

Chapter 2

Democratic Policing and State Capacity in an Integrated World

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Introduction

In this chapter, I want to examine the interconnection between three forces: the demands of a democratic police force,¹ the construction of a state's capacities as a way to achieve democratic policing, and the ability of international institutions to help create and cultivate the fine balance between the competing aims of modern policing in a democratic society. These forces are fundamentally paradoxical for two significant reasons: first, democratic societies are essentially organized around the principle of governance by consent, and many aspects of policing are anathema to this political order. Second, democratic societies are self-determining societies, meaning that foreign intervention, particularly in a field as important as policing, is fraught with political danger. Influencing another state's policing involves transforming the core of their governance and affecting how the state fulfills what is undoubtedly one of its most serious functions: the use of force against its own citizenry. This means that those involved in foreign interventions into a state's policing system, be it from regional or international institutions, must be aware of the delicate position it is in and prickly matters of state sovereignty.

Nonetheless, it is both possible and necessary that international institutions play a role in constructing democratic police forces around the world. While "nation building" as a political project has come into disrepute in recent years, it is clear that many newly emerging democracies, particularly in Eastern Europe and in the Islamic World, need international assistance in developing the crucial institutions of democratic governance. While societies cannot be made democratic simply by

¹For an analysis of the notion of democratic policing, see the OSCE's Guidebook for Democratic Policing (2008).

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waving a magic wand and the transition from despotism to democracy is a perilous, arduous process, basic institutions of most societies are capable of democratization, if for no other reason than that people demand a certain level of democracy from these institutions. Crime control in general and policing in particular are clearly amenable to democratization, and it is probably not an exaggeration to say that democratic policing is a necessary condition for a democratic society. However, like all aspects of democratic society, there is a tension between the normative demands of democracy as such and the need for law and order (Habermas 1998).

Police and “the Democratic Dilemma”

In democratic societies, the police stand in a strange, even contradictory position. The police embody the “sharp point” of the state’s monopoly on the use of force, deploying physical violence (guns, batons, handcuffs, etc.) to enforce laws, maintain public order, and advance government policy. While this is taken for granted, it is important to understand the dramatic nature of this power: at their core, democracies are not societies based upon coercive imposition and the use of force, but rather are organized around the freely given consent of the governed. Moreover, because of their resources, training, and social structure, police as an independent governmental institution consists in individuals that are in some ways separate from and sometimes even hostile to the public at large. Each of these features of democratic police mean that, while they clearly are a necessity for almost all modern, industrialized societies, they are also in many ways a threat to these same democratic states. When police officers use force on their fellow citizens, they are denying their right to dissent from the prevailing order or freely determine their own actions.

There are two horns to this dilemma: a police force that is too powerful and even too effective could easily stifle the robust civil society as well as the personal privacy that are central to a democracy. On the other hand, a police force that is too ineffective or incompetent leaves the citizenry vulnerable to the ills of social disorder, which itself can impede democracy.

Thus, the “democratic dilemma” of policing refers to the need to create institutions for effective law enforcement and for the maintenance of social order while simultaneously preventing these institutions from becoming tools of oppression, either through their deployment by a would-be dictator or simply by overaggressive law enforcement. (I am leaving aside the issue of corruption for this discussion, but it too is a continuing threat to democratic policing.) Police officers who, in an earnest zeal to fight crime, violate individual liberties by invading an individual’s private space or who become pawns of power-seeking politicians are a continuous problem in democratic societies, and such challenges require constant efforts to address.² Unlike, say, ordinary, profit-driven corruption, this dilemma is not a

²In nondemocratic societies, we might add, there is a corresponding dilemma—how to prevent an individual from using his control over the police force as a means for seizing power from those who presently hold it.

product of “bad cops” or rotten institutions—serious problems—but problems which are separate from the core functions of policing. Rather this dilemma is inherent to the logic of policing: law enforcement and the maintenance of order are often at odds with essential features of a democratic society such as privacy and dissent. Earnest cops out to stop crime and protect innocent civilians are more likely to infringe on individual liberties than are corrupt cops using their position for profit. This dilemma is so acute that in many democratic societies, police who violate individual liberties are valorized as tough enforcers by the very public they abuse (Klockars 1993, p. 89).³

In most Western liberal states, police are controlled by a complex web of legal, cultural, and political controls. These, along with policing practices that seek to prevent the abuse of coercive power on the part of the police, serve to keep them within democratic norms. Legal regulations on policing, be it in the form of civil or criminal liability for misbehaving officers, administrative oversight of police, or criminal procedural law (such as the exclusion of improperly obtained evidence from criminal trials), can help prevent police officers and institutions from stepping beyond their proper grounds. Cultural practices among officers such as the cultivation of a professional ethic for police officers (such as “policing by consent” in the UK), training and educational requirements for officers, and other symbolic aspects of police officers’ self-identity can likewise be valuable in preventing police deviance.

