

# Policing and Human Rights

## *Eliminating Discrimination, Xenophobia, Intolerance and the Abuse of Power from Police Work*

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## Acronyms

<b>ANC</b>	African National Congress
<b>AWB</b>	Afrikaner Weerstandsbeweging
<b>BOF</b>	Black Officers' Forum
<b>BPA</b>	Black Police Association
<b>CPCG</b>	Community Police Consultative Group
<b>CPF</b>	Community Police Forum
<b>HMIC</b>	Her Majesty's Inspectorate of Constabulary
<b>ICCPR</b>	International Convention on Civil and Political Rights
<b>ICD</b>	Independent Complaints Directorate
<b>LAPD</b>	Los Angeles Police Department
<b>POPCRU</b>	Police and Prisons Civil Rights Union
<b>SAP</b>	South Africa Police (during apartheid era)
<b>SAPS</b>	South Africa Police Service (post-apartheid era)
<b>UDHR</b>	Universal Declaration of Human Rights

## Summary/Résumé/Resumen

### Summary

This paper examines racism, xenophobia, discrimination, intolerance and the abuse of power in policing, based upon a critical analysis of theoretical and empirical research on selected police forces in England, South Africa, Australia and the United States. It sets out a framework, founded upon international legal instruments relating to anti-discrimination policy and the governance of policing, for protecting fundamental human rights, including safety, liberty and freedom from unlawful intrusion by the state. The paper reviews the research on the control of abusive policing through structural and cultural change; explores innovations in personnel management and training; and recommends the introduction of robust mechanisms to achieve democratic accountability.

Racial discrimination, xenophobia, intolerance and the abuse of power are problems in police organizations in many parts of the world. There is evidence that many police officers hold racist and xenophobic views toward specific racial or ethnic minority groups, and that derogatory language is often used when dealing with people from economically and politically marginalized communities. Moreover, research suggests that supervisors are often unwilling to challenge racist banter and inappropriate language. Conservatism, xenophobia and suspiciousness toward marginalized groups are common elements in police culture in each of the contexts studied, as are hostility and racial prejudice. As well as having prejudiced *attitudes*, there is also evidence that police officers often make *decisions* based upon ethnic or racial stereotypes, with resulting *discrimination* against particular groups. Although the relationship between prejudice and discrimination is complex, numerous studies have identified the ways in which racist ideas translate into discriminatory practices.

In many jurisdictions, ethnic, cultural and other minorities are disproportionately subject to intrusive and coercive police powers such as “stop and search”, “on-street interrogation” and arrest. Research evidence suggests that disproportionate use of police power is, at least in part, a product of discrimination, and that the abuse of power is most discriminatory where police autonomy and discretion are greatest. People from minority groups are, in many places, disproportionately subject to the excessive use of force, including deadly force. Inquiries have uncovered intrusive and intimidatory policing, including extreme examples, such as unwarranted entry into households, physical abuse, and harassment in public places and private functions. Although patterns vary from place to place, deaths in custody and other police-related deaths more frequently tend to involve people from ethnic minority groups, both in comparison with their numbers in the general population and in comparison to the number of people arrested. Surveys in many locations suggest a widespread public perception that the police abuse their powers more often in dealing with minority suspects.

Research has also revealed barriers to the recruitment, retention and promotion of police officers from minority communities. Problems in recruiting a police service that reflects the diversity of the community served include discrimination and abuse of ethnic minority recruits. Studies have indicated that there is a link between the internal culture of policing and the delivery of services to the public. This affects not only the use of coercive police powers, but also the treatment of people from ethnic minority communities as victims, witnesses and bystanders. It is also evident that systems of police governance and handling of complaints are insufficiently robust to prevent the abuse of power.

This paper sets out a human rights framework based on existing national and international legal instruments relating to anti-discrimination policy and the regulation of policing (including the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, and the United Nations Code of Conduct for Law Enforcement Officials). It provides a basis for critical evaluation of the research evidence and the development of measures to reduce racial discrimination and injustice.

Such measures include:

- attempts to ensure that police organizations reflect the diversity of the communities served;
- measures to promote equality of opportunity and equality of service delivery;
- structures and processes to ensure legal, political and community accountability;
- introduction of civilian oversight measures and robust mechanisms for handling complaints;
- the development of ethnic minority staff networks; and
- innovation in education and training.

On the basis of this survey of the literature, the paper concludes with a series of recommendations for the development of competent, accountable, equitable and responsive policing systems for the maintenance of community safety and the protection of fundamental human rights.

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## **Résumé**

Les auteurs étudient ici le racisme, la xénophobie, la discrimination, l'intolérance et l'abus de pouvoir dans la police en se fondant sur une analyse critique des recherches théoriques et empiriques effectuées sur certaines forces de police en Angleterre, en Afrique du Sud, en Australie et aux Etats-Unis. Ils établissent un cadre général, à partir des instruments juridiques internationaux relatifs à la lutte contre la discrimination et à l'administration des forces de police, pour la protection des droits de l'homme fondamentaux, notamment la sécurité, la liberté et le droit de ne pas être l'objet d'immixtions illégales de l'Etat. Ils rendent compte des recherches faites sur la lutte menée contre les abus policiers en fonction de l'évolution des structures et des mentalités, traitent des innovations introduites dans l'encadrement et la formation du personnel et recommandent que soient introduits des mécanismes solides de responsabilisation des forces de l'ordre envers la population.

La discrimination raciale, la xénophobie, l'intolérance et l'abus de pouvoir dans la police posent des problèmes dans de nombreux pays du monde. Il est prouvé que de nombreux officiers de police ont des opinions racistes et xénophobes sur certaines minorités ethniques et raciales et s'adressent souvent aux membres de communautés économiquement et politiquement marginalisées en termes désobligeants. De plus, les recherches portent à croire que les officiers supérieurs sont souvent peu enclins à réprimander leurs subalternes lorsque ceux-ci font des plaisanteries racistes ou tiennent des propos déplacés. Dans chacun des contextes étudiés, le conservatisme, la xénophobie et la méfiance envers les groupes marginalisés sont des éléments courants de la culture policière, de même que l'hostilité et le préjugé racial. En plus d'*attitudes* préjudiciables, il est également prouvé que les officiers de police prennent souvent des *décisions* fondées sur des stéréotypes ethniques ou raciaux, ce qui entraîne une *discrimination* envers des groupes donnés. Malgré la complexité des rapports entre préjugé et discrimination, de nombreuses études ont montré comment des idées racistes se traduisaient en pratiques discriminatoires.

Dans de nombreuses juridictions, les membres des minorités ethniques, culturelles et autres subissent de manière disproportionnée l'intrusion et les mesures coercitives des forces de l'ordre qui les interpellent et les fouillent, les interrogent dans la rue et les arrêtent. Les éléments rassemblés par les chercheurs laissent à penser que cet usage disproportionné que les policiers font de leur

pouvoir est, au moins en partie, un produit de la discrimination et que l'abus de pouvoir est d'autant plus discriminatoire que la police jouit d'une autonomie et d'une liberté plus grandes. Dans bien des endroits, l'emploi excessif de la force, meurtrière même parfois, frappe de manière disproportionnée les membres de minorités. Les enquêtes ont révélé des méthodes policières qui s'apparentent à de l'intrusion et de l'intimidation, y compris des exemples extrêmes tels que visites domiciliaires injustifiées, brutalités physiques et harcèlement dans les lieux publics et les réunions privées. Bien que les caractéristiques varient d'un pays à l'autre, on constate que, parmi les décès survenus en garde à vue ou liés d'une quelconque manière à la police, la proportion des membres de minorités ethniques touchés est plus forte que celle de la population générale et qu'il en est de même par rapport au nombre de personnes arrêtées. Dans bien des endroits, les enquêtes montrent que, dans l'esprit du public, l'idée que la police abuse souvent de ses pouvoirs lorsqu'elle a affaire à des suspects de minorités est très répandue.

Il ressort également des recherches que le recrutement d'officiers de police parmi les minorités et leur carrière dans la police se heurtent à des obstacles. Parmi les problèmes qui se posent dans le recrutement d'un service de police dont la diversité reflète celle de la population desservie figurent la discrimination et les brimades subies par les recrues issues de minorités ethniques. Des études ont montré qu'il y avait un lien entre la culture qui régnait au sein de la police et la prestation des services au public. Cela concerne non seulement l'emploi par la police de ses pouvoirs de coercition mais aussi le traitement des membres de minorités ethniques auxquels elle a affaire en qualité de victimes, de témoins et de badauds. Il est évident aussi que les systèmes d'administration de la police et de traitement des plaintes ne suffisent pas à prévenir les abus de pouvoir.

Les auteurs établissent un cadre des droits de l'homme à partir des instruments juridiques nationaux et internationaux en vigueur concernant la lutte contre la discrimination et les règles régissant le maintien de l'ordre (notamment la Convention internationale sur l'élimination de toutes les formes de discrimination raciale, le Pacte international relatif aux droits civils et politiques et le Code de conduite des Nations Unies pour les responsables de l'application des lois). L'étude jette les bases d'une analyse critique des éléments recueillis par les chercheurs et fournit des éléments utiles à ceux qui voudraient prendre des mesures pour réduire la discrimination et l'injustice raciales.

Ces mesures consisteraient notamment:

- à essayer de faire en sorte que les services de police reflètent la diversité des populations desservies;
- à favoriser l'égalité des chances et des services rendus;
- à veiller, par le biais de structures et de procédures, à ce que les policiers soient tenus de rendre des comptes à la justice, aux forces politiques en présence et à la population;
- à introduire des mesures de contrôle civil et de solides mécanismes de traitement des plaintes;
- à permettre de développer le réseautage du personnel issu de minorités ethniques et
- à innover en matière d'éducation et de formation.

