely a political system. The polity is the institutional form of administration, in other words the practical form of political organisation. To illustrate with a practical example: Christendom in the Europe of the Middle-ages was a polity, but it was not a polity of the demos. Neither in the present age is the polity vested in the commons (Sheptycki, 1996, p. 63). Nor could it be. The 'global commons' consists of a wide array of groups, cultures, nations, societies, indeed perhaps even 'civilisations'. It also consists of 'legal persons', such as multinational corporations. Incorporating all of these institutional interests, the transnational political regime is a vastly complex polycentric power system. Dirigisme in this context is difficult, if not impossible, to manage.

The governmental capacity of the transnational political regime is uneven, as is participation in the deliberations that animate it.² The first point can be illustrated by reference to three regional compacts that, in part, circumscribe the global system. Even the most cursory comparisons of the European Union (EU), the Association of South East Asian Nations (ASEAN) and the North American Free Trade Area (NAFTA), and the states that help to consolidate them, is enough to show the unevenness of the transnational political regime. The first of these was founded by a number of states which themselves had well developed capacities. Further, the European project has been such that the competences formally granted it have lent the EU a collective character that given added power to transnational governance in that region. The ASEAN compact could hardly be more different. Several of the countries that participate in this alliance can be characterised as 'weak states', or some variant of the term, and ASEAN itself was never intended to act as an adjunct to member-state power in order to further enhance governmental capacity. Founded in 1967 ASEAN is largely a product of post-colonialist and Cold War sensibilities, its major purpose, then as now, to shore up member states claims to sovereignty in the face of threats from insurgent guerrillas, ethnic minorities and secessionist or irredentist movements (Leifer, 1996). Further, the ASEAN project is more focused on balance of (great) power issues (Khong, 1997; Leifer, 2000). The NAFTA project is different again. The states that make up this regional compact possess different

² It might do to point out that my understanding of the capacities of the transnational political regime is partly underpinned by the infra-structural notion of state power which refers to the capacity of the state to 'penetrate civil society' and to 'implement logistically' political decisions throughout the realm (Mann, 1986, p. 113-116).

degrees of governmental capacity and, further, NAFTA itself is merely a 'free-trade agreement' and not a programme of transnational governance like the EU (Jamieson, et al 1998a, 1998b). This unevenness of governmental capacity affects the operations of the institutions that make up the broader transnational political regime. Moreover, participation in decision making in transnational governmental institutions is uneven. The World Trade Organisation is a case in point. When it began operations on January 1, 1995 the WTO had 76 members. Scarcely five years later, at the dawn of the new millennium, the organisation had 142 members – nearly 75 percent of which were considered to be 'developing countries'. But numerical dominance does not equal influence. So while the major players of the developed world send scores of representatives to meetings and to the WTO headquarters in Geneva, in 2001 28 developing country members and 9 observer countries had no permanent mission to the WTO HQ. At that time an almost equal number had offices staffed by less than five diplomats many of whom also represent their countries at meetings of other international institutions. This imbalance of participation in a key institution of the global system famously resulted in a clash of interests over trade-related intellectual property rights between a number of developing countries and the United States over pharmaceutical preparations used in the treatment of HIV/AIDS. In this instance the USA used trade rules to pressure developing countries to enforce the intellectual property rights of multinational pharmaceutical companies, which argued that their patent protections were violated when countries such as Brazil and India allowed domestic firms to manufacture 'generic' drugs for the local population. After intense pressure from NGOs such as Medicines sans Frontiers, and Oxfam International the United States eventually withdrew its complaint (Audley and Florini, 2001).

The diversity of the policing field makes dirigiste planning difficult to orchestrate and the fragmentation of the transnational political regime means that there is no one key institutional site from which any such orchestration could be conducted. Policing in a polycentric power system risks becoming de-coupled from an overarching sense of the public good and degenerating into an array of institutional capacities that selectively police the particular interests of specific power groups. Thus, both globally and within specific localities, policing may contribute to further fragmentation. How, in this context, could an emergent transnational occupational subculture of policing act as a moral compass? A transnational subculture of policing infused with a

'constabulary ethic' might achieve a direction and coherence of its own in a system that lacks an overarching sovereign power. But before considering the sociological and normative parameters that are needed to give meaning to an idea like the constabulary ethic', it is both necessary and useful to look at policing at the bad edge of postmodernity because the hard cases are increasingly becoming the norm.

