

Ethics in Policing



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*Through Knowledge
Comes Progress*

Terrorism and Policing
A Delicate Balance

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Terrorism and Policing A Delicate Balance

Editor

Peter Villiers, MA

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I must express my sincere gratitude to my publisher, Mr Bryan Gibson of Waterside Press, for his courtesy and co-operation in allowing reproduction of some of the material included in articles one and three. Police ethics is too important a subject to be restricted to copyright, it might be argued; but such an argument could have other consequences, and I shall leave it as a subject for future debate.



Editorial

Welcome to our third journal.....

As preparation for this number, I wrote to readers as follows:

... President Obama has indicated that the United States will be pursuing a new policy in this area [of countering terrorism], with a renewed emphasis on traditional liberal values. It is you, the members of the police and security services, who will have to make this policy work. For those of you who are American, there will be immediate implications; and for all our readers, there will be some effect. How are the police to counter terrorism effectively in the new era, whilst at the same time respecting civil liberties and human rights?

You are the people who will be making the tough decisions. Whilst we do not intend the journal to become a forum for the discussion of actual policies, there is room for us to step back and share experience, compare values and highlight important issues. The moral perspective of the police, which is founded on practical experience rather than abstract speculation, is a comparatively neglected area, and we want to change that..

I am happy to report that I have been able to use your material in this journal, and I am especially grateful to Dr Terrence Dwyer for his contribution, from which I now quote his summary on policing a free society.

'...The patrol officer, left to his or her own devices, knows how to police a free society. The law remains an important aspect of an officer's training. It too is the guiding hand for an agency's response to societal challenges. In order to chart a steady course in this new world of policing traditional values based on the rule of law need to be followed. By staying true to the ethic of policing and the community-based role of policing officers will remain connected to their constituency. The most valuable resource an officer has is the trust and faith of those policed for they become extensions of the eyes and ears of the officer. From these bonds comes information which in turn may thwart a future terror attack. By adhering to the principles of law the liberalizing effects of democracy remain intact and the credibility of policing remains whole. The delicate balance between rights and security is achieved.'

Dr Dwyer's thoughtful article is rightly entitled a delicate balance, and it is a delicate balance that we all need to maintain: for whatever our location, training and status we all share an interest in proper policing.

Another View

An American police officer, who offered his name, wrote a more personal response to my request, as follows:

'The recent decision by President Obama to release the prisoners at Guantamo Bay prison in Cuba is based on this president's belief that we as Americans have forgotten our basic constitutional right to treat all prisoners, no matter what, with fairness and compassion. I for one also believe that every prisoner should be treated fairly. He or she should not be tortured, if that's the policy, and should not be beaten, if that's also the policy. But as an American, as well as a citizen of the world, especially in this day and age, I must disagree with our president on this important matter.

I'm a proud American, and just happen to be a black American, and I fully support the historic significance of President Obama's elected as America's first black president, but I strongly disagree with this one policy. Surely everyone can understand loving your children, but disagreeing with one action or decision by your children. In other words, I support the president, **but not this policy decision!**



Let me be clear and illustrate an important point. If you and I are next door neighbours, and for some reason, any reason, you don't like me or my family, or my looks, or even my religion, you have no right to kill me or my family. And if you take it upon yourself to take such draconian action to kill me or my family, I have a fundamental right to protect my family, even if I must kill you! That right is a natural right understood by every country or person in the world. It transcends all man-made laws!

If you murder a member of my family, are arrested by the police, convicted in court, serve a sentence, and upon your release you return home and make that same threat once again against my family, I would be lacking as a man not to take that threat seriously—once again!

The prisoners held at Guantamo Bay are **NOT** normal prisoners, but dedicated religious soldiers that have made the threat that they intend, **by any means necessary**, to change the world through killing others, period! These prisoners are boldly saying to their next door "**neighbours**", "if you give me the chance, I'm going to kill you and your family". They're also stating, "you might have incarcerated me this time, but I'm going to eventually get you".

The terrorists that blew up the world trade centre in New York didn't take in consideration the nationalities of the occupants. They were sending a message to all nationalities...kill as many people as one can! Thousands of people, of ALL nationalities, including people of colour, were incinerated, murdered, and maimed for life.

These actions were performed to terrorize. They were performed to make all people bow down to the god of the terrorists, to their way of life, and to their perception of reality. I for one, and I'm sure that many of you, have no problem with Islam or Arab religions, but I do have a problem with any religion forced upon me and my family! And because I don't accept your view of religion, you have no right to kill and maim me, as well as my family.

I can say with a surety, if these prisoners are released, they will strike again. Maybe not in the United States, but maybe in Great Britain, Italy, France, or some other country. You can be assured that these are not just normal prisoners, but people who have dedicated their lives to tell their next door neighbours, I will never accept you, even if I must kill you. In the face of such honesty, we all must protect ourselves, as well as our loved ones.'

Editorial Comment

I admire this officer's honesty and commitment, and the conviction that resonates in what he writes. His views raise a number of moral issues, some of which I raise below, and welcome your comments.

Conscience and Obedience

The writer disagrees with government policy. What should he do with that inner disagreement? Where does conscience step in, and where do professional obligations cease to apply? Is a police officer, or any other public servant, entitled to pick and choose which decisions he will accept, and which he may choose to ignore or disobey? What influence is he entitled to exert, on his colleagues?

Torture

Then we return to the question of torture, which has been addressed in previous journals; and again, I welcome your comments on the views expressed above. Open debate is a necessary characteristic of a free society.



Policing Demonstrations: The Practice of Consent

This leads me to my next main point. To police effectively, it is necessary to police by consent across the board and that means maintaining a very delicate balance when it comes to policing demonstrations.

As I write, that practice is very much in the news. The policing of the recent G20 summit in London, England, and its attendant demonstrations aroused very considerable controversy, and the police of the metropolis have been heavily criticized. In essence, the more serious criticisms of the police appear to consist of the following:

- That the police were prepared for a confrontation with the demonstrators, and were happy to 'take them on;'
- That the police used unnecessary force;
- That they were undisciplined on occasion, and concealed their marks of identity so that they could not be rendered accountable for their actions;
- That their supervisors did not do their job properly;
- That the police policy of 'kettling' the demonstrators was an indiscriminating policy with untoward consequences; and
- That overall the police succeeded in offending many of the very people who were their natural supporters, i.e. people who had come to the capital to exercise their legal, ethical and traditional right to peaceful protest.

What is my view on all this, as editor of this journal?

Firstly, I feel that it is incumbent on me to express one, and not to sit on the fence, which in this case would mean to write such a perfectly balanced editorial, that I could not possibly be accused of having taken a position!

Secondly, I must acknowledge in advance that part of what I say may be factually wrong, or based upon false or incomplete information. To criticize any police operation is to lay oneself open to the accusations, individually or collectively, that:

- one did not know the true facts;
- or, as a variation on the same theme, that one has laid in far too soon, and jumped on the convenient bandwagon presented for criticizing the police;
- or, that one did not have access to the (privileged) information on which the police decided their tactics and made their decisions;
- or, that the episode in full, including any accusations of improper behaviour that may have been levied, will be the subject of a full enquiry, and that in the meantime the police cannot present their side of the story;
- or, in general, that almost any criticism is unfounded, or unjustified, or improper, of a police service, the great majority of whom are acting with the best of intentions and on occasion have a thankless task.



My readers will already have discerned where I am going with this. On the face of it, there was improper behaviour by the police in regard to the G20 demonstrations; and that policing was at the very least a public relations disaster. This issue needs to be addressed, and it is in my view right and proper that I should comment here especially as any reader has the right of reply.

In my view, the police need to remember their history, which in the metropolis (and Great Britain more generally) is one of the successful policing of demonstrations with minimum force and maximum toleration. The unique skills that the British police have shown in the policing of demonstrations has been their distinguishing mark since the foundation of the Metropolitan Police Service in 1829, and cannot be abandoned now. It is not for me to say precisely where the police went wrong, or what they need to do to rectify the situation. But it is clear, to me, as, I am sure, to very many of my readers, that something needs to be done.