Se fondant sur cet examen de la littérature, l'étude s'achève sur une série de recommandations concernant la mise en place de services de police non seulement compétents pour maintenir la sécurité et protéger les droits de l'homme fondamentaux, mais aussi responsables, équitables et réceptifs.

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## **Resumen**

En este documento se examina el racismo, la xenofobia, la discriminación, la intolerancia y el abuso de poder entre las fuerzas del orden público, sobre la base de un análisis crítico de investigaciones teóricas y empíricas de fuerzas policiales seleccionadas en Inglaterra, Sudáfrica, Australia y Estados Unidos. Se establece un marco de referencia, sustentado en instrumentos jurídicos internacionales relativos a la política antidiscriminatoria y al buen gobierno de las fuerzas policiales, para la protección de los derechos humanos fundamentales; inclusive la seguridad, la libertad y el derecho a actuar libremente sin la intromisión ilícita del Estado. En este documento se revisan las investigaciones realizadas sobre el control de las fuerzas policiales abusivas a través del cambio estructural y cultural; se exploran innovaciones en materia de gestión y formación del personal, y se recomienda la introducción de mecanismos sólidos para conseguir una rendición de cuentas democrática.

La discriminación racial, la xenofobia, la intolerancia y el abuso de poder son problemas a los que se enfrentan las organizaciones policiales en muchos lugares del mundo. Existen pruebas de que muchos oficiales de policía tienen opiniones racistas y xenófobas sobre grupos raciales o minorías étnicas específicas, y que muchas veces utilizan un lenguaje despectivo al tratar con personas procedentes de comunidades política y económicamente marginadas. Asimismo, las investigaciones sugieren que, con frecuencia, los supervisores no están dispuestos a desafiar los comentarios racistas o el lenguaje inapropiado. El conservadurismo, la xenofobia y la desconfianza hacia grupos marginados son elementos comunes de la cultura policial en cada uno de los contextos estudiados, al igual que la hostilidad y los prejuicios raciales. Además de mostrar *actitudes* llenas de prejuicios, también se ha probado que algunos oficiales de policía toman *decisiones* basadas en estereotipos étnicos o raciales, que conducen a la *discriminación* de grupos particulares. Aunque la relación entre prejuicios y discriminación es compleja, en numerosos estudios se han identificado formas en que las ideas racistas podrían traducirse en prácticas discriminatorias.

En muchas jurisdicciones, las minorías étnicas, culturales y de otro tipo son, de manera desproporcionada, objeto de acciones policiales abusivas y coercitivas, como la “detención y registro”, el “interrogatorio en la calle” y el arresto. Las evidencias obtenidas en las investigaciones sugieren que el uso desproporcionado del poder policial es, al menos en parte, producto de la discriminación, y que el abuso de poder es más discriminatorio cuanto mayores son la autonomía y la discrecionalidad de la policía. En muchos lugares se recurre excesivamente a la fuerza contra miembros de grupos minoritarios, incluida la fuerza letal. Las investigaciones han revelado acciones abusivas de las fuerzas del orden, incluidos casos extremos, como el allanamiento injustificado de la morada, el abuso físico y el acoso en lugares públicos y en actos privados. Aunque los patrones de comportamiento varían según los lugares, el fallecimiento bajo custodia u otros fallecimientos relacionados con la policía suelen estar más vinculados con personas pertenecientes a grupos étnicos minoritarios, tanto en su proporción respecto de la población general, como en el número de personas arrestadas. De conformidad con los sondeos realizados en muchos lugares, prevalece la percepción pública de que la policía abusa de su poder con más frecuencia cuando trata con sospechosos pertenecientes a grupos minoritarios.

Las investigaciones también han revelado algunos obstáculos para la contratación, conservación y promoción de oficiales de policía procedentes de comunidades minoritarias. Los problemas que surgen al contratar un servicio policial que refleja la diversidad étnica de la comunidad a la que se presta el servicio, incluyen la discriminación y el abuso de los oficiales contratados pertenecientes a una minoría étnica. Los estudios realizados ponen de relieve el vínculo existente entre la cultura interna de las fuerzas policiales y la prestación de servicios al público. Esto no sólo afecta al uso coercitivo de los poderes policiales, sino también al trato de los miembros de comunidades minoritarias étnicas como víctimas, testigos y transeúntes. También es evidente



que los sistemas de buen gobierno y tratamiento de las quejas de las fuerzas policiales no son lo suficientemente sólidos como para evitar el abuso de poder.

En estas páginas se establece un marco de referencia para los derechos humanos basado en instrumentos jurídicos nacionales e internacionales existentes relativos a la política antidiscriminatoria y a la regulación de las fuerzas policiales (inclusive la Convención Internacional sobre la Eliminación de todas las Formas de Discriminación Racial, el Pacto Internacional de Derechos Civiles y Políticos, y el Código de Conducta de las Naciones Unidas para Funcionarios Encargados de Hacer Cumplir la Ley). Se proporciona una base para la evaluación crítica de las pruebas obtenidas durante las investigaciones y elaborar medidas encaminadas a reducir la discriminación racial y la injusticia.

Tales medidas incluyen las siguientes:

- desplegar esfuerzos para asegurar que las organizaciones policiales reflejan la diversidad étnica de las comunidades a las que sirven;
- adoptar medidas para promover la igualdad de oportunidades y de prestación de servicios;
- elaborar estructuras y procesos para asegurar la rendición de cuentas jurídica, política y comunitaria;
- introducir medidas de vigilancia civil y mecanismos sólidos para el tratamiento de las quejas;
- crear redes de personal perteneciente a minorías étnicas, e
- introducir innovaciones en la educación y formación.

Sobre la base de este estudio de la información, este documento concluye formulando una serie de recomendaciones para el establecimiento de sistemas de fuerzas del orden público, competentes, capaces de rendir cuentas, equitativos y responsables, que velen por la seguridad de la comunidad y por la protección de los derechos humanos fundamentales.

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## Introduction

Racial discrimination, xenophobia, intolerance and the abuse of power are problems in police forces in many parts of the world.<sup>1</sup> In recent years, allegations of racism and racial discrimination have led to public inquiries into many police agencies, including the Metropolitan Police<sup>2</sup> in London, England; the New South Wales Police<sup>3</sup> in Australia; the Los Angeles Police Department (Christopher 1991; Human Rights Watch 1998) in the United States; and the South Africa Police Service (SAPS).<sup>4</sup> In each of these localities, government and independent researchers have gathered evidence relating to individual cases and the broader organizational context. Although these are among the best-documented examples, the problems of racism, discrimination and the abuse of power have also been identified in numerous police agencies elsewhere.

This paper attempts to draw general lessons from an overview of the published literature in the field with specific reference to the police agencies mentioned above. Limited space makes it impossible to provide detailed discussion of individual cases or extensive documentation in each of the four contexts. It has not been possible to conduct a fully comparative analysis of the abuse of police power, or the similarities and differences in the historical, political, economic, social, technological and organizational context in each locality. Nonetheless, it is contended that there are sufficient similarities among the four contexts discussed to draw a number of general lessons.

Because the nature of the police mandate and the tools available to achieve it are similar across the globe, the nature of abusive policing and the contexts in which abuse arises are also similar. For the same reasons, almost identical explanations have been developed by police researchers around the world to account for the abuse of power, whether this relates to some characteristic of the individual abuser, the culture of police organizations or the larger structures of society in which they operate. As the diagnoses share similarities from one place to the next, the range of policy solutions and the problems faced in implementing them are also similar. The goal of this paper is to explore the ways in which principles have been applied in practice, and with what results.

The focus of this paper is on the “public police”, those accountable to local or national governments who are given a “general right to use coercive force by the state within the state’s domestic territory” (Klockars 1985). Concentration on public police agencies—which lie at the centre of debates about securing human rights and are most extensively documented—excludes the extremely important areas of “private policing” and “informal policing”. The private security industry dwarfs public policing, whether measured in terms of employees or budgets.<sup>5</sup> It is also often heavily armed and is afflicted by many of the problems described in this report. The existence of informal policing—which includes activities as diverse as vigilantism, policing by tribal or political organizations and neighbourhood watch—also raises questions about human rights and the regulation of the use of force. Although this paper touches upon the extensive literature on the role of policing in crime reduction, an extended discussion of the effectiveness of various methods of crime prevention and the maintenance of community safety is beyond its scope.

This paper is, by virtue of its subject matter, critical of the police, and dwells on the “dark side” of policing. It should be remembered, however, that most police officers join the service with the specific intention of helping communities to be safer and more peaceful places, and that the central ethic of police forces around the world is to provide protection for, and service to, the community. It is to that end that this paper is written.

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<sup>1</sup> Police abuse of force also occurs in countries where social divisions are based not on race or ethnicity, but on class and political affiliation (such as Jamaica), religious sectarianism (such as Northern Ireland) and tribal heritage (such as Rwanda).

<sup>2</sup> Macpherson 1999; Bowling 1999; Bowling and Phillips 2002.

<sup>3</sup> Royal Commission into the New South Wales Police Service 1997; Johnston 1991; Human Rights and Equal Opportunities Commission 1991; Chan 1997.

<sup>4</sup> Truth and Reconciliation Commission 1998; Brogden and Shearing 1993; Cawthra 1997, 1993; Melville 1999; Brewer 1994.

<sup>5</sup> In South Africa, Cawthra (1997:98–99), estimates that the workforce of the private security industry outnumbers that of the public police by a figure of around three or four to one.