Weak States, Divided Societies and Fragmented Policing

Until relatively recently the idea of personal security provision as a matter of state provision was unremarkable (Loader, 2000). For a period of perhaps a century, the idea that 'the police' rightfully embodied the state's claim to the monopoly of coercive force within its territory simply could not be challenged. Shifting social patterns have raised questions and some scholars have noted the declining role played by the state in the social, political and economic life of citizens (eg. Castells, 1997; 1998a; 1998b). Scholars who share these concerns, but who focus on policing, have come to talk about 'networks of security' (Bayley and Shearing, 1996), a 'nodal conception' of policing governance (Shearing, 2001), or 'pluralist policing' (Johnston, 2000). Such concepts do not signify that state based policing has altogether evaporated. But they do mean that coercive power spent in the maintenance of social order(s) has been dispersed with the consequence that the once assumed radius of social order that comprised the territory of a given nation-state has begun to disintegrate into many smaller private radii. The effect of this is different in different regions, but the general thrust of this development seems clear. The motor for this spiral of insecurity is not hard to discover.³ Results from the International Criminal Victimization Surveys which focus on public confidence in state-based police provision point to the frequently unmet security expectations of the public and this is particularly so the less developed regions (cf. Del Frate, 1998; Mayhew and van Dijk, 1997; Zvekic, 1998). The result globally is the development of 'bubbles of security' connected by 'secure corridors' which attempt to segregate the good from the bad and the at risk from the risky (Sheptycki, 1997).

³ Robert Berki locates the impetus for this process at a more fundamental – he uses the words 'existential' and 'almost cosmic' – level. (1986) "as a seeker and consumer of security I am also defining myself as a producer of insecurity" (p. 32). For him the search for security is located in the most selfish recesses of our individuality. Thus there is an "ineluctable paradox involved in the quest after personal security" such that "the paradoxes of insecurity remain until the very end" (p. 242).

Examples of these processes are legion. The case of post-Soviet period is particularly instructive. According to Louise Shelley (1990), Soviet policing differed from that of Western democratic societies in rather fundamental ways. In the USSR policing was a state monopoly carried out largely by the Ministry of Interior militia; a recognisably paramilitary policing apparatus. This was a model of policing as an intensive, centralised, government controlled police force. However, the economic reality was such that the organisation was a corrupt, inefficient, under-funded, and therefore largely inefficient mechanism for social control. And yet by conventional measures, the Ministry of Interior troops seemed to provide a modicum of effective crime control, even while the venality and corruption of destitute militia members made this extensive law enforcement apparatus tolerable to the citizenry (p. 53-54). In Shelley's words: "the Soviet leadership has promised its citizenry a higher degree of order than in western industrialized societies and it has delivered on its promise to a significant extent" (p. 54). Only eight years later, Serge Timoshenko (1997) described some of the changes for this organisation in post-Soviet era, a time when crime levels and the resultant sense of insecurity in Russia had reached unprecedented levels. Chief among them was the diminution of state-policing as a career. To be sure, the numbers of officers in the Russian Militia remained very high, Timoshenko reported that Moscow had roughly twice as many police agents as did London (two cities of comparable size). However, unhappy with unclear and less than promising career prospects officers of rank were increasingly attracted to other sectors, especially: "private security, legal banking and financial services and other commercial activities which require special permissions (or licences) from the militia or other state agencies" (ibid. p. 123). According to these observations, the amount of state-policing capacity dedicated to protecting elite interests – and especially the integrity of the state – remained robust, while the growth in private sector security provision had effectively insulated the social and financial interests of social elites from the well known negative effects of the transition. Simultaneous with this had been an erosion of police provision for the benefit of the more general public who experience the state police as increasingly inefficient and capricious in their enforcement of law. That is why surveys of public perceptions of policing in post-Soviet societies find high levels of mis-trust, including considerable concerns about corruption, abuse of power and a lack of respect for the public (Beck, forthcoming). Thus whatever else characterises pockets of privilege in post-Soviet society, they at least function as 'bubbles of security'. Meanwhile the major characteristic in the life of

the commons is insecurity, not least of which is the insecurity brought about by the predations of both police and thieves.