On the street, there are many ways that democratic policing may be inculcated into police forces. Practices like community policing and problem-oriented policing seek to make the police more responsive to the demands of the public in ways that are democratic in character. By structuring police practices such that officers are forced to be responsive to the community means that they are not only more likely to be effective but they are more likely to be responsive to a democratic society and not seen as alien from it. As “Skolnik and Bayley” describe it:

Neither the police nor the criminal justice system can bear the responsibility alone. In an apt phrase, the public should be seen along with the police as “co-producers” of safety and order. Community policing thus imposes a new responsibility on the police to devise appropriate ways for associating the public with law enforcement and the maintenance of order. (Skolnik and Bayley 1988, p. 5)

Thus, policing practices themselves, strategies developed by police forces to fight crime, can help to structure the relationship between the public and the police.

Finally, the organization of policing bureaucracies themselves can work to regulate policing: decentralized systems such as in the United States or England diffuse authority among states, cities, counties, and other political entities. Similarly, this organization spreads oversight among different civilian and police units (police oversight committees, departments of justice, internal affairs divisions, etc.) in such ways as to allow for effective governance of officers and police units, keeping them effectively under civilian control or at a minimum preventing forces from having

³ “There is considerable support among the public for an aggressive, kick-ass style of policing” (Skolnik and Fyfe 1993, p. 189).

too much autonomy. Decentralizing power by carefully structuring the organizational chart of a nation's police force hinders the ability of armed organizations, be they military or civilian, to threaten a democratic polity.

Thus, most states that are considered to be established democracies, that is, states where there is little likelihood that the government will sink into a police state (here I am thinking primarily of North America, Western Europe, and Japan), have developed a number of ways to restrict, regulate, and control those groups of people owning the most guns and possessing the authority to use them. These different tools permeate police forces culturally, organizationally, and actively, making the forces sensitive to the needs of the people and able to respond to their complaints and demands. While this is not to say that the police in these states are always functioning in a democratic fashion, as the testimony of many disempowered groups in these societies will bear witness to, they have developed and continue to refine tools to maintain and enhance their forces' democratic character. I will rely on some of these features of democratic police forces when I examine ways that regional and international actors can improve a state's capacity to fight crime democratically.

Of course the irony in this is that many of these developments have the effect of limiting the ability of officers to do precisely what we want them to do: fight crime and prevent public disorder. These restrictions on policing serve as road blocks to the police officer's ability to investigate crimes that occur, arrest and interrogate suspects, handle large-scale social disorder, and perform many other essential functions of policing. Procedural roadblocks hinder the ability of officers to get evidence; a police ethic can make officers reluctant to abuse their position to force suspects to confess or give up other criminals. Similarly, a failure of police officers to effectively share information on account of bureaucratic barriers can hinder investigations and lead to competing efforts to capture a suspect. Officers' "integrity" can prevent them from doing the dirty work that may be necessary when confronting unsavory characters who are not cowed by the Marquess of Queensbury style rules that sometimes constrain modern police forces. As Colleen Lewis puts it, "Police in democratic societies often defend their illegal behaviour by asserting that adherence to principles such as due process and the rule of law hinders rather than enhances their effectiveness as law enforcers" (Lewis 2000, p. 21). While almost everyone agrees that many of these constraints on policing are valuable, officers often face political and public pressure to fight crime in ways that these barriers are meant to preclude, particularly when crime appears or novel threats such as international terrorism arise.