## Conceptualizing the Uses and Abuses of Police Power

The police service is one of the most important and powerful institutions of government. Its officers hold coercive powers second only to the military, but in contrast to soldiers, police are both a visible manifestation of state power and a body with which civil society has extensive day-to-day interaction. As David Bayley suggests, “the police are to government as the edge is to the knife” (Bayley 1985:189). The police (together with the army in some circumstances) hold the monopoly on the state-sanctioned use of violence against citizens. They are authorized to bear arms and, in certain circumstances, to shoot to kill. Police officers routinely detain by force, conduct intimate searches of people, their homes and possessions, and conduct covert surveillance on the private lives of people suspected of criminal involvement or intent. Clearly, the possession and use of these powers requires justification and explanation (Waddington 1999a; Kleinig 1996). Analysts of policing have suggested two models of policing that can broadly be defined as the military/colonial model and the civil/consensual model.<sup>6</sup>

### *The paramilitary model of policing*

The “paramilitary” or “colonial” model grows out of the direct relationship between the government, the army and the police, and emphasizes the use of force to control or subjugate specific sections of the population. The model for all British colonial forces—including those in South Africa and Australia—was the Royal Irish Constabulary.<sup>7</sup> In the United States, the equivalent “military model” emphasizes a “we/they worldview” and promotes the idea of police officers as a close-knit, distinct group and of citizens as outsiders and enemies (Kappeler et al. 1994:105–106.) Police see themselves as the “thin blue line” on the frontline of a war against crime, which, if lost, will see civilization slip into anarchy and disorder (Kappeler et al. 1994:151). In the military model, the police are seen as agents of central or local government rather than agents of the law.<sup>8</sup> Social control is based upon coercion rather than consent, and force is used readily, sometimes as a first resort. The acquisition and use of armaments (such as firearms, gas, water cannon and military vehicles), the use of military language and symbolism, secrecy and the collation of intelligence on suspect populations (often demonized as “enemies”), are all integral to what can be termed paramilitary police forces. Such forces are divorced from local populations and impose an “alien rule” (Brewer 1994). The police are under the direct control of governments and are partisan in enforcing the rule of a specific political regime, including those with entrenched discrimination policies. Policing in this model requires selective enforcement in favour of the dominant group, the criminalization of minority activities and suppression of the right to protest or to demonstrate for political change (Jones and Newburn 1996:3–4). “Policing by strangers” tends to require that recruitment not be from among locals. Where the indigenous population is employed, the bulk of the “troops” and all of the senior command are from the “metropolitan or settler group” and do not reflect society at large (Brewer 1994). In some contexts, police forces have been formally segregated and the “native sections” have been insular (both from the settler police and local communities) and have been seen as inferior and subjected to harsh discipline (Brewer 1994).

### *The community model of policing*

The community model<sup>9</sup> is the antithesis of the military model. This model of policing is commonly associated with the establishment of the “new” Metropolitan Police in London by then Home Secretary Robert Peel<sup>10</sup> in 1829. The community model emphasizes the deployment of a decentralized civilian force with a membership that broadly represents the population being policed and is based upon the axiom that the police officer is merely a “citizen in uniform”. Po-

<sup>6</sup> See Bowling and Foster (2002), Table 1: Military vs. liberal models of the police.

<sup>7</sup> Brewer 1994:5–10. This association between the “Irish model” and “colonial policing” is challenged in Hawkins (1991:18–32).

<sup>8</sup> Brewer 1994:6. In terms of the United States, most of the worst abuses have been committed by local forces under the influence of local political machines and local “democratic” structures.

<sup>9</sup> The “community” model has also been referred to as the “consensual”, “civil”, “democratic” and “liberal” model.

<sup>10</sup> Sir Robert Peel was home secretary from 1822 to 1830 and during that period, instituted far-ranging criminal reform and instituted the Metropolitan Police. He went on to become prime minister in 1834.

licing, according to this model, is intended to be seen as legitimate by the majority of the community (even among those “policed *against*”) and is based upon the principle of consent (Reiner 2000). The role of the police is peacekeeping and dealing with “ordinary crime”. In this consensual model, the police are servants of the law rather than the government and are seen as “apolitical”, that is, independent of political parties or governments, and they carry out their tasks without being partisan to personal political beliefs or social groups. This model emphasizes internal democracy and the idea that the police service should reflect the demographic and social characteristics of the communities served (Jones and Newburn 1996).

The idea of accountability is central to the community model, since responsiveness to the law, the state and the public provides the basis for police legitimacy. The problem of crime—or, more generally, interpersonal violence and conflicts between citizens—requires some form of state-sanctioned force to impose binding solutions,<sup>11</sup> and therefore the possession of intrusive and coercive powers remains central to the definition of policing in the consensual model. But in contrast to the military model—which may see the use of force as a “first resort”—in the community model, the use of force and intrusive powers may only be used when all other means of ensuring compliance have failed and, even then, should be restricted to the minimum required. It is axiomatic that in a democratic society the use of these powers can only be justified to the extent that they are lawful, necessary, proportionate, accountable, and fairly utilized and enforced.

The two models sketched out above must be seen as “ideal types” that do not exist either in a “pure form” or entirely without the presence of the other. In most places, both forms of policing coexist. The “community” model has been central to attempts at police reform that have been implemented in the Los Angeles Police Department (LAPD), the London Metropolitan Police Service, the New South Wales Police Service and the South African Police Service over the past two decades. In Britain, the Scarman report, produced in the aftermath of the widespread disorder in Brixton and elsewhere in 1981, can be seen as a restatement of the community model of policing.<sup>12</sup> It has been argued that the Scarman report has been an influential basis for currently acceptable international standards in policing, particularly in the context of Australia (Chan 1997) and South Africa (Marks 1999). In each of these four police organizations, the police chiefs have committed themselves to “community policing”, emphasizing to a greater or lesser extent the principles set out above.

These commitments to community policing notwithstanding, it is clear that the military/colonial model still remains a powerful force within each organization. Sometimes paramilitary policing is deployed under certain “special conditions” (for example, to police protest demonstrations, or in instances of public disorder). It is also a common pattern that community policing is reserved for middle-class, wealthy, suburban white populations, while paramilitary police are deployed in poor, urban, black and ethnic minority neighbourhoods. It is also noticeable that paramilitary policing is sometimes employed in response to public anxieties about crime. For example, in 1999 a senior figure in the South African government spoke of engaging in a “ruthless and aggressive” offensive against criminals and suggested that systems of accountability hampered the police (cited by Manby 2000:20 and Gordon 2001).

To be effective, the police need public consent and the support of those being policed. Paramilitary policing can never be anything other than a short-term measure of repression and ac-

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<sup>11</sup> At the heart of policing lies a paradox. The police are empowered, expected and required to use violent means to achieve peaceful ends. They are therefore responsible for two kinds of wrongs. If they do nothing in situations of violence and disorder, they err by failing to protect life and property. If they act, the main resource they have at their disposal is coercive force, itself morally wrong. This problem of being “damned if you do, and damned if you don’t”, known by philosophers as “dirty hands”, partly explains the controversy that surrounds police work. See Kleinig (1996).

<sup>12</sup> Scarman 1981. Although Scarman criticized the Metropolitan police for inflexibility and for not achieving a balance between “hard” and “soft” policing, he did not ultimately reject the military model. In fact, his recommendations in relation to the development of public order training, the acquisition of special equipment and so on, have been followed by the creation of a considerable paramilitary capacity within many British police forces, including the Metropolitan police.

count should be taken of the evidence with respect to policing and crime reduction initiatives.<sup>13</sup> Although such evidence is equivocal, it is desirable that the police should focus on problem-solving rather than using force, since it is the former, not the latter, that is considered to be “a hallmark of good policing”.<sup>14</sup>

## **Community Policing and Paramilitary Policing in Practice**

Although London is usually cited as the origin of the Peelian “community” model of policing (based on the work of Sir Robert Peel in the early 1800s), it has been argued that authoritarian policing has been employed in the “domestic colonies”, the inner city areas of the metropolis where ethnic minority communities are concentrated. Certainly, the experience of “over-policing” has been consistently highlighted in reports based on empirical research<sup>15</sup> and community experiences. Studies have found widespread personal experiences of police harassment or brutality either directly or through families and friends.<sup>16</sup> Communities have complained of oppressive police tactics, such as mass stop and search operations, co-ordinated raids, use of riot-squads using paramilitary equipment and continuous intelligence-gathering and surveillance. Researchers have documented the pervasive, ongoing targeting that appears to regard black areas as intrinsically criminal and black people as a potential threat to public disorder (Institute of Race Relations 1987; Keith 1993).

In Australia, policing must be set in the context of colonization, xenophobia and racism among white Australians. The police played an important role in the legal system that facilitated the dispossession of Aborigines of their own land, suppressed Aboriginal resistance to European settlement and enforced segregation. In the contemporary period, the 1991 National Inquiry into Racist Violence reported numerous incidents of “intrusive and intimidatory” policing, including some examples of an extreme nature (Chan 1997). This included unwarranted entry into households, physical abuse and discriminatory policing in public places and private functions. The inquiry was also presented with “overwhelming evidence” of maltreatment of Aboriginal women and girls, including racist and sexist verbal and physical abuse, and including allegations of sexual abuse and rape while in police custody (Chan 1997:23–25).

Modern policing in South Africa grew out of the military units responsible for the conquest and subjugation of the black population. Policing along the lines of the Peelian model was applied to the white population, but Africans were subjected to authoritarian military policing (Cawthra 1993:8). The notorious “pass laws”, which restricted the movement of the African population, were enforced by the police, and between 1916 and 1981, more than 17 million people were arrested for pass violations. During the apartheid era, the police were a central component of the state apparatus for maintaining white domination. The police were an authoritarian, quasi-military, racially segregated force whose primary responsibility was the enforcement of repressive and restrictive legislation. In the South African Police (SAP) of the apartheid era, police brutality, torture and abuse of criminal suspects were “routine”. The police were responsible for the assassination of leaders of the African National Congress (ANC) and other liberation movements, and in the latter years of apartheid, were responsible for deliberate promotion and orchestration of political violence with the intention of destabilizing black communities.