It must be possible to police a demonstration so that the right to peaceful protest is not only recognized but indeed upheld and actually facilitated by a wise and far-sighted police service, while at the same time real malcontents and trouble-makers are identified, isolated, and neutralized, and if necessary prosecuted after the event for criminal damage caused or any other serious offences committed.

I am almost embarrassed to write about this, since I had assumed until very recently that these were the accepted views of almost any police officer, apart from those who should not be in the job in the first place; but it would seem necessary that what might have seemed truisms must be repeated.

I welcome your views on this subject, and your criticisms of the editor.

The remainder of this journal consists of an extremely thoughtful article by Dr Terrence Dwyer; an extended article on policing terrorism, the original draft for a chapter of the same name which has been published in my latest book, Police and Policing, an Introduction (Waterside Press, 2009); and finally, an edited chapter from the same source (Policing a Safe, Just and Tolerant Society, Waterside Press, 2004, edited by Peter Villiers and Robert Adlam.)



How to Police Terrorism

Peter Villiers

Please note that some of the material for this article has been adapted, by kind permission of the publisher, from Police and Policing, Peter Villiers

Waterside Press, Hampshire, 2009

This book is available from all good publishers, or by approaching Waterside Press on-line.

In this article, we shall:

- Present a brief historical introduction to the subject of terrorism;
- Reflect on its recent development and growth;
- Consider current anti-terrorist measures in the United Kingdom;
- Present what we consider to be the essential features of a successful anti-terrorist campaign in any state which aspires to the title of a liberal democracy; and
- Reconcile effective counter-terrorism with policing by consent.

Naturally, this article is centred on the United Kingdom, the only setting of which we have first hand experience. Equally naturally, we need an international perspective; and that is where you, our faithful readers, come in.

Please reply to the questions for reflection inserted in the text, and help policing worldwide to develop and refine an effective response to terrorism. This journal and website present us with a unique opportunity to gather and refine practical wisdom. Let us use it.



Terrorism: An Historical Perspective

Terrorism was already a major worry in the 19th century, when the assassination of heads of state was commonplace, and there was an international response: an international anti-anarchist conference was held in Rome in 1898 under the direction of the Italian Minister of Foreign Affairs—the same year in which the Empress of Austria-Hungary was stabbed to death by an Italian anarchist. (The conference was widely attended but did not, as the report in the New York Times noted, result in a binding protocol.) The Empress Elizabeth was not the only victim of an anarchist attack; during the whole of the 19th century, and continuing for the whole of the 20th century, heads of state and other senior officials continued to be murdered with an almost monotonous regularity, despite the best efforts of the police and other security forces to prevent these outrages; and during the 20th century, terrorism changed both in strategy and tactics, although the essential aim remained the same: to achieve political change by terror. Anarchism and terrorism are not the same, and we have still to address the knotty problem of the definition of terrorism. We simply seek to establish that, in its wider sense, it is part of political life, and has aroused an international response over a long period.

For information

What is the record on terrorism, in your country? Is it a new phenomenon, or has it been with you for a long time? When did it start, and to what extent has government policy changed in combating terrorism?

Changing Perspectives

The definition of terrorism is an ongoing problem. Famously, one person's terrorist may be seen as another person's freedom fighter; and many former 'terrorists', jailed under British or other colonial regimes, have gone on to be heads of state and indeed elder statesmen, such as President Kenyatta of Kenya (1894-1978: imprisoned for alleged Mau Mau associations, 1953-1959). We may also note that President Barack Obama's father was a Kenyan, and that the current President of the United States may not have the same attitude to the struggle for independence in a former British colony such as Kenya, as did a British Prime Minister such as Sir Winston Churchill.)

The offence for which Nelson Mandela served 27 years in jail was sabotage, but the South African government of the time classified him as a terrorist. Mandela himself stated that he adopted the armed struggle against apartheid when all other methods had failed.

A Question

What is your understanding of terrorism? When do you classify an incident as terrorism, rather than crime or protest? What are the implications of a terrorist episode?

State Terror

It is arguable that the word terrorism originally meant state terrorism, not acts of terror by a non-state group or individual. 'The terror', or 'the great terror', was the period of extreme violence that followed the French Revolution of 1789, when terror was used as an instrument of state policy by the Committee of Public Safety (1793-1795) under the direction of Maximilien Robespierre (1758-1794), who was himself guillotined in a campaign that turned on itself.

To use terror, in this context, is to purge those whom the regime believe to be a threat to the security of the state, by the self-authorized use of lethal force and in contradiction to any notion of the rule of law. Many regimes have used this tactic from time to time, with monstrous consequences. The use of state terror includes the maximisation of fear and uncertainty, either in identified groups or indeed amongst the population at large; and it may be a declared policy or a tacitly-agreed practice.



Night and Fog

Some governments, such as the national socialists of the Third Reich, set out their aims in legislation such as Hitler's night and fog directive of 1941, designed to maximise uncertainty amongst resistance groups, since those arrested by the state disappeared into the 'night and fog'. Other examples of state terror are unfortunately legion, and we take simply one instance; the situation that prevailed in Argentina during its period of military dictatorship from 1976-1983, the 'dirty war' in which up to 30,000 people were murdered by the forces of the junta led by General Videla. Hence the campaign for 'los desaparecidos' which continues to-day: for the disappeared are not only the men and women who were murdered by the junta but the children of political undesirables, taken away from their parents and farmed out to approved families.

Chomsky's Paradox

Any state may be accused of terrorism, and the well-known political activist (and professor of linguistics at the Massachusetts Institute of Technology) Noam Chomsky (born 1928) has accused his own country, the United States, of using what could be defined as state terror on occasion to achieve its aims in foreign policy. Under the first amendment to the American constitution, Noam Chomsky is entitled to the expression of his views; although if he were to advocate terrorism that would be another matter.

Terror and Torture

We might note here that sometimes terror and torture seem to fit in the same context. As we write in May 2009 there remains a controversy about special rendition and the alleged use of torture by the United States and its allies or agents in order to combat terrorism: a policy into which the new President has articulated a different view to the previous administration.

There is no indication that the United Kingdom has been prepared to consider or condone the use of torture under any circumstances. However, when considering the use of information gained under improper circumstances, the United Kingdom has expressed a more pragmatic view, and has never, so far as we are aware, ruled that such evidence is necessarily inadmissible.

For the purposes of this article, we shall restrict the ambit of terrorism to the actions of non-state groups, and leave the notion of state terrorism for the political theorists to debate elsewhere.

There remains a danger that the word terrorist, like, perhaps the word fascist when not applied to Nazi Germany or Italian fascism, becomes little more than a term of abuse. We believe that whilst it would be impossible to lay down a universally accepted definition, the concept is still a useful one if used under caution. What follows is not a definition, but a set of assertions which go towards building a profile of the archetypal terrorist.

The Archetypal Terrorist

- A terrorist is an extremist, but an extremist is not necessarily a terrorist. A terrorist is someone who puts words into action.
- A terrorist wishes to maximise fear, alarm, panic and uncertainty and to create a climate of foreboding.
- A terrorist believes that he has the right to use violence, under his own logic and the circumstances of his own choosing.