In the years following the end of the Cold War Russia can, in common sense terms, be characterised as a state on a weakening trajectory. That is, its infrastructural power has, on the whole, been diminishing. In this context the practices of policing have not naturally evolved along democratic lines. It is interesting then to compare this general observation with one based on a state with a rather different historical trajectory. Policing in post-apartheid South Africa has been the subject of intense scholarly scrutiny (Brogden and Shearing, 1993; Gordon, 2001; Marks, 1999; van der Spuy, 2000; Waddington). It has also been the recipient of a significant amount of international aid aimed at enabling the country to enhance its policing capacity in its transition to democracy. The resulting developments are not altogether in keeping with this aim. Elrena van der Spuy (op cit.) charts the development of foreign donor assistance to South Africa in three stages. The first aimed to integrate the police service and reorient it around the philosophy of 'community policing'. The second phase concentrated on developing a policing capacity on the ground. Policing in South Africa during the years of apartheid had been bent to the task of policing racial segregation, so the practical task was to develop the capacity to deliver basic police services. Subsequent to this however, according to van der Spuy, came a new focus on controlling 'organised crime' and a resultant emphasis on enforcement activities rather than developing community policing provision. This clearly shows the rise and decline of the 'community policing' project in South Africa. According to Gordon (op. cit.) the South African experience suggests that once the new government had become established the imperatives of "regime performance" eventually came to carry more weight than the need to deepen democracy. By regime performance, she was referring to the ability to cope with a rising tide of crime and violence and consequent high levels of fear. Monique Marks' observations of the attempts to reform the specialist public order policing units in Durban are illuminating of the processes internal to the police institution during this period (op. cit.). She shows the inability of training and policy programmes to achieve reform in the face of poor supervision and command of the rank-and-file. Further, the tendency to deploy specialist public order units on general policing duties projected the hard edge of policing capacity where it was not needed and served to confuse police repressive and service roles both in the minds of the public and of the rank-and-file themselves.

Despite the initial efforts aimed at creating a service and community oriented policing institution, South Africa ended up (re)creating enforcement based policing with a hard edge.

South Africa cannot be called a weak state in the infrastructural sense, and certainly not in comparison with Russia. Further, given the amount of policing assistance that it received in the post-Apartheid years, it certainly cannot be argued that it was on a weakening trajectory with regard to its policing capacity. And yet, both countries share a similarity in their lines of development: the growth of private security provision and the parallel emergence of an insecurity discourse that trumps concerns with democracy and human rights. In both places the emergence of a set of phenomenon described as 'organised crime' has served to ensure that concerns with general service policing have had to give way to concerns about policing forms of 'serious criminality'. In both countries the state is weak in the sense that there are rising perceptions that the state cannot ensure a modicum of social peace essential to the public life of a liberal democracy, and a resultant reluctance to trust the state with sole responsibility to do so. We see similar sorts of issues in Los Angeles, the 'capital of the Third World' (Chevigny, 1995). There the Los Angeles Police Department and the Los Angeles Sheriffs Department share the policing turf with numerous private security contractors who announce their presence in certain neighbourhoods with 'Armed Response' signs (Davis, 1992). In Los Angeles we also see a concern with organised criminal gangs, continuing high levels of fear of crime amidst public perceptions about the inability of state based police to provide security, and a tendency for tough law and order tactics to disallow any notions of human rights based policing. In many places, particularly where state-capacity is infrastructurally weak and where social divisions are sharp, deep and contested, we see that the apparatus of the state, including its police and military, becomes a active contributor to the violence. The existence and ferocity of intra-state violence in many countries is testimony to this (Birkbeck and Gabaldón 1996; Cohen, 1993; Huggins, 1991; Kaplan, 1996; Strange, 1996; Sheptycki, forthcoming; Walton and Seddon, 1994). However, the process is not entirely confined to those regions where states are critically weak in an infrastructural sense; they are evident in places where citizens perceptions of insecurity have weakened the sense that the state can fully play its role as arbiter of social order. In such circumstances the exercise of police