In the Los Angeles Police Department, the 1991 Christopher Commission concluded that “there is a significant number of officers in the LAPD who repetitively use excessive force against the public which is ‘aggravated by racism and bias’ within the LAPD” (Christopher Commission 1991:foreword). More than one quarter of the 650 officers responding to a survey indicated that “an officer’s prejudice towards the suspect’s race may lead to the use of excessive force” (Christo-

<sup>13</sup> See Bowling and Foster (2002), Table 4: Police and crime reduction; and Miller et al. (2000a).

<sup>14</sup> See Bowling and Foster (2002), Bayley (1998), and Reiner (2000).

<sup>15</sup> Skogan 1990, 1994; FitzGerald and Sibbitt 1997.

<sup>16</sup> See, for example, Institute of Race Relations (1987) and Macpherson (1999).

pher Commission 1991:foreword). Unsurprisingly, surveys also indicate that minority residents believe that white officers are aggressive and abusive in minority communities. Witnesses who testified before the Christopher Commission consistently reported that officers verbally harassed minorities, detained African-American and Latino men who fit certain generalized descriptions of suspects, and employed unnecessarily invasive or humiliating tactics in minority neighbourhoods, such as requiring suspects to “lie prone” while being searched.

### ***Routine police practices: Stop, search and arrest***

In many jurisdictions, ethnic and cultural minorities are disproportionately subject to intrusive and coercive police powers such as “stop and search”, “stop and frisk”, “on-street interrogation” and arrest.

In recent years, increasing concern has been expressed about “racial profiling” in many police agencies across the United States, including the LAPD (Harris 1999). Racial profiling occurs when the police target someone for investigation on the basis of that person’s race, national origin or ethnicity. Examples of profiling include the use of race to determine which drivers to stop for minor traffic violations (sometimes referred to as “driving while black”) and the use of race to determine which motorists or pedestrians to search for contraband. Racism has been identified as a chief motivating factor in police suspicion, investigation, and stops and searches in the LAPD.<sup>17</sup>

A 1985–1986 study in New South Wales found that the Aborigines were more than three times as likely to be arrested as might be expected from their numbers in the population; they comprised 15 per cent of the population but 47 per cent of those arrested (Cunneen and Robb 1987). A more recent study found that Aborigines were overrepresented among the population held in police cells by a factor of 19 (McDonald and Biles 1991).

The use of the power to “stop and search” has also been used in discriminatory way by the London Metropolitan Police. Early studies indicated that police used colour as a “criterion for stops” (Smith and Gray 1985), and there is evidence that this pattern still persists. UK official statistics show that black<sup>18</sup> people are about five times as likely as their white counterparts to be stopped and searched by the Metropolitan police (Home Office 2000) and are also more likely to be subjected to repeated stops and more intrusive searches (Skogan 1990; 1994). People of Asian<sup>19</sup> origin are stopped and searched by the police to a lesser extent than people of African/Caribbean origin, but rates are higher than for whites (Home Office 2000). Research conducted by the Home Office found that being black was a predictor of being stopped by the police, even once all other factors had been taken into account (Skogan 1990), indicating that the pattern is explained by direct discrimination and stereotyping. Another Home Office report argued that the police contributed to the large ethnic differences with regard to stop and search practices because of a “pervasive and deeply entrenched” suspiciousness of black people.<sup>20</sup>

The response of police agencies is usually to argue that stop and search statistics simply reflect differences in patterns of involvement in crime. On both sides of the Atlantic, commentators have drawn attention to the use of newspapers and other media to convey a “police view” to the wider public (Institute of Race Relations 1991:5; Kappeler et al. 1994:161). It is true that in the venues studied, criminal statistics, such as arrests and imprisonment rates, do show marked overrepresentation of marginalized groups. However, the weight of evidence suggests that the disproportionate use of police powers is, at least in part, the product of discrimination. Evidence from a number of contexts suggests that the abuse of power is most discriminatory where police auton-

<sup>17</sup> Ogletree et al. 1994. See also Skolnick and Fyfe (1993), Christopher Commission (1991) and Human Rights Watch (1998).

<sup>18</sup> In the British context, this is usually used to describe people whose origins lie in Africa or the Caribbean.

<sup>19</sup> Used to refer to those people who have origins in the Indian subcontinent, the majority of whom come from India, Pakistan and Bangladesh.

<sup>20</sup> FitzGerald and Sibbitt 1997:66. While the research evidence bears this view out, recently published Home Office research is more equivocal. The analysis suggests that the ethnic balance of those stopped at the times and places when and where most stops were conducted, reflects, to some extent, those on the street and “available” to be searched. See Quinton et al. (2000), Stone and Pettigrew (2000), Bland et al. (2000) and Miller et al. (2000a, 2000b:1-6). See also Bowling and Phillips (2002:138–140) for critique.

omy and discretion are greatest. Without formal safeguards, such as being held accountable, individuals with discriminatory tendencies are more likely to discriminate in practice since they know that their actions will go unchecked and will not subject them to unwanted repercussions.<sup>21</sup>

### ***Death in custody and as a result of police action***

In the United States, the weight of evidence suggests that African-Americans are far more likely to be victims of police shootings and abuse of force than would be expected on the basis of representation in the population, even once arrest rates are taken into account.<sup>22</sup> In South Africa, the police force has always had a rather militaristic nature, and for many years retained a “policing style characterized by the use of crude maximum force” (Van der Spuy 1990:89). However, it is only in recent years that reliable figures have been produced on deaths in police custody or as a result of police action. Between April 1998 to March 1999, 756 people died in police custody in South Africa (Manby 2000:207–208), and it can safely be assumed that the overwhelming majority of these people were of African origin.

In Australia, the 1991 Royal Commission on Aboriginal Deaths in Custody drew attention to the extent to which Aboriginal people had died due to abuse of force, neglect or suicide in police cells (Johnston 1991). Australia-wide, Aborigines accounted for 29 per cent of those in custody and 32 per cent of the deaths. The corresponding figures for New South Wales were 14 per cent and 12 per cent.<sup>23</sup> The report concluded that the disproportionate number of deaths was not due to the rate at which Aborigines were dying in custody, but the rate at which they were being taken into custody. On an Australia-wide basis, an Aborigine was 27 times more likely to be in police custody than a non-Aborigine, and 15 times more likely in New South Wales. A study of the decade following the Royal Commission<sup>24</sup> found a reduction in the number of deaths in police custody (from 67 to 21 indigenous people and 136 to 78 non-indigenous) but a significant increase in the number of deaths in prison custody.<sup>25</sup>

In recent years in the United Kingdom, deaths in custody have more frequently involved people from ethnic minority communities, both in comparison to their numbers in the general population and in comparison to the number of people arrested.<sup>26</sup> For the United Kingdom as a whole, in 1996–1997, 57 people died in police custody or “otherwise in the hands of the police”, an increase of 14 per cent over the previous year. African/Caribbean people were six times more likely to die in custody of the police than would be expected from their numbers in the population. More recent figures for 1998–1999 indicate an increase in numbers of deaths in custody to 68, but a lower proportion of deaths of ethnic minorities in custody relative to their representation in the arrested population and relative to the general population (see Home Office 2000).

Deaths in police custody provide the harshest example of unequal treatment before the law. More troubling still is the tendency to create “official misinformation” that explains the deaths as accidental, as a misadventure or even as “the fault of the victim, because of his or her behaviour, drunkenness, abuse of drugs, or mental or physical condition” (Institute of Race Relations 1991:5). Police officers are in a unique position to lend “official” credibility to their speculations, inferences, misrepresentations and sometimes even fabrications (Kappeler et al. 1994:161). These become integrated into official accounts of police-citizen encounters. Characterization of citizens as drug abusers and criminals has advantages for police officers in justifying the use of force. It supports the inference that force was needed to subdue the citizen, discredits the victim’s account of

<sup>21</sup> Empirical evidence supports the intuitive position that greater police discretion leads to greater discrimination. The discretionary nature of police acts (such as stops and searches, as well as arrests) can be compared with the less discretionary stages of prosecution. See Bowling and Phillips (2002:163, 169) and Phillips and Brown (1998).

<sup>22</sup> Skolnick and Fyfe 1993:146–164; Chevigny 1995:48–49. See also Reiner (2000:130).

<sup>23</sup> *New South Wales, Victoria and Tasmania—The Concern about Aboriginal Deaths in Custody*, [www.austlii.edu.au/au/special/rsjproject/rsjlibrary/rciadic/regional/nsw-vic-tas/14.html](http://www.austlii.edu.au/au/special/rsjproject/rsjlibrary/rciadic/regional/nsw-vic-tas/14.html).

<sup>24</sup> Williams 2001. See also the Australian Institute of Criminology website, [www.aic.gov.au](http://www.aic.gov.au).

<sup>25</sup> Almost three times as many indigenous persons died in prison custody in the decade 1990–1999, when 93 died, than in the decade 1980–1989, when 39 died (Williams 2001).

<sup>26</sup> Deaths in Custody Working Group of the Community-Police Consultative Group for Lambeth 1996.



brutality, and suggests that the victim is likely to be dishonest and/or dangerous. In the process, the attention is deflected away from police deviance to questions about the victim's deviance (Kappeler et al. 1994:161).