- That right includes attacking or threatening the innocent bystander, who may be the unintended victim of an act of violence: or deliberately chosen for his innocence, in order to maximise the terror. (A further terrorist twist may be to assert that no-one is truly innocent. Thus anyone who lives in a capitalist country, supports capitalism.)
- A terrorist may be prepared to use violence against his own person, as in suicide bombing.
- A terrorist does not feel shame, guilt or remorse, for he is sure that what he is doing is right.
- As the terrorist does not believe that his actions are criminal, prison cannot reform him: it can only delay his further actions.
- Although the terrorist may claim to be the equivalent of a soldier on active service he does not accept and practise the rules of war; and as he operates out of uniform he cannot claim the protection offered to combatants under the Geneva conventions.
- A terrorist's actions would be hard to justify under the medieval proofs for a just war.
- A terrorist can be a woman or child, as well as a man.
- A terrorist is not necessarily immature in personality and development; damaged; narcissistic; or in some other way psychologically similar to other terrorists and different to the majority of mankind.
- A terrorist is not necessarily irrational, if by that we mean that he cannot cope with ordinary life, that he has difficulty associating cause and effect, that his life-style is bizarre and his behaviour unpredictable, and so on. A terrorist may be perfectly rational, in an everyday sense.
- Finally, the terrorist is wrong. He is doing the wrong thing, and must be stopped. Indiscriminate violence against innocent people can never be justified.

In summary, therefore, terrorism is to be defined by means of a combination of three elements:

- i. The objectives of the terrorist;
- ii. The means used to achieve them; and
- iii. The context of the struggle.

The IRA is a terrorist organisation, in that it might have addressed its objectives by non-violent means, as did other organisations who shared its aim to achieve a united Ireland. The African National Congress to which Nelson Mandela belonged did not have a democratic option. Its use of violence was selective and it was, in the long run, able to influence world opinion to its decisive advantage. Was it a terrorist organisation? From afar, it appeared as a struggle for freedom. Closer to home, issues may have assumed another perspective.

¹ PTherefore, arguably, at least some of the Russian 19th century regicides were not terrorists in the full sense, for they recognised that it was wrong to kill even a tyrant, and were prepared to plead guilty and pay for their deeds on the state gallows. Albert Camus (The Rebel) summarised their conduct as perceived by themselves to be both necessary and inexcusable. Nevertheless, their actions led to the death of innocent people, even under their own categorisation; and we shall class them as terrorists.



Pure Terror and Propaganda

The IRA tried to present itself, even at the height of its campaign in 1972, as a credible organisation. Thus, it claimed that its attacks were selective, rather than random; that it targeted members and supporters of the security forces and their supporters, rather than the population at large; and that in general it might be considered akin to a wartime resistance movement with pretensions towards being a military organisation.

The IRA did not, generally, practise 'pure' terror. It did not train and employ suicide bombers, which would have been seen as fanatical; and it devoted a considerable proportion of its resources and energies towards the propaganda campaign, at which it was highly successful.

The aim of propaganda, which includes counter-propaganda, is fourfold:

- i. To present the cause in its best light (by any means) and therefore reassure the faithful, persuade the unconverted to join, and weaken the conviction of even its most dedicated opponents;
- ii. To alter the context in which the campaign is perceived, more generally; and, if possible
- iii. To convert outside opinion to the cause:—
- iv. Which means that it may no longer be described as terrorism.

The difference between propaganda and orthodox political activity is not always clear. We would suggest that propaganda is inescapably linked to censorship and deception, whether the cause is a just one or not; and it is therefore a necessary accompaniment of war.

In general, it is in the interests of the state to define terrorism as widely as possible, in order to have the maximum battery of guns to combat it; and it is in the interest of those who might be accused of terrorism by the state to define the offence as narrowly as possible, and to argue that their actions are in reality not those of terrorists, whatever the terms of the relevant legislation.

Terrorist groups such as the IRA, who believe in the power of the word as well as the deed, will present a variety of arguments in support of their cause and its legitimacy, including at least some of the following:

- No real change ever takes place without violence. One man's terrorist is another man's freedom fighter. History will absolve the so-called terrorists, who will one day achieve their goal;
- The separatist argument that the regime in power may claim to be legitimate but is in reality illegitimate. It rules, if it rules at all, de facto and not de jure, and therefore violence is justified against it; and
- The state is the real source of terror, through the actions and inactions of its security forces, their unofficial murders, collusions with private assassination gangs, cover-ups, failure to investigate crimes of which they approve, general bias and distortion in their work, and so on.

Pure terror, on the other hand, is intended to destroy the lives, welfare and possessions even of those who may be sympathetic to the cause, as on 9/11; and pure terror and propaganda are not aligned. Islamist suicide bombers may cause shock, awe and even admiration within certain sectors of their 'own' community; but their actions are not designed to win hearts and minds.



For Reflection

What is your experience, in policing Islamist terrorism in your own country?

- What are the motives of the terrorists?
- To what extent do they wish to influence public opinion in general, and to what extent are they susceptible to it?
- To what extent are the terrorists influenced by contrary opinion, as expressed within their own community?

Non-State Terrorism: Four Items of Legislation

How has the British state reacted to terrorism, in its more recent manifestations? There has been a mass of anti-terrorist legislation since the IRA re-launched itself in 1969, of which we shall only refer to legislation in this century.

1. **The Terrorism Act of 2000 (UK)**

Terrorism is defined under the 2000 Act so as to include the possibility of 'the use or threat of action' where 'the use or threat is made for the purpose of advancing a political, religious or ideological cause.'

Action is defined as falling within subsection (2) if it:

- involves serious violence against a person,
- involves serious damage to property,
- endangers a person's life, other than that of the person committing the action,
- creates a serious risk to the health or safety of the public or a section of the public, or
- is designed seriously to interfere with or seriously to disrupt an electronic system.

We may also note that under subsection (3) the use or threat of action falling within subsection (2) which involves the use of firearms or explosives is terrorism whether or not the use or threat is designed to influence the government or to intimidate the public or a section of the public.

Action may take place abroad as well as at home: it is still terrorism.

Comment

Legislation tends to be framed so as to cover conceivable uses, but even so this is an extremely wide definition, and whether or not actions taken under its auspices are valid can only be finally tested in court.

Why is it so wide-ranging? To suggest one example of its possible usefulness: on the face of it, it allows the police to charge animal liberation front (ALF) saboteurs with terrorism, since at least some of their actions are clearly intended to cause serious damage to property in order to advance an ideological cause.



No doubt that was part of the purpose for the framing of the act in inclusive terms. Firstly, the ALF may be legally branded as terrorists, which gives the high moral ground to the state. Secondly, it increases the options open to the state in dealing with them, and the penalties they may face if convicted. (The penalty for damage to property as a terrorist offence may be greater than the penalty for damage to property as a result of a drunken spree; and we suggest that the 'reasonable person' so prominent in legal theory, would accept the validity of such a distinction, and the reasons for its existence.)

However, if terrorism is defined too widely, the legislation itself may fall into disrepute; and it is the police service, no doubt in discussion with other agencies, that must decide how, when, why and against whom to apply this act, taking into account the possible reaction of public opinion as a factor to be considered.

Terrorism or Peaceful Protest? G20 Summit, London, April 2009

In this context, we may note a hardening of attitudes in regard to the policing of the G20 summit in London in April 2009, during which the police threatened to use 'the terrorism act' in policing the actions of people described in the broadsheet press as predominantly peaceful protestors. The reaction of 'middle England', so far as it is possible to make such a judgment, was that the police had got the balance wrong and swung too far towards confrontational policing, with an unjustified threat of the use of legislation passed for other purposes; and we have discussed further aspects of this event in our editorial.

Content

The Terrorism Act specifically aims to make it more difficult for extremists to abuse the freedoms we cherish (original wording), in order encourage others to commit terrorist acts.

The Act creates a number of new offences. Once it is brought into force, it will be a criminal offence to commit:

- Acts Preparatory to Terrorism
This aims to capture those planning serious acts of terrorism.
- Encouragement to Terrorism
This makes it a criminal offence to directly or indirectly incite or encourage others to commit acts of terrorism. This will include the glorification of terrorism, where this may be understood as encouraging the emulation of terrorism.
- Dissemination of Terrorist Publications
This will cover the sale, loan, or other dissemination of terrorist publications. This will include those publications that encourage terrorism, and those that provide assistance to terrorists.
- Terrorist training offences
This makes sure that anyone who gives or receives training in terrorist techniques can be prosecuted. The Act also criminalises attendance at a place of terrorist training.