power is “ensystematic, sporadic, particularistic and often corrupt” (Marenin, 1996, p. 323).

It is in this context that policing scholars look for ways in which state-based policing can be shored up so that it can foster democratic norms (Bayley, 2001; Goldsmith, 2001). Indeed there is something of an export industry in policing development assistance and a concomitant worry that more dominant states may use such aid as a way of gaining undue control over the domestic policy of recipient states (Cottam, and Marenin, 1999). This has led to attempts to think about how best to ensure that police development aid is kept within boundaries acceptable in democratic and rights based terms (Marenin, 1998) But before trying to fathom how democratic, rights-based and service oriented policing might be practically fostered the situation is worthy of some reflection. The social fragmentation into ever smaller radii of security that is palpably observable in so many different regions of the world is reminiscent of Hobbsean political theory. Leviathan was originally made public in 1651 in the wake of the English Civil War and, with its emphasis on sovereign power, presents a quintessentially modern political theory. Hobbs’ attempt to understand the brutality of the civil war and, in turn, understand the requisite conditions for peace, order and good government offers some insight into the present day processes of insecurity. It is frequently, but erroneously, assumed that Hobbs projected a view of history whereby humanity evolved away from a ‘state of nature’, wherein life was ‘nasty, brutish and short’, to a more civilised social order ruled by the Leviathan. In fact, for Hobbs the opposite was true. The state of nature was, for him, not something that preceded the social order of Leviathan, but rather was something that would surely follow upon its dissolution (Sheptycki, 2001, p. 238). Hobbs is usually thought of as the supreme theorist of absolutism, but it is important to remember that he allowed that sovereignty could equally well reside in an assembly of people as it could in the body of the King. He certainly insisted that, once established, the sovereign power had absolute authority in making and enforcing law and that such law could only be rejected by its subjects in an act of rebellion which, by definition, would rend the social contract asunder. However, Hobbs also contended, albeit with slightly less vigour, that there could be ‘no obligation on any man which ariseth not from some act of his own’ (quoted in Sheptycki, 2001, p. 238). Thus Hobbs theory ultimately required that governance must eventually be traced back to the social contract and the voluntary consent of the governed.

This is the complication that confronts all projects that aim to improve the effectiveness of policing. Without the active consent of the great majority of people, the ability of the Leviathan to ensure peace order and good government is bound to fail. Under circumstances of extreme social cleavage, be it in Los Angeles, Moscow or Durban, even the most 'tooled up' police agents cannot prevail, much less dispense social justice (Waddington and Hamilton, 1997). Indeed, in such circumstances it even becomes impossible for state-based police to deal with ordinary law crimes such as stealing hubcaps or domestic violence and private security provision becomes the last redoubt of those who can afford it. In these conditions, state-based police – the forces of law and order – may come to see certain regions as virtual 'no-go areas'. This level of insecurity may set up a pattern of action whereby policing becomes an active part of the state of nature it ostensibly seeks to overcome. Often police settle in as an army of occupation and on the occasions that they do, security discourse trumps the discourse of police service delivery.