Each democratic society has developed its own relations with its police forces. In each case these relations are the product of long, fractured histories and often reflect the peculiarities of their respective pedigrees. Unarmed officers in the UK, the *Garde à Vue* in France, and the exclusionary rule in the US are unique products of the development of their police forces and of their experience of governance more generally. Moreover, these institutions and the regulation of police officers are under constant negotiation in their respective societies. Unforeseen developments, such as new criminal threats (the September 11, 2001, attacks in the USA), ambitious politicians (Nicholas Sarkozy in France), or public scandal (the Guildford Four and Maguire Seven cases in England), can shift the balance one way or another.

It may be an overstatement, but perhaps we can say that democratic societies and their police exist in a state of “punctuated equilibrium”—new events rapidly force sweeping changes, disrupting the status quo until a new, complex balance emerges (True et al. 2007). Regardless of whether the metaphor from evolutionary biology is correct, it is clear that the relation between a society and its police is contradictory and dynamic: force and consent are in some ways inherently opposed; the democratic dilemma of policing cannot be finally and definitively resolved.

Capacity, Policing, and Democracy

Of course, the delicate balance that democratic policing seeks to maintain requires a great deal of resources and capacities from the state as well as a willingness on the part of government officials to restrain the powers of the state, even when it is to their own disadvantage to do so. The politics of constructing criminal justice institutions is a delicate matter: elected officials put themselves at risk if they hinder the abilities of police forces. Preserving law and order is frequently placed high on the public’s agenda in any campaign season, and one high-profile crime can ruin a public official’s electoral chances. To use one small example, one of the significant factors leading to Michael Dukakis’ loss in the 1988 US presidential election was his alleged link to a felon, Willie Horton, who attacked innocent people while out on furlough. On the other hand, the public may equally disapprove of an overly aggressive police force linked to intrusive or abusive tactics, particularly if voters recognize themselves as potential targets of abuse and not, say, a feared or distrusted minority. A democratic government must both be willing to develop state institutions that allow them to effectively fight crime and social disorder while at the same limiting the ability of the police to do this very thing. The democratic public often demands no less.

For democratic policing to exist, it must be shepherded by government institutions and maintained by a vigilant civil society. The development of a democratic police force does not happen because of a spiritual transformation on the part of a people that is spontaneous, free-formed, and (most importantly) inexpensive. Rather it is a product of hard work and the commitment of extensive resources from a number of different groups inside and outside of government. In this sense, “state capacity,” that is, the ability of state to meet the basic needs of its citizens and maintain stability, is an essential ingredient of police development and police reform. As the research of Kappeler et al. (1998) suggests, if a government lacks the resources to effectively train, equip, pay, and monitor police officers, these officers are much less likely to meet the complex demands of democratic policing. Similarly, if officers lack appropriate pay, are recruited without proper screening, not given support in the field, and not observed and supported by a watchful civil society, there is a good chance that, whatever the attitudes of the public or the perspectives of the officers themselves, they will neither be an effective nor will they be a democratic police force. Thus, there is a close link between a democratic police force and the development of state capacities to fight crime and regulate this force.

Foreign Intervention and Democratic Policing

One of the central questions in the field of foreign aid and development is, “How can we make governments more effective at providing goods and services to their people?” Of course, policing is a part of the answer to this question, but with this part of the answer comes the important follow up, “How can the police do their jobs while simultaneously respecting the restrictions imposed by democratic governance?” Arming and training law enforcement in developing societies is only going to be useful if officers clearly understand their limits and are placed in institutions that recognize these limits. This sensitivity and responsiveness to the public creates unique challenges for foreign and international organizations interested in aiding a state’s capacity to maintain an effective police force. On one hand, they must aid a police force in being effective against crime but on the other accept that there are important political limitations on this capacity. In this section I will briefly outline some of the most significant ways that I believe such international and foreign organizations can help a government’s capacity to have a democratic police force.