The Act also makes amendments to existing legislation, including:

- Introducing warrants to enable the police to search any property owned or controlled by a terrorist suspect
- Extending terrorism stop and search powers to cover bays and estuaries
- Extending police powers to detain suspects after arrest for up to 28 days (though periods of more than two days must be approved by a judicial authority)
- Improved search powers at ports
- Increased flexibility of the proscription regime, including the power to proscribe groups that glorify terrorism.

Commentary

Clearly, the British government is taking terrorism far more seriously than ever before, and is determined:

- To provide the means for addressing terrorism wherever it occurs, and to prevent the establishment or continued existence of 'safe havens', whereby group x can plan and promote terrorist act y in country z, safe in the knowledge that it cannot be brought to account for its actions where they were planned;
- To ensure that terrorism is not just addressed as a security issue, but that terrorist activity is countered by other means, including such issues as financial measures to stop or block terrorist funding; and
- In proscribing the glorification of terrorism, to attack an ideology rather as one might attack a cancer: i.e., by every possible means.

A Comprehensive Counter-Terrorist Policy

It is a commonplace of counter-terrorist thinking that terrorism cannot be defeated by police or military action alone. The counter-terrorist campaign should be twofold, and deal with both symptoms and causes. How is it to do so?

The policy addresses the causes of terrorism and attempts to remove or neutralise them, for example by:

- improving socio-economic conditions for the population as a whole, and/or
- improving the comparative and absolute position of a particular disadvantaged group.

It may consider the changes which the group in question would like to achieve, for example in regard to foreign policy, and attempt to take them into account.

It addresses the symptoms of terrorism by means of an effective counter-terrorist campaign by the security forces and other state agencies which utilizes and unites the full resources of the state.

That counter-terrorist campaign aims to win hearts and minds, in this case primarily those of the 'moderates' who form the 'community' from which the 'extremists' have emerged, and who must believe that the state campaign is legal, necessary and proportionate if they are to remain moderate and not become extremists themselves.



The fundamental challenge of policing, as Sir Ronnie Flanagan (the recently retired chief inspector of constabulary) said when a chief inspector on a course at Bramshill in 1986 at an earlier phase in his career, is to decide whom to control and whom to support. Extremists need to be controlled. Moderates need to be supported.

Pause for Reflection

What are your views in this area?

- Do the police have a twofold role, exercising support as well as control?
- How do you establish a connexion with those whom you police, and to what extent do you engage in a dialogue with them?
- Can you make a practical, working distinction between moderates and extremists, and how does it affect your behaviour?

Metaphor and Reality: The War on Terror

Does international terrorism create a state of war, and does it require special powers by the police, in order to deal with it? In our opinion, to talk of a war on terrorism, as to talk of a war on drugs, is a metaphor; and metaphors can be misleading. We (the UK) are not at war with terrorism, as we were at war with Nazi Germany from 1939 to 1945. War presents a realistic and credible threat to our independent existence as a nation and our control of our own destiny. In war, we have a specific opponent, against whom war has been declared, against whom a range of measures can be adopted, and with whom a truce or peace may eventually be negotiated and a settlement follow.

We would suggest that we need neither the full panoply of war time powers to deal with terrorism, nor a plethora of new legislation, when there are already existing laws that might be applied. On that basis, some of the legislation passed since 2000 may prove useful, and some may not. Legislation is unhelpful that duplicates existing powers, or increases their complexity without improving their effectiveness.

The Sources of Terrorism

It is a comforting assumption to believe that terrorism is likely only to appeal to the infantile, deranged and deluded elements of the population: people who may feel insecure in their identity, for one reason or another, and have chosen terrorism as a means of asserting themselves.

It is easy enough to find data to justify this belief, although the evidence tends to the anecdotal. Thus, for example, one of the leaders of the Easter Rising in Dublin in 1916, Eamon de Valera (1882 to 1975) was born in New York to a Spanish father and Irish mother, and may have been illegitimate. The assumption that de Valera's career as a terrorist, however, was caused or even fostered by the insecurity of his background is unproven and seems doubtful.

Moreover, even if de Valera's loyalties were influenced, at least in part, by the particular circumstances of his birth and upbringing, there were plenty of other Irish Republican leaders of homogeneous origin. De Valera's background was neither necessary nor sufficient to explain his behaviour.

Some evidence suggests that the people who join terrorist groups such as the IRA or ETA are conspicuous for their normality rather than abnormality, and that the picture of the archetypal terrorist as narcissistic or addictive in personality is not born out by the facts. This leaves the question of the personality of the suicide bomber unanswered.



Tackling Extremism

It is conventional to separate moderates and extremists, and for the state especially a state that prides itself on its traditions of liberal democracy, and is in the definition of the Council of Europe, a democratic state to encourage and support moderate opinion and to isolate and delegitimize extremists, especially those who advocate and practise violence.

The distinction makes sense in theory, but is not always so easy to apply in practice. Moderates and extremists are not always separate groups. People may pass from one to the other, and then back again. Moderates may denounce extremism, but not to the extent of offering practical cooperation to the police. Separate moderate and extremist organisations may have a section of their membership which is common to both: such as the ALF activist who is also a supporter of the RSPCA.

The Labour Party, which vigorously opposes terrorism see, for example, the record of Roy Mason [b.1924] as Secretary of State for Northern Ireland from 1976 to 1979—has been itself preoccupied by extremism within its ranks from time to time. It has needed to combat what is described as 'infiltration' or 'entryism', and has purged itself of Trotskites, the Militant Tendency, and other variations on militant socialism, in order to remain a democratic and non-violent organisation which is part of the mainstream of political life. The Labour Party was not created as a front for covert Marxists, and its rejection of extremism is genuine.

By implication, any group or organisation which is dedicated to upholding the values of a liberal democracy must be prepared to take action to do so. It is not enough to utter pious hopes and acceptable platitudes

Criminalisation

It can be argued that it is easier, or more convenient, for a state under attack to categorise its attackers as extremists, rather than to engage with their particular demands. The IRA, for example, claims to be an army carrying out a military campaign for political ends. The British government, however, rejected their self-categorisation and awarded them the status of criminals, to be charged, convicted and imprisoned for their offences under criminal law. They were not, therefore, prisoners of war; and their claim to be treated as political prisoners was always a source of enormous contention.

The peace process in Northern Ireland might be read to suggest:

1. That the policy of criminalisation served its need and was then abandoned; and
2. That the genuine moderates have been punished for their efforts, whereas the extremists have been rewarded. It was, after all, Martin MacGuinness and Ian Paisley who came to share power, and not the leaders of the Alliance Party and the SDLP. However, this is to ignore *realpolitik*. Who was disturbing the peace, to put it at its mildest? The IRA, and the loyalist paramilitary groups. Who, therefore, needed to be emasculated? Politics is the art of the possible, and there are times when a criminal conviction is of less importance than a political one.

² Some commentators might draw an analogy with the creation of racially aggravated offences under the Crime and Disorder Act of 1998, under which the convicted criminal may receive a higher maximum sentence if the specified criminal act is shown to have been aggravated by racial prejudice. On the one hand, such laws emphasize how seriously the state regards racially aggravated offences. On the other hand, the crime in question is already a crime. Why refine it?



Islamist Terrorism

Islamist terrorism differs from what has been experienced before, in at least as follows:

- it marks the advent of suicide bombing as a laudable and indeed glorified choice, rather than a risk to be avoided if possible;
- it is marked by the absence of warning and the intention to commit unpreventable mass destruction;
- there is an absence of terrorist demands, except in so far as their actions have some link to a globalized conflict;
- the background of the terrorists does not include a link to criminality, so far as we are aware; and
- it is associated with the idea of 'radicalisation.'

The campaign against Islamist extremism has made great play of the fact that some converts have been 'radicalised' into believing in an extreme and indeed false version of Islam, either in madrassas abroad where they have been indoctrinated rather than educated, or by self-proclaimed religious leaders of dubious authority, preaching in or near British mosques, whose interpretation of the Koran is at best highly questionable.