What has this shows, I think, is that efforts to 'transform' or 'develop' policing capacities in a variety of settings – even when such efforts have been infused with concerns about fostering democracy – have tended to founder on the polycentricity of postmodern power. The attempt to export a model of democratic policing from the 'developed world' to the 'developing world', or 'top-down' is stuck, from the very start, in the sovereignty trap. Perhaps this is why so many of the metropolises in the so-called developed world exhibit the same characteristics of places labelled underdeveloped, and why the developmental trajectories of (in)security in local communities in such a great variety of regional settings seem set on a similar course. Policing by itself cannot deliver greater democracy because police agencies are points in a global system of polycentric power where there is no clear sovereign and no realistic prospect of one. Moreover the social sphere that any putative sovereign power might seek to rule is itself fragmented, so the solution to the problem cannot be achieved by simply imposing a Global Leviathan, even if it were possible. Globally police institutions are part of broader organisational set which inhibits democracy and human rights across a wide range of human activity. Policing cannot become part of the solution to this problem prior to the development of a normative theory of policing that adequately copes with postmodern power in the transnational setting. Before

such a normative theory can take hold the condition of 'transnational civil society' will have to alter.

Some Social and Normative Conditions for the 'Constabulary Ethic' in the Transnational Age

Stan Cohen has observed that common usage the term 'civil society' is usually vague, covering a range of institutions that are thought of as a buffer, bridge, or intermediary between 'the individual' and 'the state' (1994, p. 80). In the classic 19th century liberal use of the term it referred to the natural realm of society outside the legitimate sphere of the state and 'politics'. Liberal thought sought to impose boundaries on coercive state control: Leviathan. Like Orwell, the champions of civil society saw that a population totally dominated and administered by 'the state' was a dystopian dream. According to this view the job of liberal critics in civil society was understood to be keeping government in its place and ensuring that coercive state control did not override the self-controlling aspects of people themselves. Broadly speaking, in the modern period civil society was seen to offer a needed balance to the power of the state, and any heterogeneity that might characterise it was overshadowed as it gained collective significance through its resistance to the state. The problem in the contemporary period, as we have seen, is that the neat dichotomy between 'the state' and 'civil society' has given way to a transnational polycentric power system that, in too many regions, has yielded something close to a Hobbesian state of nature. The problem is not so much keeping 'the state' within acceptable bounds (although that role remains) but rather orchestrating a complex transnational governmental apparatus to ensure the delivery of policing services where and when they are required. In postmodern transnational era, civil society can no longer be merely contra 'the state', it must exceed this and become the counterweight to the transnational political regime – a much more diffuse entity. The dispersed nature of power in this system makes it extremely difficult to conceive of transnational civil society as a 'block', much less constitute it as one. The problem is partly conceptual. The complexity of political power in the transnational age probably means that we have to abandon modernist terminology altogether and raises questions about the notion of civil society, transnational or otherwise. The danger that projects for transnational governance might fall back into the realpolitik of state's interests is ever present.

The concerns of this paper are grounded and specific, they have to do with the interplay of discourses about policing that stem from three key constituencies: human rights organisations, police leaders and social science experts on policing. The theoretical difficulties involved in comprehending the relationship between abstract entities such as 'transnational civil society' and the 'transnational political regime' attain a practical significance through this more limited focus. At minimum the social conditions necessary for the articulation of a constabulary ethic for the transnational age include fora wherein these three discourses can be brought into harmony. If these sets of knowledge can be well orchestrated it might become possible to invent a constabulary ethic for the transnational age. There is no reason to think that this is an easy undertaking.

Police leaders are essential to the discussion, since they bring with them an understanding of professional police discipline. At its core policing consists in the judicious application of coercive force in the maintenance of social order. It is peace-keeping, peace-making and, if needs be, peace-enforcement. Policing agents are charged with responsibility for maintaining either a general or specific social order and they do so with ultimate recourse to coercion (Bittner, 1967). Discipline is required in order to undertake this mission, and police leaders are (or at least should be) people schooled in ways of instilling this discipline. In order that policing agents, either individually or collectively, undertake tasks calculated to instil and help maintain social peace they are invested with awesome coercive power. Discipline in the application of these powers is therefore key, partly because the application of such powers is simply more effective if it is well co-ordinated and partly because the maintenance of social peace requires that coercion is only used as a matter of last resort lest it become self-defeating. Human rights organisations are less concerned with disciplining and more concerned with the quality of social peace and with the advent of 'globalisation' have come to focus on the need for 'cosmopolitan justice' (Shapiro and Brilmayer, 1999). Traditionally human rights organisations concerned with policing, crime control and associated activities have tended to focus almost exclusively on instances of police wrong-doing (eg. Chevegy, 1995; but also the reports of Amnesty International and Human Rights Watch). The need for monitoring of this type has not disappeared, indeed globally the abuse of police coercive powers (extra-judicial killings, 'disappearances', torture) and their misuse (bribery and corruption) seems to be growing (ref?). However, it is becoming increasingly