## Explaining Xenophobia and Discrimination in Policing

Having provided a sketch of the nature of discrimination and other abuses of police power, we now turn our attention to attempts to explain and prevent it. Thinking about how police abuse of power can best be explained is important because the nature of the diagnosis provides the basis for agendas for reform.<sup>27</sup>

### ***Bad apples?***

The "bad apple" or "bad egg" theory suggests that discrimination is the result of the actions of a small number of rogue police officers who actively discriminate against ethnic minorities.<sup>28</sup> But contemporary research evidence conducted in the four locations analyzed demonstrates that many police officers hold racist and xenophobic views toward specific racial, ethnic or cultural minority groups, and that derogatory language is often used when dealing with people from economically and politically marginalized communities.

In the LAPD, the Christopher Commission uncovered "an appreciable number of disturbing and recurrent racial remarks...some [describing] minorities through animal analogies...often made in the context of discussing pursuits or beating suspects" (Christopher Commission 1991). A documentary film shown on Australian television indicated that some police officers spoke "automatically" about the Aboriginal community as "coons" and "gooks" (Chan 1997). In interviews, Chan found that some police officers saw ethnic minorities as ignorant and dishonest, and believed that Aboriginal people had "no respect for property or the law" (Chan 1997:216). Similar use of racist language has been documented in England. Reports in the 1980s described the use of derogatory language—such as "Paki" for people from the Indian subcontinent, and "coon", "macaroon", "sooty", "nigger" and "spade" for people of African and Caribbean origin—as accepted and expected in the Metropolitan Police Service.<sup>29</sup> In other studies, many ethnic minority communities have been characterized by the police as "illegals". Until recently at least, some supervisors were unwilling to challenge racist banter and inappropriate language.<sup>30</sup> Although there is documentary evidence of police officers using racist language, there have been no recent empirical studies specifically addressing this issue.

The attraction of the "bad apple" approach is that it implies the relatively straightforward solution of removing racist officers from the service and preventing the emergence of others either through recruitment and selection processes or through training. Of course, specific police officers must be held to account for their behaviour and officers responsible for abuse should be disciplined or removed from the service. The removal of "bad apples" also has important symbolic value in that it demonstrates a commitment to anti-discrimination policies and the promotion of diversity. There is also strong evidence that the behaviour of some abusive police officers is part of a pattern evident over many years. Individual behaviour, stereotypes and prejudiced attitudes are all important factors in understanding the phenomenon of discrimination in criminal justice. However, the individual approach oversimplifies a complex problem and ignores the wider social, cultural and structural context within which policing is carried out.

<sup>27</sup> This analysis is based upon the work of theorists of the police such as Keith (1993), Reiner (2000) and Chan (1997).

<sup>28</sup> The "bad apple" or "bad egg" approach has also been applied to sexism and corruption within police and criminal justice agencies. See Newburn (1999) and Human Rights Watch (1998).

<sup>29</sup> See Smith and Gray (1985). See also the work of Holdaway (1996), Reiner (2000) and Bowling and Phillips (2002).

<sup>30</sup> Her Majesty's Inspectorate of Constabulary 1997; Bowling and Phillips 2002.

### ***Reflection of society?***

A significant problem with regard to the “bad apple” theory is that the rotten individuals are not always distinguishable from the rest of the barrel. Often, the racist views, attitudes, opinions and behaviour of the so-called bad apples are very similar to those held by the majority of other police officers, and indeed, the wider society from which they are drawn. This is the central premise of the “reflection of society” theory, which contends that racial prejudice and discrimination in the criminal justice system simply reflect widely held beliefs and behaviours among the general population.<sup>31</sup>

Racism is well documented in each of the contexts studied. The ideology that certain groups are innately, biologically, socially and morally superior to other groups based upon characteristics attributed to their race is a significant problem in each of the societies studied. The issue of race has contributed to a widespread view that particular ethnic groups constitute a “problem” that requires exclusion, segregation or special measures for control. Historically, there are obvious examples, such as the white Australia policy<sup>32</sup> in place in the 1970s, but there is also evidence that some police officers still hold such views. For example, Chan found that some police officers had no sympathy with non-English speakers and felt that they should not be allowed in the country (Chan 1997). They opposed the idea of multiculturalism and government policies to redress inequality.

In each location there are extreme right political parties and movements that circulate overtly racist materials. In South Africa, the image of the black population as a “primitive, uncivilized sector” of society who need to be controlled, appears to have been deeply entrenched in the nation’s history, and has been manipulated so that the violence and force used against them can be “justified” (Van der Spuy 1990). The South African Police can be seen as the medium through which apartheid was experienced. Given that the police were, until 1990, responsible for the enforcement of apartheid, including preventing blacks from using facilities reserved for whites, it is hardly surprising to find officers who hold racist views. There is also clear evidence of strong sympathy with extreme right political parties within the SAP. In 1992 one police trainer commented that “the police are totally AWB [Afrikaner Weerstandsbeweging]<sup>33</sup>—especially the younger ones”.<sup>34</sup> There is also evidence that, until the end of apartheid at least, racial beliefs influenced the way in which Afrikaner police officers treated blacks, which partially explains the gratuitous violence meted out to black communities.<sup>35</sup>

More widespread is what might be termed “everyday racism”—the widely held beliefs that “racial differences” determine aspects of culture and behaviour, such as criminal propensity and trustworthiness. The extensive UK policing literature has identified widespread stereotyping practices based upon notions of inferiority and “suspect qualities”. People of Asian origin are characterized by police officers as “devious” and prone to lying and cheating. People of African and Caribbean origin are believed by the police to be violent, dangerous, anti-authority, drug using and “tooled up”, and ethnic minority communities as a whole are characterized as being of an “alien character”.<sup>36</sup>

This perspective returns policing and the criminal justice system to the broader social and cultural context within which individual actions take place. However, it does not take us very far

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<sup>31</sup> For a discussion of this perspective in the United Kingdom, see Keith (1993).

<sup>32</sup> The so-called “white Australia policy” involved both official and unofficial discrimination against non-European migrants. Starting in the 1850s and reinforced by the Immigration Restriction Act of 1901, immigration policy and citizenship requirements were heavily biased to favour European migrants, and specifically those of Anglo-Saxon extraction, over other ethnic groups. The final legislative restrictions on “non-European migrants” were removed in 1973. The social attitudes that underpinned the White Australia Policy have largely, but by no means entirely, disappeared.

<sup>33</sup> Afrikaner Resistance Movement, an extreme right-wing political party.

<sup>34</sup> Cited by Brewer (1994:329).

<sup>35</sup> Brewer 1994:341. It should be borne in mind that the majority of SAP(S) officers were and still are Africans. Most of the violence in the townships was black-on-black, not least that between police and the civil population.

<sup>36</sup> See Graef (1989); see also Reiner (2000) and Bowling and Phillips (2002) for reviews of this research evidence.

because it does not answer the question of why cultures tend toward racism, and whether racism is endemic to society as a whole.

### ***Occupational culture?***

Researchers have noted that police agencies sometimes have an “occupational culture” in which concentrated forms of racism and xenophobia are prevalent.<sup>37</sup> As indicated above, police research is peppered with examples of the expression of extreme racist views, prejudiced and stereotypical opinions about ethnic minorities, support for right-wing politics and sympathy with perpetrators of racist violence. This research is also replete with examples of police discrimination against ethnic minorities. Cultural theories complement theories of individual action, but sometimes portray the police occupational culture as an unchangeable monolithic entity into which officers are automatically socialized. What is needed is an analysis of how police *actively reproduce and transform culture* by placing these processes within the institutional, political and social context(s) of policing.

### ***Institutional racism?***

The term “institutionalized racism” was introduced in 1968 by Carmichael and Hamilton, who wrote that racism in America is “pervasive” and “permeates society on both the individual and institutional level, covertly and overtly” (Carmichael and Hamilton 1968:20–21). Cashmore sees the concept of institutional racism as an analytical tool to examine how “institutions can operate along racist lines without acknowledging or even recognising this and how such operations can persist in the face of official policies geared to the removal of discrimination” (Cashmore 1996:169–172). Lea (1987) defines institutional racism as occurring when racist actions are “built into the policy or mode of operation of institutions irrespective of the attitudes of the individuals who carry out the activities of the institution” (Lea 1987:148). By way of illustration he points out that “racist immigration laws may be administered by officials and police officers irrespective of their individual attitudes to immigrants” (Lea 1987:149).

Susan Smith argues that “although a hallmark of institutionalized racism is detachment from the intentionality of individual managers and administrators...some racist practices must be regarded as the product of *uncritical* rather than unconscious racism” (Smith 1989:101). That is, practices with a racist outcome are not engaged in without the knowledge of the actors, even if they have failed to consider the consequences of their actions. Smith also points out that:

Institutionalized racism is not a process confined to housing or any other single system of resource distribution. It is rather, a pervasive process sustained across a range of institutions—housing, education, employment, health and social services—that have procedures which combine to produce a mutually reinforcing pattern of racial inequality. This acknowledges that virtually all large organizations concerned with the allocation of power and resources develop conventions which distinguish the deserving from the undeserving and the reputable from the debased, in order to help prioritize applicants queuing for goods and services. Virtually all these conventions invoke ‘racial’ attributes, tacitly or explicitly, as a criterion for exclusion or inclusion in the dispensation of scarce resources (Smith 1989:102).

Without losing sight of the importance of the overt expression of racism, individual prejudices and direct discrimination, “institutional” racism has become a focus for many critics because it is both more subtle and equally pervasive. All definitions of institutionalized racism have a set of common themes, encapsulated by the Stephen Lawrence enquiry as:

The collective failure of an organization to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to

<sup>37</sup> The police occupational culture is sometimes referred to pejoratively or appreciatively as the “canteen culture”. See, for example, Waddington (1999b) and Chan (1997).

discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people (Macpherson 1999, paragraph 6.34).