The Islamic community is itself eager to sort this out, for obvious reasons; and there is a case for the state to support them, provided that such support is not counter-productive. Counter-indoctrination is not the same as education, although the two have something in common; and the policy of the police must be, as always, to decide whom to control and whom to support, and to make sure that they are successful in both tasks.

Police officers who combat terrorist groups, we suggest, do not usually engage in a debate on ideology with their opponents which is likely, at best, to be inconclusive. But still, a little knowledge is not always a dangerous thing: and the police officer who is aware of the general attitude and assumptions of the Islamist (or any other) terrorist, actual or nascent, is in a better position to counter them.

Stereotypy and its Dangers

We have taken care not to categorise terrorists as necessarily the product of socio-economic circumstances or psychological inadequacy, but, on the whole, as rational beings operating under free will. Nevertheless, we can make generalisations about the behaviour of groups of people, which do not necessarily predict the behaviour of individuals. Countering radicalisation requires socio-economic investment, and it is not insignificant that the young Moslem men who become terrorists, tend to come from some of the poorest groups in our society—although some individual terrorists may be both highly educated and in regular employment.

The young, the less educated, and the unemployed are more likely to be the disaffected, and will provide a reservoir of recruitment for terrorism which would not exist, or would be smaller and less effective under full employment—or at least a situation in which young persons from a particular religious background did not feel disadvantaged.



Counter-terrorism

To prevent terrorism's success requires three things:

- The right political, social and economic policies;
- A well-organised and professional police service, which includes an effective intelligence department; and
- Good fortune—as the detailed study of any counter-terrorist operation will reveal.

There is little new about the principles of counter-terrorism. Any modern police service has to provide both personal protection for those individually judged to be at risk, and security in the wider sense for identified groups and buildings such as embassies—which the MPS has described as 'symbolic locations'. Inevitably, and since protection on its own is never enough, the police service needs to gain specific and forward-looking information about the sort of people, and the people themselves, who are likely to plan and carry out an assassination, bombing, or any other act of extreme violence.

Lessons from history

The best defence against effective terrorism is to be able to work to protect a credible and humane system, where the arguments of the terrorist are and appear wrong to the ordinary member of the public of any background.

We end this article on terrorism where we began.

Terrorism is a difficult word to define, and presents fundamental challenges to the police service that confronts it. In our view, the analogy of a war on terrorism is misconceived, and the challenge of terrorism needs to be dealt with as another aspect of the overall challenge to policing, rather than as a separate phenomenon.

Terrorists are people, and the police service knows, or should know, how to deal with people who conspire to murder and carry out other extreme acts. It needs to ensure that its policies against active terrorists do not turn the bulk of the population against the police service itself; and that part of the population as a whole from which the active terrorists have emerged, requires especially careful treatment, rendered more difficult by the usual problems arising in policing a multi-cultural society in which certain groups feel and often are discriminated against, whether by design or neglect.

This does not mean that the police service needs to become or present itself as a social welfare organisation or public relations agency. The police service exists to keep the Queen's Peace, and has a monopoly of the use of legitimate force with the United Kingdom to do so. There are times when that force will need to be used: but prevention is better than cure.

Policing terrorism is an aspect of policing by consent, and not an alternative to it.



A Delicate Balance: Immigration Enforcement, Homeland Security and Policing in the United States

By: Terrence P. Dwyer, Esq.
Assistant Professor, Western Connecticut State University

Local policing

A distinguishing aspect of American law enforcement is the number of police agencies operating throughout the country, each responsible for a specific geographic jurisdiction. Much of this is due to the accepted tension between state's rights and the centralized function of a national government. Our system of federalism invites a sharing of powers among the national, state and local governments. An inquiry of constitutional proportion ensues when considering which powers are reserved to the state government and which reside solely with the federal government. The policing function is one of those powers readily handed to the states in which they possess near complete autonomy. Except for egregious instances of systemic misconduct the federal government takes a general laissez-faire approach to local policing.

The large number of U.S. agencies is indicative of the local nature of American policing. There are a total of 17,876 law enforcement agencies nationwide which employ over 836,787 sworn full-time officers. Within each of these municipal subdivisions the police are responsible for enforcing their respective state laws as well as municipal ordinances and performing various service and community-based functions. In addition to these state agencies there is a cadre of federal law enforcement agencies, the most well-known of which is the Federal Bureau of Investigation (F.B.I.), responsible for the enforcement of federal criminal laws. While a dual system of enforcement may seem redundant, federal law enforcement is largely concerned with matters impacting those areas exclusively within federal control or impacted by federal programmes.

Immigration

Immigration enforcement is one of those areas the United States federal government has specifically reserved to itself. The U.S. Constitution provides in Article I section 8 for the Congress to establish "a[n] uniform Rule of Naturalization." It is a power the U.S. Supreme Court has said implicates national security concerns. The realities of terrorism, along with the United States being a historical destination for disenfranchised peoples, have brought immigration concerns to the forefront of discussions about policing and terrorism. Despite the clear federal mandate to enforce laws relating to immigration the post-9/11 climate has created a shift toward more localized enforcement of immigration statutes. This has in turn caused immigration advocates to criticize the policy, claiming unfair and biased extra-jurisdictional enforcement. For police administrators and managers the situation has raised issues as basic as staffing to the more complex matters of community credibility and legality.

Presently, as we crest the back end of the post-9/11 decade, local agencies are beginning to question the true nature of their role within the federal scheme of immigration enforcement and homeland security vigilance. Unifying principles of patriotic fervour have given way to pragmatic concerns over the potential deleterious effects of police agencies becoming extensions of federal authority. Original fears over a national police force have been replaced by an overly paramilitarized policing structure emblematic of the citizenry's worst fears of a centralized domestic force.

The ensuing legal implications of extra-jurisdictional law enforcement as well as the ethical considerations for a predominantly service oriented occupation are problematic for police officers and administrators alike. While this article addresses the present environment within U.S. law enforcement, the particular concerns are not necessarily



limited to the immigration debate within the United States. European communities, particularly those with large immigrant influxes over the past decade, have increasingly devoted police resources to deal with burgeoning issues related to crime, calls for service, and terrorism related investigations stemming from these communities.

The challenge in democratic societies is to balance the need for investigation and enforcement with individual rights and protections. While United States federal courts have exhibited a strong presumption in favour of certain Executive and Legislative branch powers related to homeland security, the courts have curtailed those same branch powers when they exceeded their reach. Yet, within this legal landscape these branches have undertaken measures in the post-9/11 world that have been constitutionally aggressive. Certain Bush Administration policies have been curtailed by the U.S. Supreme Court and deemed unconstitutional, despite invocation of unilateral constitutional emergency powers. Key portions of the PATRIOT Act, hastily passed by Congress and the Senate in October 2001, have initiated debate over the effectiveness of additional legislation in the wake of the terrorist attacks versus the usurpation of treasured liberties.

Civil Liberties v. Homeland Security

The push of civil liberties is vulnerable against the tug of homeland security. The recent transfer of power, a transfer which is significant in the shift of not only political parties but ideology, comes at a time when the global economic crisis and the mechanisms for correcting the precipitous drop in world markets has made terrorism a side stage issue. President Obama's call to stand down on the aggressive detention and interrogation policies of the Bush Administration is in sharp contrast to the increased activity of local police in the enforcement of federal immigration policy. Recent criticism of the new President's policy has been voiced by former Vice-President Dick Cheney. There are competing choruses of political finger-pointing and second-guessing but in the middle of it all remain police officers tasked with a new enforcement mandate. Important constitutional rights of individuals sway in the balance. A crucial issue confronting police the administrator is how involved should officers become in enforcing laws that are deemed solely within the realm of the federal government. Does immigration enforcement aimed at homeland security measures equate with racial or ethnic profiling? This is the challenge faced at the local level by police officers. So how do we instruct our officers? What measures do we implement to ensure their actions are not only proper but respecting of the position they maintain in a free society?