apparent that human rights watchdogs need to focus as much on the positive aspects of what police can do: fear reduction and the minimisation of threats to individual safety. This is so because threats to individual safety and the resultant fear are themselves violations of human rights. Human rights advocates need to develop ways to help foster police service delivery in order to satisfy their own mission to provide rights for all. Social scientists have produced a substantial body of work on 'how to recognise good policing' (Brodeur, 1998). Academicians bring with them a range of ideas drawn from anthropology, geography, history, psychology, political science, the sociology of organisations and of law and much else. The array of ideas that has come from 'police studies' provides the best understanding of what goes on in policing and help to clarify what is at stake. Social science can help to better the delivery of police services in concrete ways; organisational sociologists for example often seek to do just that. The social conditions necessary for fostering a positive ethic for policing require that, at minimum, these three constituencies build and maintain mutual dialogue. They do so in the context of a transnational political regime that is frequently riven by state's interests. The doctrine of sovereignty is in many ways antithetical to the notion of cosmopolitan justice (Sheptycki, 2000, p. 3) and so it is difficult to maintain this dialogue.

The political circumstances established in the transnational political regime present one set of difficulties, but there are obvious points of tension between policing and human rights discourses. Policing requires the judicious application of coercive force aimed at the maintenance of social peace, but the use of police powers is not always judicious. Human rights watchdogs are long practised at picking up moments of police injudiciousness and thus an adversarial relationship is established from the very start. In the context of relatively stable and quiescent social order, occasions for friction between these two types of institution are less frequent. In the context of rising crime and social disorder, when feelings of insecurity are strong, they are frequently at odds and there are more occasions on which to point the finger of blame. For example, at an international meeting organised by the World Peace Foundation and the Institute for Defence Policy a representative of the South African Police Service argued that the impact of the emerging 'human rights culture' on the criminal justice system was one of the key factors conducive to rising crime in South Africa (Rotberg and Mills, 1996, p. 9). There is a danger that people fearful of criminal victimisation may be persuaded that rights discourse amounts to a 'charter of

rights for criminals' and therefore silently applaud when police agents adopt the 'Dirty Harry solution' – "forget what's legal, do what's right" – (Reiner, 1985). Such a dynamic often serves to amplify the violence that police agents are faced with. According to the Geneva based International Council on Human Rights there is a major challenge in re-configuring the terms of public debate on these issues so that human rights is not perceived as antithetical to public security concerns. Some police leaders are aware of these issues and have put forward the point that "it can be convincingly argued that not only are police required to respect human rights when exercising their powers, they are required to protect human rights as one of their functions (Crawshaw, et al, 1998). Thus, controlling the use of police coercive power is not merely a matter of minimising police use of force so that it is in line with human rights standards, human rights discourse sets the conditions for successful police work over the longer term. The perspectives of policing agencies and human rights NGOs are too often depicted as being at odds with each other, if not altogether mutually exclusive, but they need not be.