One important thing to keep in mind as a caveat is that in a globalized society, regulating domestic police forces need not be an entirely national affair and monitoring need not happen “on site,” that is, within the borders of the state in question. Rather, a great deal of intervention can take place through cross-border exchanges and transnational monitoring. The technology available to a globalized society enhances the capacity of “outsiders,” be they expatriates or foreigners, to monitor the behavior of actors within a state. With the creation of international nongovernmental organizations like Human Rights Watch, which often employ nationals of affected countries, the distinction between “internal” and “external” police monitoring is increasingly blurry. The relative ease of international transportation allows these organizations to transport monitors abroad to observe police behavior and make their findings available to a wide audience. The actions of police in China’s Xinjiang and Tibet provinces were reported and monitored extensively outside of China as were abusive police tactics in Burma, Iran, and in the United States. A network of websites going under the moniker “Copwatch” have set out the task of cataloging and reporting abusive police tactics.⁴ The organization “Global Roots” has similarly promoted transnational monitoring of police actions, particularly in Sweden (Wahlstrom and Oskarsson 2006). An internet video search under the title “Police Abuse” has pulled up over 1,200 videos of different sorts of police brutality from all over the world and is difficult for governments to effectively control (Wines 2010). While these videos are often ripped out of a meaningful context and presented purely for shock value, they nonetheless show that in many ways policing and police monitoring have become globalized.

Another thing to keep in mind is that enhancing a state’s capacity to fulfill its functions does not exclusively require increasing or improving the state’s government or its bureaucracy. In a healthy democracy, government institutions and civil

⁴<http://www.copwatch.com/>, <http://www.berkeleycopwatch.org/>

society stand in a reciprocal relationship with each other and neither can fully function without the other. Governments require the input and oversight of individuals and groups outside of the state's bureaucratic sphere and at the same time civil society requires government to focus its concerns and forge them into enforceable laws and policies. This means that civic organizations, nongovernmental organizations, and other activist groups can influence policing in many ways from outside of the bureaucratic sphere. These activities can both enhance and limit the ability of the police to maintain order in ways that are appropriate for a democracy. Sometimes, organizations like civilian review boards can work alongside police bureaucracies, in other situations, such as with *Copwatch*, they are diametrically opposed to it. While their relationship between these civil society groups and police organizations mean that such groups often go unappreciated by officers, they often serve an important role as watchdogs, limiting the ability of the police to abuse others free of consequences. There has yet to be a serious study of organizations like *Copwatch*, but studies of civilian review boards have suggested that civilian oversight can play an important role in democratic policing (Goldsmith and Lewis 2000).

Organizations like the ACORN, the ACLU, the Southern Poverty Law Center in the United States, and similar activist groups operating abroad such as France Libertés in France, Civil Rights and Livelihood Watch in China, and the Council for the Defence of Human Rights and Freedom (CDHRF) in Albania can keep the police democratic by having a voice in police procedures and policies. This can either take the form of cooperation, providing the police with intelligence about crime problems or helping them better understand the communities that they handle, or open confrontation, exposing aggressive policing or defending its victims. Similarly, as reported by the international NGO *Reporters Without Borders* (<http://en.rsf.org/>), courageous journalists monitor police abuse around the world, often at great risk to life and limb in order to make their findings available to a public who may then demand better oversight from their leaders. Thus, it is useful to think about "state capacity" more broadly than simply the political and bureaucratic institutions that are associated with the government and understand the democratic interconnections with the public at large. Just as there is no democratic government without a democratic civil society, there is no democratic policing without a robust public sphere overseeing it and this should be taken into consideration in any account of state capacity.

At the international level, groups such as Human Rights Watch and the Open Society Institute work in different ways to assist in the monitoring of police without being formally linked to a state's governmental institutions. By empowering the actors of a civil society, these groups can work with people who are often motivated, driven, and not subject to the competing demands of a bureaucracy as are more official police monitoring institutions. That is to say that police officers and administrators are bureaucratic actors who are beholden to their superiors and to public expectation that they maintain law and order. Moreover, as Skolnick's profile of the police officer's "working personality," officers often show with "their own" over the demands of the public (1975, pp. 52–53). On the other hand, civil society groups, particularly those who are critical of the government, are not so constrained. This means that they are able to monitor the police from a more "purely" critical

vantage point. While there certainly are nongovernmental civil society groups that are either corrupt or wasteful, these groups often are stocked with idealistic individuals who are willing to make stands, including stands against police forces, when they believe that they violate the public trust.

Focusing in the remainder of this section on the construction and staffing of police bureaucracies (and not on the public at large), I will examine three places where the state capacity to construct and maintain a democratic policing can be influenced by the deft intervention of international and regional actors. These are *organization*, *professionalization*, and *legalization*. These three, I believe, are particularly important because they do not rely on the “good will” of government actors to reform themselves or on the direct forceful intervention of outsiders, but instead are simple structural formations that can help make a police force more democratic. Given that democratic governance is self-governance, the lighter the touch that international actors can place upon domestic police forces, the better.