### ***Racism in context***

What is needed is an understanding of individual human action placed in the context of its dominant organizational and national cultures, and anchored in the broader structures of society. In an attempt to integrate these perspectives, this paper utilizes Walker, Spohn and DeLone's notion of contextual racism as that which occurs in certain places, situations or contexts (Walker et al. 1996). The question of where discrimination occurs requires an analysis of such factors as the extent to which discrimination and anti-discrimination policies are enshrined in law; the demographic composition of an organization; the extent to which police from the marginalized communities are in senior positions and empowered to affect the culture and practices of the organization; the extent of oversight and accountability; and the extent and strength of racist prejudices.<sup>38</sup>

Chan (1997) addresses the complexity of discriminatory policing and its relationship to its social context using two key concepts from sociologist Pierre Bordieu. The *field* refers to a social space of conflict and competition in which participants struggle to establish control. In policing terms, this consists of the historical and contemporary relationships among different social groups, and between the community and the police. The *habitus* refers to the "cultural knowledge" and informal structures within an organization and is triggered by an encounter with a particular field. Police practice, skills and "operational common sense" (Grimshaw and Jefferson 1987) can be seen as the interaction between the social and political context of police work (the field) and the institutionalized perceptions, values, strategies and schemas that comprise the *habitus*. Chan suggests that the *habitus*, or cultural knowledge in policing, can be distinguished by *axiomatic* knowledge (that which constitutes the basic rationale for policing), *dictionary* knowledge (the categorization of people with whom the police come into contact), *directory* knowledge (which informs officers about how to "get things done") and *recipe* knowledge (which prescribes "menus" of acceptable and unacceptable practices in given situations) (Chan 1997:76). Changing police culture(s), in Chan's model, requires not only changing both the *habitus* (through internal reform), but also changing the field, including the social, economic, legal and political contexts within which policing takes place. As Brewer puts it:

Police reform must be part of a wider process of social change which addresses the political and economic problems which the police would otherwise have to deal with...unless the structural inequalities and problems of the society are addressed, no amount of police reform will alter the nature of police-public relations (Brewer 1994:348).

### **Policing Styles: Law Enforcement or Peacekeeping**

Arguably, the most important reform that impacts on both *habitus* and *field* is the reformulation of policing from the military to the community model. Community-led policing cannot merely be an augmentation of traditional policing, but requires a complete reorientation of the policing role. It requires supportive management with open communications and an emphasis on social, rather than exclusively physical, skills. Policing conceived of as community-controlled would be directly controlled by, and responsible to, people at a local level, and would be concerned with peacekeeping, problem solving and community integration, as opposed to the dominant ethos of "crime fighting", "law enforcement" and "bandit catching".

This means that the conventional top-down, state-centred conception of policing must be turned on its head. The new form of policing must give expression to a "bottom-heavy" system, where the state police are combined with other resources located within the institutions of civil society

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<sup>38</sup> See Bowling and Phillips (2002) for a fuller elaboration of the idea of contextual discrimination.

(which could be extended to groups and individuals in society), in an environment of “self-policing”, with an emphasis on peacekeeping. The state police play a limited, albeit vital, role in maintaining safety and peace within communities, but radical change to the policing system is required to achieve these goals.

## **Personnel, Equality of Opportunity and Equality of Service**

In a society divided by ethnic, racial, class, tribal and sectarian differences, it is to be expected that the police service will itself be affected by such divisions. If police officers share widely held beliefs that individuals from ethnic minority communities are inferior, if they share stereotypes about ethnicity and criminality, then this is bound to affect the ways in which police officers from different backgrounds relate to one another. Moreover, specific restrictions have existed in many jurisdictions with regard to the employment of members of minority communities, which has shaped the contemporary context. A police force that reflects the population it serves is an important goal in its own right, and also contributes to other objectives. For example, it may, in itself, increase ethnic minority communities’ confidence and trust in policing and might also contribute to improving service delivery.<sup>39</sup>

### ***Representation and equality of opportunity in policing***

The first three police officers from visible ethnic minority communities in England and Wales were recruited in 1966. More recently, there has been an increase in the proportion of serving police officers from ethnic minorities, in 1986 from 0.7 per cent to 2 per cent of the police service as of 31 March 2000 (Home Office 2000). However, despite this progress, these figures indicate that minority groups are considerably underrepresented, relative to around 7 per cent of the economically active population. The underrepresentation of ethnic minorities within the police service is due to both a shortfall in applications and a lower proportion of success at the recruitment stage.

Practical efforts to encourage local people from ethnic minority backgrounds to join the police force, such as conducting targeted recruitment campaigns with the assistance of community organizations and contacts; organizing familiarization and access courses, and placement schemes; and providing application forms in minority languages; are all positive steps forward. However, these efforts are impeded by the awareness of potential applicants that they may be forced to endure racism and discrimination on the job. Thus, negative community perceptions about the police have had a demonstrable impact on the capacity of police forces to recruit ethnic minority police officers (Wilson et al. 1984).

Despite a long reform process, it is evident that the Metropolitan police rank-and-file occupational culture is based upon specific masculine and Anglocentric norms that permeate all aspects of police work and shape the experiences of ethnic minority police officers. The research evidence shows that African, Caribbean and Asian police officers have found that racist comments and jokes were routinely part of officers’ conversations, and they have adopted coping strategies to deal with this problem (Holdaway 1996). Until recently at least, neither supervisory officers nor senior officers appeared to be concerned with challenging and changing this aspect of the police culture.<sup>40</sup> Some officers have brought cases of racial discrimination to industrial tribunals and have received monetary compensation. Black and Asian officers may be marginalized within work and social networks because they do not accept or collude with negative representations of ethnic minorities, or because, in the case of some Asian (and other) officers, religious observance may prevent socializing that revolves around drinking alcohol.

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<sup>39</sup> The evidence for this is equivocal; see McLaughlin (1991:109–133) and Skolnick and Bayley (1986:246).

<sup>40</sup> A series of reports by Her Majesty’s Inspectorate of Constabulary has examined these issues. The first report in 1995 revealed some wholly unacceptable pockets of racist policing and a striking lack of awareness of, or support for, equal opportunity policies. More recent reports have shown that some progress has been made. See Her Majesty’s Inspectorate of Constabulary (1995).

Although African-American officers have been involved in US policing since the nineteenth century, their progress was blocked by legally enforced segregation and direct discrimination.<sup>41</sup> The recruitment of black police officers was facilitated by Title VII of the 1964 Civil Rights Act, which prohibited discrimination on the basis of race, sex, religion or national origin, and, in particular, by the 1972 Equal Employment Opportunity Act, which authorized the Justice Department to bring local and state governments to court to challenge their hiring practices. Title VII has been interpreted in several court decisions as justifying affirmative action programmes. Quotas—including such practices as promoting a black officer for each white officer promoted—successfully increased minority representation, but also led to lawsuits by white-dominated police unions. Despite considerable gains since the 1960s, there remains significant underrepresentation of African-American and other ethnic minorities in US police departments.

### Testing and selection

If the demographic composition of the police service is to resemble more closely that of the community served, in most instances the police need to increase the number of black and ethnic minority officers they recruit and employ. One way to achieve this is to evaluate selection and testing procedures for cultural bias (Rotterdam Charter 1996). An obvious example is dispensing with the minimum height requirement, which placed women and Asian applicants, in particular, at a disadvantage at the recruitment stage. Beyond this, however, is a recruitment process that attracts more minority groups, including women and non-visible sexual minorities (Chan 1997). This would not mean lowering standards, but *changing standards*. Arguably, policing in the nineteenth century “military model” required qualities such as strength and bravery. However, contemporary policing requires general analytic and communications skills as well, together with familiarity with information technology and other knowledge-based skills. Shifting from an orientation of crime fighting to that of peacekeeping also requires social skills in communications, conflict resolution and dispute settlement, as well as skill in maintaining order by peaceful means rather than resort to force.

Such skills as the ability to interpret and translate should also be criteria for recruitment, selection and training since these skills should be appropriately recognized and rewarded as valuable assets in policing multilingual communities. Obviously, it is important for officers to be able to communicate in the language of the community they are serving, and perhaps incentives should be given to those who show an interest in learning the languages spoken within their jurisdiction. Possessing these skills might also go some way toward reducing the difference in quality of service between white and minority clients by assisting those who do not speak the dominant language to articulate their concerns. Such services should be fully integrated into the institution, with translation and interpreting skills understood to be valuable resources for the community and the police service.

### Recruitment targets

“Positive” or “affirmative” action programmes aim to achieve equality of representation within a given time frame. They have a symbolic value, which demonstrates that society regards discrimination as a serious issue and diversity as an important goal. They also enable different communities to select talented individuals who may act as role models for others (Rotterdam Charter 1996). To avoid a backlash among those officers whose numerical and ideological dominance is threatened, the Rotterdam Charter on Policing for a Multi-Ethnic Society<sup>42</sup> suggests that there should be policy statements issued by police leaders to rank-and-file officers and the wider public explaining why such action is necessary, and explaining that such action is not based upon favouritism, but rather stems from a requirement that the police reflect the

<sup>41</sup> There are a number of other sources on black police in the United States. Attempts in the United States to transform the police service into one which reflects the community served is described in Dulaney's concise but comprehensive history, *Black Police in America* (1996); Hawkins and Thomas' "White policing of black populations"; Cashmore's "Black Cops Inc." (both in Cashmore and McLaughlin, *Out of Order*, 1991); Leinen's *Black Police, White Society* (1977) and Nicholas' *Black in Blue* (1969).

<sup>42</sup> The Rotterdam Charter was produced by the foundation Policing for a Multi-Ethnic Society. The Charter has no official status as an international document. It is a model of “best practice” for police organizations in their response to ethnic diversity arising from the initiative based in Rotterdam, and combines the experience of experts and practitioners throughout Europe.

communities they serve. There is also the danger of disadvantaging relatively underprivileged members of advantaged groups (for example, working-class white women) and missing the real targets by benefiting only relatively privileged members of disadvantaged groups (for example, middle-class men from minority communities).