Community Trust

As a lawyer I find the answer in the body of law we have in place. There is a moral force to the law which guides behaviour. The positive and remedial effects of law are the fulcrum in the balance between governmental action and personal liberties. However, as a lawyer I must be a historian by default, cognizant of past evils the same reliance on law and the Constitution have created. Nowhere are the requirements of this balance more needed than in the area of policing and terrorism. After 9/11 an intense overnight suspicion of Arab-Americans was born. Complaints over racial profiling along with that of religious based profiling have proliferated. Civil rights advocacy groups and individual plaintiffs have challenged the government's authority, specifically the authority of local governments to take action within the federally reserved area of immigration enforcement. A critical matter to be addressed when policing terrorism is how to handle the proliferation of non-citizen, undocumented aliens in the United States. The tension resides in the traditional role of police in a democratic society and the imposition upon them of immigration enforcement.

The fact that the federal government has not fulfilled its own mission in this area is not lost on police practitioners. In June 2006 the Major Cities Chiefs Association, a group of police chiefs from the sixty-four largest cities in the United States, through its Immigration Committee, adopted a nine point position statement which sought to place primary immigration enforcement with the federal government. Concerns relating to familiarity with the complex immigration law structure, liability issues and officers being diverted from their primary patrol and service missions were at the core of the Committee's position statement.



However, the first and most important of these concerns was the potential for undermining trust within the communities served by the police, especially those immigrant communities most affected. The Committee indicated that “[H]ow local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities.”

Law and Morality

The realisation of a potential shift in the paradigm of policing ushered in by increased local involvement in immigration enforcement is both prudent and ethical. Any alteration to the role of the police in a democratic society must be carefully scrutinized. This is particularly relevant when political sanction is given as an extension of the war on terror. If law is to continue to have force as a moral imperative it must not only in and of itself be of moral value but the guardians of that law must also operate as a force of morality. A failure of police administrators to respond to the encroaching nature of nationalism in the policing structure can have dire consequences. The position of the Major Cities Chiefs Association came only three years after a failed attempt by Congress to pass the CLEAR Act.

Otherwise known as the Clear Law Enforcement Criminal Alien Removal Act of 2003 (HR2671) the legislation was aimed at providing state and local law enforcement full authorization to investigate, apprehend and remove aliens in the United States. This authority included interstate transportation to detention centres. Among the provisions in the CLEAR Act were the withholding of federal funding for detention assistance for those states not in compliance within two years of the Act’s enactment, increased criminal penalties and forfeiture provisions under the Immigration and Nationality Act, an NCIC (National Crime Information Centre) database of immigration violators, liability coverage and immunity to law enforcement officers and agencies involved in immigration enforcement efforts.

The CLEAR Act met with strong opposition from immigration rights groups and the American Civil Liberties Union (ACLU) and is still not law. There is a tendency to over-legislate in the United States and the position of the *Major Cities Chiefs* is both practical and conservative in response to this—we already have a system in place, make it work and allow the police to serve their communities in an un-biased manner.

Without Fear or Favour: The rights and wrongs of racial profiling

This is essentially what the issue of policing terrorism in the United States has come down to, whether or not it can be done in an un-biased, race neutral manner. Once again, as a lawyer, I rely on the effectiveness and force of law to resolve these issues. Racial profiling has already undergone an extensive examination in the United States. Federal and state case law have outlined the impermissible and unconstitutional nature of the practice. Additionally, the stigma and potential monetary damages of a federal civil rights lawsuit, the monitoring of a renegade police agency under federal consent decree and the potential for egregious conduct to result in criminal charges all serve as checks on the power of the police. Finally, the courts, the “least dangerous branch” of government, remain vigilant of the most basic of rights.

Two recent cases bring the problem of extra-jurisdictional immigration enforcement to light. In each of these cases there is a potential loss to the credibility of the police in the community and questionable motivations behind the enforcement. In New Hampshire a local officer arrested an individual for trespass under a state statute based on the individual’s status as an illegal alien. The chief of police in a neighbouring town had his officers similarly enforce the state statute and arrest aliens based on their status as undocumented immigrants. The theory of enforcement was that the state trespass statute made it criminal for an individual to enter and remain unlawfully on property. By extending the definition of property to the continental U.S. the police reasoned that undocumented aliens were trespassers within the country. The arrests were eventually nullified and the criminal case dismissed by the New Hampshire Superior Court based on federal pre-emption and constitutional grounds.



The Danbury Eleven

In the City of Danbury, Connecticut the mayor and individual police officers are presently being sued in federal district court for alleged civil rights violations connected to immigration enforcement efforts. During a 2006 sting operation round-up of alleged illegal immigrant day labourers an undercover police officer posed as a contractor. The officer, operating a truck, picked up several individuals who once in the truck were surrounded by law enforcement officers and taken into custody. The detainees were subsequently transported to detention centres around the country and held incommunicado from family and friends. The lawsuit, undertaken by a Yale University School of Law legal clinic, alleges a pattern of racial profiling by the city against Latino immigrants. The plaintiffs in the case have become known as the "Danbury 11."

Part of the pattern of police and government abuse alleged are the pre-textual vehicle and traffic stops initiated in order to check the names of vehicle operators to ascertain if they were wanted through the National Crime Information Centre. Many vehicle operators were subsequently arrested based on civil immigration detainees. The complaint refers to the officers' lack of authority to enforce civil immigration detainees and further references the Danbury Corporation Counsel's warning to the mayor that the officers lacked authority.

Policing a Free Society

The "Danbury 11" case remains in its pre-trial phase but raises significant issues with the implementation of local police in immigration enforcement. As previously indicated these same questions are equally applicable to the broader war on terrorism and the role of police. The thrust of bona fide enforcement efforts are wasted when mired in the muck of politics. Terrorism and immigration enforcement have been clarion calls for politicians seeking office. Police leaders who are swept up in the politics lay waste to their sworn oaths of duty and the moral demands of the profession.

While political debates ensue the officer on patrol has the weight of the world and its myriad problems to contend with. The patrol officer, left to his or her own devices, knows how to police a free society. The law remains an important aspect of an officer's training. It too is the guiding hand for an agency's response to societal challenges. In order to chart a steady course in this new world of policing traditional values based on the rule of law need to be followed. By staying true to the ethic of policing and the community-based role of policing officers will remain connected to their constituency. The most valuable resource an officer has is the trust and faith of those policed for they become extensions of the eyes and ears of the officer. From these bonds comes information which in turn may thwart a future terror attack. By adhering to the principles of law the liberalizing effects of democracy remain intact and the credibility of policing remains whole. The delicate balance between rights and security is achieved.



Endnotes

U.S. Department of Justice Bureau of Justice Statistics, www.ojp.usdoj/bjs/lawenf.htm . Statistics are as of 2004 and do not account for part-time agencies.

See eg. Chae Chan Ping v. U.S., 130 U.S. 581 (1889) – also referred to as the Chinese Exclusion Case, the Supreme Court held the federal government has plenary power over immigration due to its sovereignty and the political nature of foreign policy as well as national security concerns. The national security concern can become an overriding concern in this area as seen in some past court decisions and more recent post-9/11 adjudications.

For extensive discussions on this see for example: Overkill: The Rise of Paramilitary Police Raids in America, Radley Balko, www.cato.org/pubs/wtpapers/balko_whitepaper_2006.pdf or Militarizing the American Criminal Justice System: The Changing Roles of the Armed Services and the Police, Peter B. Kraska, Northeastern Press, 2001. For a discussion on the paramilitary nature of police training see, The Paramilitary vs. Academic Training Debate, Dr. Paul Weinblatt, www.policelink.com/training/articles/1996-the-paramilitary-vs-academic-training-debate .