The relationship between policing institutions and social science is similarly complex. Like the relationship between policing agencies and human rights advocates, social scientists may also find themselves in an adversarial relationship with policing institutions. The tension between these two poles is not just over the issues relating to use of police powers, although these certainly arise. Social scientists have busied themselves in studying every facet of police organisations. One obvious source of tension that emerges relates to the scientific measurement of police effectiveness – in the hands of externally funded academics this may generate friction because such findings may be seen as limiting police discretion. The riposte might be that social science improves the quality of police discretion and helps to improve the way policing agents undertake their mandate. There is an uneasy relationship between police and the academic community, but it should not escape our attention that very often, such scientific undertakings mirror the shortcomings of a policing world view devoid of the moral compass that rights discourse supplies. In Richard Ericson's memorable turn of phrase, such social science is 'General Schwartzkopf criminology' (1994). This emphasises police strategies and tactics that aim to secure a territory against those who threaten its people and things and stresses how military-type police bureaucracies can use the technologies of coercion to fight criminality. This scientific discourse is not easy to reconcile with rights-based concerns.

The triangular interplay that naturally occurs when human rights activists, social scientists and police leaders sit down to discuss practical issues has positive and negative strands between each point. Police leaders and human rights organisations share a common interests in that both can agree that policing by consent is to be preferred and, under that rubric would welcome social conditions where recourse to coercive force is minimal. Social scientists and human rights activists are natural allies insofar as they both seek to shape police discretion in line with shared concerns about the proper place of police power in a free society. Policing institutions actively embrace social science because the tools it provides help to enhance their organisational capacities. This in turn may set up a negative relationship between human rights and social scientific discourses, because the scientific enterprise may, in some instances, be limited to concerns about the enforcement of criminal law and the 'fight against criminality'. This mirrors the adversarial relationship between human rights watchdogs and policing agents, a relationship wherein some social scientists may choose to weigh-in on the side human rights advocates. Assuming that the institutional conditions for mutual dialogue can be established (and this forum is ample testimony that this is possible) there arises a need for a 'normative glue' that binds the perspectives represented by the points of this triangle. Without a shared normative perspective it is all too easy for the bearers of these discourses to fall back into a dialogue of the deaf.

There are four principles that help to provide the normative conditions which allow for a constructive interchange between these points of view. They are an emphasis on social harm caused by insecurity, a concern with the needs of those who fall victim to manifestations of this insecurity, the aim to alter the conditions that produced the insecurity in the first place, and an awareness of the symbolic dimensions of police work. Let us take each in turn. Criminal acts are those which cause social harm and instances of social harm are, by definition, crimes (Schwendinger and Schwendinger, 1970; Berki, 1986). These are many and varied and include: robbery and long-term fraud; vandalism and the illegal dumping of toxic waste; domestic violence and rape as an instrument of war; the predations of street corner hustlers and of 'human traffickers'; the economic exploitation of child labour and state oppression. Formulating the policing task as one primarily concerned with the service response to instances of social harm signifies a normative choice to downplay law enforcement

as the key note in the policing repertoire. An emphasis on social harm requires that the needs of victims comes first and foremost in any policing action. The payoff is that, by aiming to meet the needs of victims, policing agents secure a higher degree of legitimacy than would otherwise be the case and thereby creating a climate of consent for policing. Such consent is useful when searching for ways to prevent crime. No matter how well resourced, by themselves policing agents will always be unequal to the task of securing social order and minimising the social harm caused by criminal acts. Therefore the consent of communities is essential if policing institutions are to successfully and progressively prevent the opportunities for crime. The symbolic content of police action must also be considered. The messages transmitted by policing action need to be compatible with the aim of minimising the social harms associated with the crime and insecurity.

Legal experts on policing and human rights will want to point to other principles as well: proportionality, necessity, legality, and inviolability (Crawshaw, et al, 1998). These are important because, no matter how successful we are at manufacturing policing by consent and no matter how well developed police service delivery becomes, the need for law enforcement will remain. However, the point of trying to foster a constabulary ethic is to heighten the standards of moral success. The constabulary ethic shifts the emphasis of policing away from law enforcement and on to peace keeping, from crime fighting on to crime prevention, from confrontation to problem solving. The principles of proportionality, legality, necessity and inviolability help to set conditions for judicious law enforcement, circumspect crime fighting and appropriately targeted confrontation, but they do not prioritise the needs of victims, the prevention of crime or the consensual basis needed for keeping the peace. All of these principles are necessary and useful, but the constabulary ethic is different from the law enforcement creed. By way of illustration, it might be useful to elaborate on a metaphor first used by David Bayley – the police are to government as the edge is to the knife – it makes a difference if the knife is a scalpel or a bayonet.