Organization—One place where regional and international institutions can influence policing is through helping structure the police force’s bureaucracy so that they are inclined to be sensitive to democratic imperatives. While Bayley is correct in saying that “there is no necessary connection between democracy and any particular mode of organization or control over the police” (Bayley 2006, p. 62), the structure of police has direct consequences for their capacities as well as their role in a society. History has pointed to this fact: too centralized police force can be easily turned into a pawn of the political forces that may seek to use it for their political ends and may likewise make it too easy to cover up police misconduct. Scholars point to the centralization of German policing under the Nazi regime or the *Guardia Civil* in Franco’s Spain as examples (Berkley 1970). Oddly enough, a streamlined, effective police force can hinder a democracy by posing a tempting base of power for an individual or group seeking an outsized measure of influence or outright control over the levers of power. As one scholar points out, “Many criticisms of the arrangements for police governance have identified the concentration of power in some sense as the problem” (Jones et al. 1996, p. 192). After achieving its independence from the Soviet Union, Lithuania decentralized its police force in a (failed) attempt to democratize its policing (Uildriks and Van Reenen 2003, pp. 50–51). A centralized power structure or a system with few opportunities for individuals to complain about police practices or police misconduct make it easy for unscrupulous officers or politicians to abuse their authority.

Similarly, a force that is too decentralized can either be ineffective or subject to low-level corruption as officials are able to operate more or less autonomously with little supervision from outsiders. The sheriff in a small American town who, lacking any serious accountability, runs his force as his own personal militia is one such example of this. On the other hand, too *much* democratic accountability can tempt police officials to pander to public whims against the demands of justice (by, among other things, targeting scapegoats or the latest moral panic in lieu of more serious threats to public order) when they sense that it is to their advantage to do so, while too little democracy has obvious threats of its own. As Bob Jones, the Chair of the Association of Police Authorities in the UK, testified, directly electing police

officials introduces an element of “political theater” into criminal justice (Home Affairs Committee 2008). Criminal justice officials have succumbed to the temptation of demagoguery by attacking the Roma population of Eastern Europe (Brearily 2001), the immigrant population in the United States (Males and Macallair 2010), and the Muslims in Western Europe (Fekete 2004). Thus, at the level of administration and bureaucratic organization, democratic policing has a lot of challenges to confront and need not be considered an unambiguous good. While “changing the organization tables does not change attitudes and mindsets” (Bayley 2006, p. 63), history has shown repeatedly that a poorly organized police force can be ineffective and undemocratic.

Foreign and international groups linked with police forces can be helpful in organizing democratic police institutions because they have come from their own bureaucratic formations, which though a direct result of their own history, have lessons for other societies. As David Bayley describes it, “Differences in national structures of policing depend on political settlements achieved at the time countries were formed” (1992, p. 509). For example, the massively decentralized policing in the United States reflects the history of federalism, the devolution of sovereignty to the states, and the diffusion of political authority to local communities out of fear of a centralized power structure. On the other hand, the French system reflects the preference for a centralized hierarchy, with only two different police forces, and is a product of the unique developments in post-French Revolution policing.⁵ Similarly, democratic forces have experimented with various forms of organization modeled on the private sphere, where “their performance, and that of the organizations they led, were subjected to a growing array of accountability mechanisms including enhanced public complaint processes, more open budget processes, community-based and interest group consultative committees of various kinds, and increasingly demanding reporting requirements, all in the context of a general trend towards ‘freedom of information’” (Stenning and Shearing 2005, p. 170). Nonetheless, these different structures reflect learning experiences, part of which involves efforts to keep police forces within the bounds of democratic policing. To use one example, the 1965 assassination of Algerian activist Ben Barka, widely believed to be the work of the Parisian police force, led to the centralization of the *Police Nationale* (Roach and Thomaneck 1985, p. 115). Reconstructing the Northern Irish police after the Good Friday Agreement led to a dramatic flattening out of their police structure and other organizational innovations in order to make officers more accountable (Ellison 2007, p. 249). There is good reason to believe that international and regional organizations can work to help local forces find the appropriate structure, including lines of command and oversight along with geographic and subject matter jurisdictions and other

⁵ To cite Pakes, the French system has two merits: “First, the state can employ a ‘divide and rule’ strategy, when the quality or loyalty of one of the forces is in question. Second, there is the possibility of transferring investigations from one force to the other, for instance in cases of procedural errors or for the investigation of complaints. When both forces police each other, there is a better chance of guaranteeing civil liberties” (2004, p. 42).

bureaucratic structures, such that they can effectively maintain social order without being a threat to the democratic peace.