In South Africa there are affirmative action programmes to “level the playing field” in recruitment for the South Africa Police Service (Cawthra 1993), but despite efforts to recruit more women and black officers, the organization’s staffing remains largely unchanged especially among the senior ranks (Marks 1999). In South Africa, the police often are not drawn from the areas and communities they serve, which makes it difficult for them to build up good community relationships. Indeed, this was a conscious policy in colonial policing and remains a conscious policy in many places. It therefore seems logical that more of an effort should be made to recruit new officers from the areas they will eventually serve, although this might risk creating policing enclaves.

For example, the US experience suggests that there is a risk that ethnic minority police officers may be “ghettoized” by being assigned to predominantly minority neighbourhoods (Dulaney 1996; Walker et al. 1996). Specifically using ethnic minority officers to police ethnic minority communities may also put them at a disadvantage if they do not receive the necessary breadth of experience required for promotion. It can also perpetuate stereotypes that only ethnic minority officers can police ethnic minority communities. In South Africa, for example, black police were only given responsibility for policing black populations; black police officers did not receive treatment equal to that of their white counterparts, and they were instructed to leave the European population alone.

In Britain in 1998, the Home Secretary published local and national targets for the increased recruitment, retention, career progression and senior level representation of ethnic minority operational and non-operational staff in the Home Office, police, prisons and probation services (Home Office 2000). The first progress report on meeting these 10-year employment targets revealed problems in recruiting, retaining and promoting ethnic minorities to meet the targets set in the police service. Levels of senior representation still remain low (Home Office 2000).

### ***Retention***

In the light of their experiences on the job, it is not surprising that the retention rate for ethnic minority police officers is lower than that of white officers. In the United Kingdom, rates for resignation and dismissal from the police service were much higher among ethnic minorities than among white officers in 1997 and 1998. Holdaway and Barron’s study of the reasons for resignation among black and Asian former police officers found that the unchallenged racist “banter” within the police force turned many officers away.<sup>43</sup> One of their interviewees said: “Obviously, it doesn’t make you feel good at all because you’re working with people who you know, who don’t really like Asians and blacks” (Holdaway and Barron 1997:145). There need to be, therefore, specific policies and actions to address discrimination and confront cultural and behavioural issues (Her Majesty’s Inspectorate of Constabulary 1997) through legal remedies, among other possible solutions.

As in the United States, in the United Kingdom, ethnic minority-run professional organizations – such as the Black Police Association (BPA) – have been set up to provide support and a forum for ethnic minority officers, and also to campaign and lobby for reform. The National Black Police Association, established in November 1998, has assisted in setting up more than 20 black police associations across the United Kingdom, representing the views of black police officers and civilians. These developments have been given support by the police inspectorate, which has recommended that police forces include mentoring, informal networking and welfare

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<sup>43</sup> Holdaway and Barron 1997; Holdaway 1991; Stone and Tuffin 2000.

support programmes for their members as part and parcel of their retention policies (Her Majesty's Inspectorate of Constabulary 1997).

There are two main groups in South Africa that have been formed to promote equality of opportunity for officers once they are recruited into the force, the Police and Prisons Civil Rights Union (POPCRU) and the Black Officers' Forum (BOF). Police unionism in South Africa has provided a real challenge to the SAPS in its efforts to speed up the transformation process. The POPCRU is important for two reasons: It has helped place democratization of police services into the public debate, and it has shown the public that some of the police did care about human rights issues. It has had a significant impact on the police force since its formation in 1989, since those in positions of power tend to listen to the union. Three high-ranking black officers launched the BOF in June 1998. It is primarily concerned with transforming the SAPS and represents those who are in positions of management and can therefore initiate changes from the top down. Both of the organizations are positive initiatives since they function as useful internal watchdogs that ensure a constructive, continuing commitment to reform (Marks 2000).

### **Promotion**

Racism and other barriers to the promotion of black officers in SAPS still exist, together with the breakdown of police management where the number of black high-ranking officers are in short supply (Marks 2000). In August 1992, black police were for the first time promoted to the rank of general, and some of the white generals were given early retirement. With the integration of the former "homeland" police forces in April 1994, the situation changed dramatically, as 26,000 black police, many of them officers—including 20 generals—were incorporated into the SAPS. By 1995, the SAPS was 35 per cent white, 54 per cent African, 8 per cent coloured and 3 per cent Asian, with women constituting 19 per cent of the force (Cawthra 1997). However, ongoing concerns about racism, abuse of power and corruption in the SAPS have led the National Head of Equity in the SAPS to conclude that transformation has not yet occurred in the South Africa Police Service (Marks 2000).

In March 2000 in England and Wales, only 14 per cent of ethnic minority officers were in the promoted ranks within the police service, compared to 23 per cent of white officers. Moreover, when advancement is sought, ethnic minorities tend to serve longer before receiving promotions. The career profiling by Bland et al. (1999) of a matched sample of white and ethnic minority police officers in eight forces showed that the latter take an average of 12 months longer to be promoted to the rank of Sergeant (five months longer for Asian officers and 18 months for African/Caribbean officers). In recognition of the very serious underrepresentation of minority officers in the more senior ranks, the Metropolitan Police Service response has been to create a Senior Officer Development Programme for minority officers (Her Majesty's Inspectorate of Constabulary 2000).

In the United States, the 1970s and 1980s saw the appointment of black police chiefs, often, but not exclusively, appointed by the increasing number of black mayors. Reformist police executives have actively used legislative change and other measures to create fairer recruitment and promotion practices and to end formal segregation within police departments. Black police officers are among the most respected police reformers and have been credited with regulating police use of deadly force, creating community policing programmes, creating opportunities for women and minority officers and developing innovative programmes to reduce conflict between the police and blacks (Dulaney 1996).

### **Linking equality of opportunity and equality of service**

Developing a police service that more closely reflects the society it serves has been proposed as a means of improving service provision by increasing the possibility that services provided will be appropriate, relevant and accessible to all members of the community. The literature on the criminal justice professions highlights the importance of the relationship between equality of opportunity for employees *within* a service and the quality of service that it provides to the



public. Clearly, if a police service cannot treat its own members fairly, it has little chance of treating the public it serves fairly. The idea that officers from ethnic minority communities will treat clients in a more even-handed and sensitive way than white officers is an appealing *assumption*. Perhaps ethnic minority police officers will not operate with the same working stereotypes as white officers, and perhaps understanding and respect for ethnic minority citizens will prevent the kind of oppressive policing that has occurred in contexts in which local officers are predominantly, or exclusively, white.

Including groups previously excluded can have the effect of transforming the organization. Arguably, just by “being there”, women and ethnic minorities bring new and different perspectives and become catalysts for change within the organizational culture (Brown 1997). The actual positions held by minority workers are crucial to maximizing their contribution to the change process. To have any real effect on service provision, they must be able to contribute to decision making. The counter-argument is that recruiting women and members of marginalized social groups is not sufficient to initiate change and that in fact the new recruits “assume a commitment to the institution and to the status quo and absorb the ‘working personality’ of the other officers” (Brogden and Shearing 1993:100). Changes in recruitment policy are unlikely to have an effect in day-to-day police work unless they are complemented “by significant structural changes in the character of the police organization related to the normative handling of police-public encounters” (Brogden and Shearing 1993:101).

## **Training**

To initiate real and committed change to a more democratic police force, it is necessary for officers to have access to ongoing training and education opportunities. However, training must relate the concept of anti-racism to the reality of policing and show its usefulness in improving police practice rather than present it as a political exercise or moral crusade (see Brewer 1994). In 1992 the Policing Research Project at the University of Witwatersrand in South Africa carried out a comprehensive survey of police basic training colleges (Cawthra 1993). The project recommended a training curriculum that highlighted the need for policing based upon respect for human rights and community policing, and suggested that training continue throughout an officer’s career. It appears as though South Africa is now using Britain as its model for training development, with open-ended, continuous training geared toward community policing and social skills (Nel and Bezuidenhout 1995). Although training is clearly an important vehicle for implementing change, it can be superficial, and there are serious questions about its effectiveness. For it to be of real value, the skills and knowledge learned in the classroom have to be implemented on the ground. Sometimes the structures of policing and its perceived “reality on the ground” make it difficult to implement new skills (Marks 1999).

Brogden and Shearing (1993) argue that the legitimacy of a new policing system in South Africa rests in part on the commitment of state officers to recognize social inequality, and seek to compensate for it with positive action. The first step toward such a goal must be found in innovative training programmes that compel officers to reflect on their own attitudes, with accompanying projects to promote positive images of minorities. Indeed, as the Rotterdam Charter suggests, training should help to ensure that officers’ personal attitudes are consistent with professional ethics. Police training should include courses in conflict management skills such as mediation and conciliation (Marks 1999).

Police training programmes need to be intrinsic, far-reaching and of high quality, since training is one of the measures used to ensure that officers possess the necessary skills to police a pluralistic, multicultural society. Before such a goal can be realized, some critics have suggested a review of teacher training methods that encourage trainers to recognize and acknowledge their own prejudices and attitudes. The essential function of training for cultural diversity is to eliminate ignorance and the dogmatism that springs from it. This may be achieved by involving communities, non-governmental organizations, schools and universities. However, it is critical

to realize that racism gains its strength from too many quarters simply to be taught out of existence; training is only part of the solution to a far-reaching problem.