Conclusion

This paper has sought to provide some insight into the difficulties posed for policing the transnational era. It has tried to provide a rough outline of the minimal social and normative preconditions for the establishment of a 'constabulary ethic'. There are concrete examples of this type of project in the contemporary period which illustrate how actors 'out there' in 'transnational civil society' have sought to affect policing practice. For example, since 1997 the Vera Institute of Justice has been engaged in an international project examining police accountability structures and public safety initiatives (Stone and Ward, 2000). They argue that the prospects for achieving democratic and rights based policing are good and that "at least a dozen recent innovations in policing and police accountability can be seen as contributing to this process" (p. 13). Further:

These innovations include such otherwise disparate developments as community policing, real-time analysis of crime statistics, victimisation surveys, civilian complaint review boards, civil rights and human rights prosecutions of police, integrity units within police agencies, exclusionary rules of evidence, laws mandating arrest in domestic violence cases and more (ibid. p. 13).

Projects undertaken by the Vera Institute in many different countries illustrate the importance of local knowledge and adapting local governmental capacities to the needs of local communities all under the watchful eye of both senior policing administrators, government officials and, importantly, disengaged and impartial observers from the academy or human rights NGOs (Macovei, 2000; Perez, 2000; Pustintsev, 2000; Silva, 2000; Szikinger, 2000;). The incremental goal is to improve the way policing agents, both public and privately contracted, treat people everyday (Sheptycki, 2000). Maggie Beirne (2001), has observed that human rights language often remains at a high level of generality and that its universality can render operationalisation in the policing context difficult. This observation, it may be argued, also applies to notions such as the constabulary ethic. The constant watchfulness over the practices of policing by social scientists, I believe, is therefore an essential aspect of the social conditions under which such norms can take root. It is interesting to note in this regard that the slow and halting progress of the peace process in

Northern Ireland has also been accompanied by a sturdy growth in academic criminology there (Ellison and Mulcohy, 2001). The criminological gaze, if one might call it that, has helped to clarify the internal organisational parameters of the public police (Brewer, 1991; Brogden, 2001) and that is essential if police reform is to succeed in the longer term. It has also helped to shed light on how young people (Ellison, 2001) or women (Pickering, 2001) experience policing in Northern Ireland changing the parameters of the policing debate in constructive ways. Social scientists have also made contributions to the study of the 'informal' practices of policing undertaken by 'paramilitary groups' in sectarian neighbourhoods, where private policing verges on vigilantism (McEvoy and Mika, 2001). This latter study is particularly important because it takes the privatised forms of policing undertaken by communities seriously; looking for ways to inculcate restorative justice thinking into these practices. This widens the conception of policing by acknowledging the polycentricity of postmodern power and is preferable to the narrow focus on state-based policing characteristic of the sovereignty trap of modernist thinking.

Policing is one of many questions that pervades debates about the character of global governance, witness the mission to democratise policing across the world. Democratic control of policing has always been a problematic issue, still more so in the transnational era. Policing agents from all sectors of the policing field have become significant transnational actors in their own rights. At the same time, the sovereignty of the state has opened up a much more complex form of governance: the transnational state system. It is difficult to explain the interplay of institutional power and vested interest that goes on under these conditions using the old vocabulary of policing accountability (Sheptycki, 2001b, p. 413-414). These can be described as postmodern conditions, but terminology aside, a danger of the contemporary period is that policing might become de-coupled from an overarching sense of the public good and degenerate into an array of institutional capacities that selectively police the particular interests of specific power groups. In these conditions, democratic policing requires at very least the combined attentions of social scientists, human rights NGOs and policing leaders to the social harms arising from the reality and perceptions of insecurity that pervades our cities, held together with the normative glue provided by the principles and notions that describe what I call the constabulary ethic.

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