Professionalization—The second place where international and regional organizations can influence policing in emerging democracies is through the creation and cultivation of a professional ethos among police officers. Thus, accompanying the technical support that international and regional intergovernmental organizations provide to police forces around the world (i.e., forensic training, facilitating the exchange of police intelligence, and other features of everyday policing), these organizations can provide much-needed professional support for officers in emerging democracies. This can include inculcating officers with a sense of duty and public service as well as a tolerance for the messiness and procedural frustrations that are in many ways the spiritual core of democratic policing. This can be done through selective admission into police forces, along with educational requirements, long training periods, and taking steps toward a sense of professional pride in officers (Niederhoffer 1967).⁶ Enhancing the capacity of police forces to develop and maintain a professional ethos among officers, particularly through exchanges and other “cross-fertilization” efforts, can help a great deal to make officers understand that their role as officers is as much dependent upon the use of restraint when dealing with criminal (and noncriminals) as it is upon their zeal.

While their conclusion on this subject is somewhat speculative, one study on transnational police training concludes that such exposure can have a positive impact on officers. “It is not difficult to imagine that international exposure by police officers to other systems will have an impact on how they think about policing, at least as individuals.... [P]ersonal exposure validates such often used phrases as ‘we are all police,’ or ‘there exist an international fraternity (still so) of the police,’ or ‘we know how to talk to each other since we are police’” (Akgul and Marenin 2007, p. 91). Symbols and narratives that help create a sense of professional pride in a force cannot be created *ex nihilo*, but exposure to the professional police forces around the world can surely help foster such an attitude.

However, it is important to keep in mind that the ability of international and regional organizations to cultivate an ethos of democratic policing can run into many counterforces. Because of the tension inherent in democratic policing discussed above (i.e., police forces are expected to fight crime and disorder, but not do it without adhering to constitutionally mandated constraints), many officers in full-fledged democracies are ambivalent about their role in a society, and even ethical officers report being frustrated by the procedural safeguards that are essential to a democracy.⁷ Thus, facilitating cross-border police interactions may have many benefits in exposing officers to different professional attitudes of other officers, but

⁶ See also Brogden and Shearing (1997).

⁷ For a nuanced analysis of US higher-ranked police officers’ attitude toward *Miranda* practices which, while finding general positive attitudes toward the procedure, concludes that “support for violations is sufficient to be of concern for a legal system that, espouses the rule of law,” see Zalman and Smith (2007, p. 874).

it can also undermine some of these practices. Police have an unusually high level of professional solidarity and often have an oppositional attitude toward the public, and there is good reason to believe that this can spill over borders with cross-national police exchanges (Skolnik 1994, pp. 50–56). Officer exchanges can easily lead to the development of an adversarial attitude of officers toward the public they ostensibly serve, a sort of support for police deviance. Official exchanges can even lead to the sharing of “tricks of the trade” used by officers to evade regulatory procedures or disciplinary oversight. Similarly, foreign officers, regardless of how well intentioned, are likely to be tone deaf to the intricate and nuanced cultural dynamics of a foreign society and its police officers. Police officers, in order to be effective, have to know more about the society in question. However, these interactions tend to be short, and there is a need to consider engaging more seriously and long term in the society in question.

Cultivating a culture of professionalism among police officers is a complex and difficult process and one that requires a great deal of resources, or state capacity, to implement.⁸ As was already mentioned, selective admissions, increased training, and the creation of a professional ethic have been suggested strategies, but often states “in transition” lack the resources to provide these very things, which makes it ideal space for international and regional organizations to intervene. Anecdotal evidence suggests that police officers report a strong bond with fellow officers from other countries regardless of the relations among figures higher up in government.⁹ Moreover, it’s not too farfetched to think that the cultural caché of foreign officers (particularly American officers who are constantly valorized in popular films and television shown around the world) can inspire and influence others in a way that domestic sources could not. By fostering exchanges with foreign police officers and by assisting local police forces in developing their training capacities, international and regional organizations can go a long way toward creating a sense of professionalism among local police forces that could both allow them to effectively fight crime and at the same time respect democratic principles.