United States Supreme Court cases have addressed these issues numerous times over the years, specifically as they relate to Executive power. During the Civil War President Abraham Lincoln suspended the writ of habeas corpus and instituted the use of military tribunals, controversial measures at the time which have been mollified by the luminary presence of Lincoln in American culture. In Ex Parte Milligan, 71 U.S. 2 (1866) the Supreme Court ruled that Lincoln could not suspend the writ of habeas corpus. Significantly, the decision was rendered after the Civil War when the danger to the nation had subsided. In a prior case Chief Justice Roger Taney sitting as a Circuit Court judge ruled against President Lincoln in Ex Parte Merryman, 17 F. Cas. 144 (1861) and held that the use of military tribunals against a citizen when civilian courts are still operational is unconstitutional. Eighty three years later the internment of Japanese-American citizens during World War II was upheld by the Supreme Court in Korematsu v. United States, 323 U.S. 214 (1944) though the decision has since been much criticized.

See eg., Hamdi v. Rumsfeld, 542 U.S. 507 (2004); Hamdan v. Rumsfeld, 548 U.S. 557 (2006)

Since 9/11 there have been six federal anti-terrorism statutes passed into law. During the preceding 40 years there were a total of nine such statutes passed, see Anti-terrorism and Criminal Enforcement, 3d Ed, Norman Abrams, Thomson-West, p. 7.

The Washington Times, March, 16, 2009, www.washingtontimes.com/news/2009/mar/16/cheney-hits-obama-policy-on-terrorism

See eg., Dred Scott v. Sandford, 60 U.S. 393 (1857), U.S. Supreme Court held slaves and their descendants were not legal persons and could not be citizens; the case further held the federal government had no power to curtail slavery within the states.

DWA (“Driving While Arab”) and FWA (“Flying While Arab”) have entered the post-9/11 vernacular. See eg., Driving While Arab, Mike Odetalla, 05/18/04 at www.muslimwakeup.com/may/archive/2004/05/driving-while-a.php ; and Driving While Muslim, Spencer Ackerman, 09/21/06 at www.thenation.com/doc/2006/09/spencerackerman. Additionally, numerous law journal articles have explored the potential legal impact of religious profiling as applied to the Muslim faith. See eg., Stephen H. Legomsky, The Ethnic and Religious Profiling of Noncitizens: National Security and International Human Rights, 25 B.C. Third World Law Journal, 161, 178-79 (2005); Aliah Abdo, The Legal Status of Hijab in the United States: A Look at the Sociopolitical Influences on the Legal Right to Wear the Muslim Headscarf, 5 Hastings Race & Poverty L.J. 441 (2008).



www.majorcitieschiefs.org/pdfpublic/MCC_Position_Statement_Revised_CFF_2009.pdf

Id, p. 3

42 U.S.C. §1983 provides an individual plaintiff with a private right of action for constitutional violations against any state actor (inclusive of local municipal employees) who acting under the colour of law deprives the plaintiff of a constitutional right. Originally enacted in 1876 after the Civil War and part of the Ku Klux Klan Acts this statute in the 1980's increasingly became a vehicle by means to seek redress against police violations and misconduct. 18 U.S.C. §242 is the criminal version of the above action enforceable upon a complaint by the U.S. Attorney General's Office.

New Hampshire v. Barros-Batistele, et al, 05-CR-1474, et seq. The U.S. Supreme Court in DeCanas v. Bica, 424 U.S. 351 (1976) held that any state or local law, ordinance, rule or directive seeking to regulate immigration violates the Supremacy Clause (Article VI, clause 2) of the U.S. Constitution and can be "pre-empted" by federal law. In the New Hampshire case additional constitutional issues relating to equal protection and selective enforcement were addressed.

Barrera v. Houghton, 2007CV01436 (DC CT)

In 1997 §287(g) was added to the Immigration and Nationality Act and allowed local police officers to enforce federal immigration laws if the municipality entered into a Memorandum of Understanding with the federal Immigration and Customs Enforcement (ICE) agency. The Connecticut Governor's Office refused to provide the authority for local agencies to pursue federal §287(g) training. A review on the Immigration and Customs Enforcement website of the agencies which have received training for its officers indicates an absence of larger municipalities, such as New York, Boston, Philadelphia, Los Angeles and Chicago, which would seem to benefit under such a program. The author finds that this absence may suggest these agencies have found a means to address the localized nature of the immigration issue while maintaining the integrity of the patrol and community-service function of the agency. A good study on point would be the New York City Police Department which maintains an aggressive and heralded anti-terrorism program operating within the bounds of the law, respectful of citizen's rights and responsive to community concerns.



Leadership and Moral Development

Robert Adlam, James McKinney and Peter Villiers

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Values and the leader's value-system: the need for self-knowledge

If the vision is to be genuine and capable of motivating others it ought, at the very least, to be capable of motivating its originator, who must be aware both of his own values and how they influence his actions. This sounds relatively straightforward-values are what we value, and it should be simple enough to find those out-but in fact it can be surprisingly difficult.

Problems of moral elucidation

Why do we act as we do-and what are the moral values that motivate or influence our actions? Philosophers, economists and psychologist-to say nothing of poets, novelists and historians-would agree that these are some of the most difficult questions we must face: and have found very different ways of addressing them.

Let us confine our speculations to the experienced police officer, and assume that we have gathered that status for ourselves.

We belong to a culture that is not inclined towards introspection and may dispute its validity. Our disinclination towards introspection may have been reinforced by our professional experience so far, in which we have devoted the bulk of our attention to understanding others rather than ourselves-which is often a simpler task, and more likely to lead to career-enhancing rewards.

We have a penchant for action, and a need to solve problems as they arise. Moreover, we very often believe that the right solution is not in question, and any difficulties of achievement will arise over means and not over ends. We may have joined the police service itself, at least in part because of its apparent moral certainty: only to find that things are not as they appeared. Right and wrong may not be so easily separated as we had thought. Our colleagues, being human, may not be so virtuous as we had hoped. And the work itself, which we had expected to be a relatively straightforward affair of upholding the law, may have proved infinitely variable in the combinations and permutations that it thrust before us, and the demands on our decision-making powers that we had not anticipated.

We may have identified an incongruity between the official values of the organization and profession to which we belong, and the factors that appear to motivate at least some of those who work for it-and here we do not refer to those police officers who are widely perceived to be corrupt, brutal or vicious. The police service, for example, may laud the values of selflessness, justice, impartiality and truth, whilst its officers are in reality motivated by a quite different, if much more understandable set of values. These may be taken to include the avoidance of stress and the pursuit of a reasonably comfortable and not too demanding way of life-and one in which loyalty to colleagues features rather more prominently than an obligation to serve the community without concern for personal or organizational gain.

As experienced police officers, we may be a little uncomfortable with the wider notion of examining values, since our acquaintance with the criminal justice system in operation has encouraged us to believe that the good are not always rewarded and the wicked punished: and we may not hold the profession and administration of the law in the utmost respect. We may fear, consciously or subconsciously, the possibility that other assumptions that have



so far comforted us by their apparent certainty are of similar untruth: and restrict our pursuit of ethics to situations in which the inculcation of a simple moral code is more a matter of repetition than analysis. (Stop kicking your brother!)

We may further believe that we have a contract with society, all the more powerful in that it is no longer openly declared. Just as in Victorian times, although to-day with less candour, it is the police task to protect the respectable and law-abiding sections of society against what used to be called 'the dangerous classes': which means not just habitual criminals, but the deviant, the marginal and the dispossessed. Despite the current emphasis on diversity and multi-culturalism, the astute police officer soon realizes that there are limits to tolerance, and that the more successful members of society, whatever their own origins, do not actually want gypsies living in their back-yard.

We need some sort of purchase on the origin of values. Where do they come from?