Legalization—The final, and probably least significant, region of government where foreign intervention can have an impact on the construction of a democratic police force is in the development of laws constraining the ability of officers to function in an undemocratic fashion. This is to say that foreign organizations can consult with lawmakers in countries in such a way that they can effectively control police forces. This could include administrative regulations spelling out the nature of and limits to police interventions into society along with the disciplinary sanctions for violating them. This would presumably also involve setting out the nature and scope of the “right to privacy” held by citizens, prescribing the limits of pretrial interrogation and incarceration, and the disciplining of deviant officers. While no other state has adopted an exclusionary rule akin to the one in the United States, many states have been influenced by American principles

⁸For a critical discussion of the concept of “police culture,” see Chan (1996).

⁹See Fichtelberg (2008) and Nadelman (1993).

regarding the legal regulation of police operations (Liptak 2008). International organizations with armies of lawyers experienced with police matters would be of great benefit to a state that wants to draw clear, meaningful lines between the police and the citizenry. As Dixon points out, “clear and effective legal regulation can benefit all participants in the justice process” (Dixon 1999, p. 67). A clear, well-defined set of norms and sanctions for police misbehavior would create a clear set of guidelines for officers to comport to.

However, legal reform is apt to be the least-effective way to control police simply because, while clearly delineated rules can guide officers through ambiguous encounters, in and of themselves, they are powerless. Again, to cite Dixon, “Effective procedures require a positive approach from the police themselves which can only be the product of wider organizational and cultural change” (Dixon 1999, p. 67). There is a need for a deeper investigation and commitment which depends on the cultural exchanges among officers and organizational changes set out above. Many failed states such as Pakistan or Haiti, with criminal justice systems in tatters or with widespread corruption, have elaborate legal codes and police regulations that are routinely and cheerfully ignored. There is likely to be any serious effect of law alone without other tools for making officers care about regulations. Mary Cheh, a law professor at George Washington University, among others, has reported that in the United States, “Criminal prosecutions and other kinds of lawsuits have not played a major role in addressing the problem of excessive force by the police” (Cheh 1996, p. 247). Certainly, clearly articulated and carefully crafted laws have an important place in democratic policing, but they must be part of a larger political and cultural matrix bent on curbing police misconduct.

However, the weaknesses of legal reform for developing democratic policing is different from helping develop a respect for the rule of law among officers. The recognition of the symbolic architecture of democratic society on the part of officers is difficult to develop and maintain, requiring all of the structures (organization and training) described above. Only if this is established would legal regulation be of any value. Legal regulation is only valuable after a “a legal blueprint that provides for those features of policing bearing most directly on adherence to the rule of law and human rights,” has been entrenched into a police force (Bayley 2006, p. 51). For an example of this in the African context, see Ntanda Nsereko (1993).

One thing to keep in mind when thinking about the intervention of foreign and international organizations into domestic policing is the significant role that police play in the state and the connection that the people feel toward that state. States can only operate effectively if they are perceived as legitimate, and in modern societies, this legitimacy comes from their claim to represent the people who live under the state’s dominion. While the citizens of many states transitioning into democracy may welcome the input of foreign and international organizations, were these interventions ham-handed or culturally tone deaf, there is a genuine possibility that citizens will feel alienated from the forces that ostensibly represent them. A police force seen to be doing the bidding of a foreign or international power could be seen as a hostile occupying force, not a domestic law enforcement institution. This is especially true given, as observed by Bayley, foreign governments’ assistance in the

realm of police reform has often been driven by imperatives of national interest (Bayley 2005). Given that the police are the state's most visible and forceful face, this could potentially have devastating effects on a state trying to establish its legitimacy among its people.