The derivation of values

Initially personal values derive from the child's interaction with its family or significant others who induct the child into a culture. Fundamental dispositions, codes of conduct, notions of right and wrong are forged in the early definition of personhood. These initial values are so basic to our personality that they could be defined as the foundations of our very self-hood. Developments in the fields of psychoanalysis and humanistic psychology provide remarkably illuminating analyses illustrating how values can be traced to distinct patterns of parent-child interaction.

The next crucial adoption of our values occurs through interaction with our peers- usually within the environment of the educational process. Our peers communicate values such as loyalty, recognition, competition and achievement. The educational process mediates the values of order, coherence and enquiry amongst many others.

Values acquired in adult life will also be partially drawn from the organization for which one works. Usually adults become socialized or inducted into the occupational values unique to each profession.

All the values mentioned so far derive from personal interaction. In addition we acquire values through the traditions and procedures that are embedded in our wider culture. The mass media also functions as an extremely powerful generator of values.

Thus, there are various sources for our values, which are absorbed and internalized by us in different ways and with different degrees of impact. The acquisition of values is largely an unconscious process based on behavior drilled into the individual as a child, deliberately 'taken on board' in imitation of an adolescent role model, accepted as if by osmosis through the lyrics of a song, or intellectually accepted through argument and debate with colleagues at work. Some of these processes are rational whilst others are not. It is worth underlining the fact that depth psychologists encourage individuals to search for the unconscious 'drivers' that underlie aspects of their values- whilst semioticians sensitize us to the subtle ways in which a culture constructs the values of its people.

Values and leadership

In any event the value system of an individual is more like a haphazard accumulation of personal experiences, many of which are highly idiosyncratic, than a rationally ordered hierarchy arrived at through personal choice. Thus, it can be seen that a person's value system is a problematic area. Values cannot simply be 'read-off' as details from a person's curriculum vitae. The individual concerned has to undergo a process of self-questioning of a particularly demanding nature in order to bring to the surface the complex of interacting and conflicting values



that constitute a major aspect of their activity and motivation. We should underline the fact that ego-defence mechanisms are likely to intervene in the process of value-clarification. Freud advised us to pay close attention to what people do, rather than what they say motivates them, since the former may be a better guide to their values. However, self-awareness and knowledge can be both fostered and developed by the appropriate means, of which we shall say more later. At this point we must stress that since the personality and manner of decision-making of its leaders are such an important factor in the functioning of any organization it is crucial that they be able to take their value-systems into account.

Clearly, a major aspect of any value-system concerns those values that are 'moral values'. Moral values, such as benevolence and justice, constitute, in part, the conscience and ego ideal of the person. A person's value-system can be described as a complex compound of moral and non-moral values.

A note on ethical reflection

Ethical reflection in today's society is a more complicated process than it has been in previous times (see MacIntyre, 1982). Durkheim characterized society since the industrial revolution as one dominated by 'anomie' or normlessness. We live, he suggested, in a society where integrating norms were open to question, fluctuation and revision. The frameworks of shared outlook and values are now part of the rapid 'mutation' that characterizes modern society. So, for example, norms generated by the traditions of locality, community and interest have been eroded through the process of economic development, with its requirement for the physical mobility of labour. The norms established through the interactions and relationships of the extended family have 'suffered' in a similar fashion. The increasing individualization of society has further accentuated the demise of shared norms. The psychological and intellectual integration offered by religious belief and doctrine has been attenuated and no commonly accepted philosophical system has filled the gap. A philosophical and intellectual relativism obtains, which allows each individual to 'take on board' whatever ideas appeal and to craft their own code of conduct and moral outlook.

Over the last decade and a half, the authors of this text have developed structures to aid police leaders and managers to undertake the process of ethical reflection. We should add that there are plenty of other resources developed for this kind of 'personal work' (see Pfeiffer 1972 – 2003).

Values and the organisation

Ethical reflection and value-clarification cannot stop at the individual. Organizations have purposes and thus have value-systems, of which the leader must be aware. Through this process can be highlighted the actual priorities (declared or tacit) which motivate or constrain the organization's members. Structural value conflicts and value-omissions can be identified. Diagnoses of fundamental procedural malfunctions can be brought to the surface. We think that the organization's value-audit is the 'raw material' upon which leaders need to work, in their principal task of developing their organization in line with their vision. We accept that this might appear to place an unrealistic onus upon the individual leader and that it might be more realistic if the process were to be reversed i.e. the leader should develop his or her value system in line with the organization. The police service has, for example, developed a statement of common purpose and values, and there is now a European Code of Police Ethics that outlines a framework designed to establish a moral basis for pan-European policing.

However, since it is the individual leader who breathes life into the words and concepts of official stipulations, then it makes more practical sense to focus upon the leader as a shaper and creator of organizational values (see Schein, 1985). We are in the process of developing a number of instruments designed to help begin the process of taking an initial value audit of the police organization, and we suggest that interested readers contact us for further information and guidance if they so wish. We should emphasize that many such structures are available and we recommend that police leaders explore the literature on organizational development and transformation for examples.



Vision and Values

The leader's value-system underpins his or her visioning and decision taking. It also shapes and orders the way decisions come to be implemented. In practice, of course, leaders also need to take stock of the raw material upon which they have to work: i.e. the organization's values. But these are static analyses. They are snapshots of the present. They can be of no use to the process of leadership unless they can be related to a vision of the future. Or, to put it another way, a vision of the future can be of no value unless it is in constant interaction with the present values of the organization and its leaders.

How might leaders go about the task of elaborating their vision for the future? We have remained uncertain as to how police leaders and managers actually construct their image and designs for the future, since so much of police leadership seems to be either reactive or defensive—a means of absorbing latest governmental initiative, rather than a 'home-grown' and authentic creation (see Elliott, 2003). Notwithstanding, it is clear that there are a number of sources from which to draw in order to arrive at a genuine vision. Police leaders can trawl their experience and decide to model themselves on some exemplary practitioner. They can attempt to elucidate the 'formula for success' that they perceived to characterize the police leader whom they most admire. Or they can use other resources, drawing upon the identification of deeper personal 'drivers' on which we have already touched.

Implementation and Values: A Link With Transformational Leadership

It seems that the current police organization is experiencing at least two sorts of value clash. On the one hand the demands of 'managerialism' can conflict with the ethos of police-as-a-profession. In addition the requirements of 'partnership' can come up against the cherished sense of independence that characterizes the police.

There is no point in inspecting organizational values if one cannot change them. The values of the existing organization must be capable of alteration into those of the envisioned organization if the leader's vision is to be realized. The vision's values must become the shared values amongst the organization's three fundamental constituencies: its members, its sponsors and its 'customers'. The leader's task is to transform the present organizational values into the envisioned values through his or her skills as negotiator and communicator. The task is to promote co-operation with and commitment to the vision.

In dealing with co-operation and commitment, however, whole 'new' sets of values are brought to the fore. These are the transcendent or overarching values that maximize co-operation and the flourishing of individuals. These are the moral values. Moral values function, in part, to provide the frameworks whereby personal values are allowed to become actualized and shared (see Warnock 1971). The most widely held moral values include the following: benevolence, justice, freedom, courage, equality, loyalty, truth, tolerance, wisdom, prudence, integrity, and industriousness.

These transcendent or co-operative values are those by which the co-operation and communal interchange that marks our lives are carried on. There exist (now) minimal standards of justice, tolerance, integrity and truthfulness without which human beings refuse to take part in any corporate endeavour. They will either withdraw explicitly by means of a walk-out (or some form of 'exit') or they will simply 'go through the motions' with no sense of obligation or commitment to any worthwhile purpose for which the organization was established.

Conclusion

We have outlined a framework for organizational and leadership development. We suggest that leaders need to build a comprehensive understanding of their value system in order to appreciate the vectors that will influence their vision and decision taking. We suggest that they conduct an organizational value-audit in order to establish the 'raw material' which they have to transmute. We recommend that the vision that they build for the organization includes explicit reference to moral values. We note the significance of moral values in the struggle to implement the organizational vision. Finally, we draw a positive relationship between moral values and fundamental human rights and freedoms.



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