Finally, something should be said about the role of women in police forces. If a society's development can be measured by its treatment of women, then a police force's development can probably be measured by its treatment of women, both as citizens and as officers. This is true in *all* societies, whether democratic or not. Female police officers in countries as developed as the United States and Great Britain report being victims of discrimination. Increasing the number of female officers is apt to make police officers more democratic or at least better representative of a country's populace. While one need not buy into any essentialist gender ontology, the data cross-nationally is clear, women are less likely to be aggressive and female officers are far more likely to be democratic in their approach to policing (Otwin 2000, p. 321, National Center for Women & Policing 2003, p. 2). India, for example, has experimented with all-female police organizations and has found them to be an important addition to their police services (Natarajan 2008, pp. 49–58). Because many societies are hostile to women (in general) and female law enforcement officers (in particular), there are many opportunities for international and regional organizations to increase the number of female officers as well as the support that these officers receive while serving in uniform.

The Democratic Dilemma and Transnational Crime

Of course, when states who are seeking to develop democratic police forces work to combat transnational crime, the problems only multiply. Smaller and less-developed states are often massively out-financed and even outgunned by powerful international criminal organizations. Moreover, of the nature of transnational crime, officers must work with foreign law enforcement agencies, a complex, expensive, and time-consuming process. Finally, crime that involves foreigners brings up policing functions that are subject to conflicting demands such as controlling immigration and monitoring international commerce. Foreigners and minority groups are often seen by the public as “others” who do not necessarily deserve the regard that “we” deserve.

It is for these reasons that the democratic policing of transnational crime becomes even more important than it is in relation to more conventional sorts of crime and social disorder. Whether it is in confronting terrorists, drug traffickers, human traffickers, or cigarette smugglers, the first temptation of a society is to come down hard on “foreign threats” in a way that would not be considered acceptable in response to more conventional, domestic sorts of crime. Procedural norms are waived, punishments are more severe, and policing is apt to be more aggressive when foreigners are involved, particularly when the crimes are heinous or perceived as a serious threat to public security. Moreover, in some societies, foreigners do not

possess the same rights as others, and even if they do possess legal rights on paper, they often lack the economic and cultural resources (or even the linguistic resources) to defend themselves when confronted by aggressive policing. Finally, those individuals involved in transnational crime do not necessarily engender the same feelings as domestic criminals may garner, and as they are “not one of us,” they are likely to fall outside of a society’s circle of concern and gather little public sympathy. Thus, along with facing a highly organized, well-financed enemy, the police have a unique set of challenges and a unique set of temptations when fighting transnational crime.

For these reasons, and on account of these temptations, a state’s capacity to create and control policing in a democratic fashion becomes even more important in the context of fighting transnational crime. States such as the USA have been willing to violate their cherished constitutional protections to handle terrorists with little consequence (so far), and other countries have followed in their footsteps. Smaller states and states without a strong tradition of democratic policing are apt to be even more aggressive and even less democratic when dealing with transnational threats. However, because many of the international organizations that assist a state to develop their policing capacities are firm supporters of democratic values and the principles of international human rights, there is reason to think that they could help counteract the pressure to violate democratic principles to fight transnational crime. Organizations like the UN and Europol are engaged with helping nations fight transnational crimes like human trafficking while simultaneously committed to promoting and defending human rights.¹⁰ Interpol’s constitution requires that they operate “within the limits of the laws existing in the different countries and in the spirit of the ‘Universal Declaration of Human Rights’” (Interpol 1956, Article 2). Like all forms of policing, fighting transnational crime and adhering to the basic principles of democratic society are inherently in tension (the “democratic dilemma” I discussed at the outset of this chapter), but with the appropriate intervention from the state and the assistance for international and regional actors, this tension can be handled if not resolved.

Conclusions

There is a close analogy between police forces in a democracy and militaries in a similar government. In both cases, there are few material limitations on the ability of these groups and their leaders to dictate to the rest of the population because to put it simply, they have guns and the rest of us don’t. (The belief, prevalent among the rights in the United States, that an armed private militia could somehow prevent an organized and determined military force from seizing power is an absurd and dangerous fantasy.) Similarly, both are organized around values and ideologies that are in some ways antithetical to the democratic ethos of equality and continuous,

¹⁰For an example, see UN (1997).

nonviolent (though spirited) disagreement. In both cases, they must be allowed to do the absolutely necessary tasks that have been given to them. So the only way to control the antidemocratic impulses that are inherent to policing is through democratic practices, cultivating a policing organization that is deftly restrained by the use of bureaucratic structures, the cultivation of a professional ethic, and carefully crafted legislation. Only through these mechanisms can the proper balance of order and democracy be established, even if, as argued above, the democratic dilemma of policing can never be finally resolved.

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