## **Human Rights, Policing and Anti-Discrimination Policies**

The role of the police is central to debates about the means by which states meet, or fail to meet, their obligations to ensure the protection of the rights and freedoms of the people.<sup>44</sup> Human rights derive from the inherent dignity and worth of the human person and are universal and indivisible. These rights, enshrined in international instruments, go right to the heart of crime prevention and policing in that they protect the rights to life, liberty and security of the person, and against torture, cruel or degrading treatment and unnecessary or arbitrary deprivation of liberty. These instruments also establish that people deprived of their liberty for any reason should be treated with humanity, respect and dignity.

Human rights protections impose both positive and negative requirements on police. The *positive requirement* is that the police keep the population safe and guard their security. This is recognized in the provisions of Article 28 of the Universal Declaration of Human Rights (UDHR), which state that “everyone is entitled to a social and international order in which [human] rights and freedoms...can be fully realised”. The *negative requirement* is that the police guard the liberty of the people through the imposition of constraints on the use of state power. Article 29 of the Universal Declaration of Human Rights states that in exercising rights and freedoms, “everyone shall be subject to only such limitations as are determined by law solely for the purposes of securing due recognition and respect for the rights and freedoms of others and of meeting the requirements of morality, public order and the general welfare in a democratic society”.

The use of force is central to police work, and this carries the risk that the police will interfere with the human right to life (UDHR, Article 3) by causing death or serious injury. Two international instruments protect the public against the arbitrary deprivation of the right to life and give guidance to police on the use of force (Crawshaw et al. 1998:26). The Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions<sup>45</sup> and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials<sup>46</sup> restrict the use of force to that which is objectively reasonable and necessary in the circumstances confronting the officer<sup>47</sup> and require the force used to be proportionate.<sup>48</sup>

The right to liberty of the person (UDHR, Article 3) is also affected by police powers to arrest and detain, and this right is protected by Article 9 of the UDHR, which prohibits arbitrary arrest and detention. All of these rights are given force in the International Convention on Civil and Political Rights (ICCPR). People in detention are vulnerable to maltreatment and torture, and gross violations of human rights. The right to a fair trial, the presumption of innocence (UDHR, Articles 10 and 11) and the prevention of arbitrary interference with privacy (UDHR, Article 12) are all at risk during the investigation of crime due to practices such as searching clothing, homes, vehicles and personal possessions, interviewing suspects and taking intimate samples.

As we have seen, policing frequently weighs most heavily on communities defined by their race, ethnic origins or other similar identifying characteristics, and therefore international instruments

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<sup>44</sup> The relevant international instruments relating to Human Rights, policing and anti-discrimination include the following: Universal Declaration of Human Rights, 1948; International Convention on the Elimination of All Forms of Racial Discrimination, 1965; International Convention on Civil and Political Rights, 1966; International Covenant on Economic, Social and Cultural Rights, 1976; Code of Conduct for Law Enforcement Officials, 1979; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984; Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions, 1989; and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990. See Crawshaw et al. (1998), Hoffman (2000) and Human Rights Watch (1998:111–122 and appendices D–H).

<sup>45</sup> Adopted by the United Nations Economic and Social Council on 24 May 1989.

<sup>46</sup> Adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders in 1990.

<sup>47</sup> Article 3 of the UN Code of Conduct for Law Enforcement Officials.

<sup>48</sup> Article 9 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

protecting against discrimination are also of crucial relevance to the governance of policing.<sup>49</sup> The International Convention on the Elimination of All Forms of Racial Discrimination (1965) prohibits “any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life”, and requires states to guarantee full and equal enjoyment of human rights and fundamental freedoms for all (Article 1.4). Article 2 requires states to eliminate racial discrimination in all its forms and to *amend, rescind or nullify any laws and regulations* (local or national) that have the *effect of creating or perpetuating* racial discrimination wherever it exists (Banton 1996). The police thus have a responsibility to avoid discriminating and also to avoid practices that sustain, perpetuate or compound injustice in other spheres, such as housing, employment and public accommodations. The implication of human rights standards in this field is that police should go beyond avoiding discrimination and work toward eliminating racism and promoting social justice.

In spite of the fact that police officers are frequently cited as human rights abusers, and that the police can be, and frequently are, used as instruments for control and repression, the positive function of the police must be acknowledged. They have a role in creating the social order within which all members and sectors of the population have an equal right to enjoy a range of fundamental freedoms, with the police actively protecting the lives and property of all irrespective of “race”, and proactively protecting ethnic and other minorities from discrimination. The Rotterdam Charter enjoins the police to be “gatekeepers of equality, integration and cohesion”, indicating that they must therefore be “*active and reliable...guardians of anti-discrimination legislation*” (Rotterdam Charter 1996:10).

International human rights instruments set minimum standards for the provision of anti-discriminatory and democratic policing. These international norms have been widely ratified and in many places are enshrined in parallel domestic law. In order for any such international or domestic law to be effective in achieving its desired end, there is a need for robust mechanisms for accountability to ensure compliance. It is to this crucial, but complex, topic that we now turn.

## **Accountability**

The extent to which the police are accountable to the public they serve has been described as being no less than “the measure of a society’s freedom” (Institute of Race Relations 1987:vii). Yet the administrative and legal procedures that should guarantee accountability are often seriously flawed and extremely resistant to change. It is when there are *actual* abuses of police power that issues of police accountability come to the fore. However, the issue goes much further than this, encompassing accountability for all of the routine contacts between the police and members of the public in their myriad capacities as victim, suspect, witness or citizen requesting service. Police accountability requires those who hold coercive and intrusive powers to explain what actions they take, for what reasons and with what consequences. These can then be tested against agreed standards and norms of conduct. Where errors and abuses occur, systems of accountability provide responsible authorities with the opportunity to provide redress to injured parties and to analyze the errors made in order to avoid their recurrence. Systems of accountability are also among the key mechanisms proposed for reducing the extent of discrimination in police systems and for developing a greater respect for fundamental human rights and freedoms in policing.

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<sup>49</sup> ICCPR Article 26 asserts that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.

### ***Accountability to the law***

It is a cornerstone of orthodox legal theory that the police are, first and foremost, accountable to the law, rather than to any political party or social group. As a first step this clearly requires that national and local laws are consistent with international norms. However, “rule of law” is an abstract concept that must be related to its expression *in practice* to be meaningful. Gilroy and Sim (1987) argue that law, police and court action cannot be separated. Rather than being directly accountable to the law, the existence of discretion in policing means that the law is permissive.<sup>50</sup> The law defines when a police officer *may* act, but cannot direct a police officer to act or act in a particular way in a given instance (Lustgarten 1986); nor does it act as a control on police activity during encounters with the public (Gilroy and Sim 1987). In practice, the law is frequently used as a resource by the police to achieve police-defined goals (Holdaway 1983; Gilroy and Sim 1987). For example, although the police may only stop and search someone if they have “reasonable suspicion” or “probable cause to believe” that an offence has been committed, these concepts are so permissive that, *in practice*, the police can stop and search anyone in almost any circumstance. Hence, some of the abusive practices described above are facilitated by the law, rather than precluded by it. Moreover, some laws, such as certain measures relating to travel and migration, are constructed in such a way that they systemically disadvantage people from ethnic minorities.

### ***Accountability to the state***

In an open and democratic society, accountability to the state provides some measure of protection against the abuse of power. But in some contexts—and the apartheid regime in South Africa is the best example of this—procedures connecting the state police to the wider society have served to facilitate, not prevent, police xenophobia, discrimination and abuse of power. Nonetheless, the police should be directly and unambiguously accountable to democratically elected political authorities, and, to avoid possible abuses by the government, decisions and activities should be as transparent as possible, partially through lay monitoring (Brogden and Shearing 1993; Brewer 1994). It is important that power over the police not be concentrated in the hands of a small number of centrally located officials, but should be distributed widely through, for example, committees of political representatives and nominated lay people who are responsible to the elected government (Brewer 1994). However, this, too, is problematic in contexts where the majority population is largely unconcerned about police oppression of minorities. For example, the notorious Frank Rizzo was repeatedly re-elected as Mayor of Philadelphia on an explicit platform of oppressive policing, of which ethnic minorities were the principal victims (see Skolnick and Fyfe 1993).

In Britain, where a “tripartite structure of accountability” diffuses power,<sup>51</sup> the doctrine of constabulary independence gives a great deal of autonomy and wide operational discretion to the Chief Officer, and indeed, to operational officers on the street. The police authorities are relatively weak and tend to have insufficient knowledge of policing or ability to use what little power they do have to provide any direction for policing policy and practice. In recent years, Britain has seen a shift away from political accountability toward “financial” and “managerial” accountability (Jones and Newburn 1997:12). Managerial reforms emphasize effectiveness, efficiency and information about “performance outputs”, and define participation in terms of consumers purchasing services. As Jones and Newburn suggest, policing, in this formulation, is incorrectly presented as a politically neutral “technical exercise”, the output of which can be measured and thus its performance judged (Jones and Newburn 1997:15). Much less emphasis is placed on responsiveness to elected bodies, direct participation or equity. Consequently, some formal democratic institutions play an even more limited role in the development of policy or in changing criminal justice practice.<sup>52</sup>

<sup>50</sup> See Skolnick (1966), Grimshaw and Jefferson (1987) and Lustgarten (1986).

<sup>51</sup> In Britain, territorially-based policing is governed by “the tripartite structure” of the Chief Officer, the Home Secretary and the local police authority (comprised of a mixture of elected local representatives, magistrates and government appointees).

<sup>52</sup> Jones and Newburn 1997:12. See also Chan (1997) on the potential for managerial reform.

### ***Accountability to the community***

It has been argued that structures of police governance should reflect the demographic characteristics of the community. However, in each of the localities studied, black and ethnic minority communities are underrepresented among senior police officers and in police authorities. The idea of policing by consent is compromised if systems of accountability fail to reflect the ethnic diversity of the population. This “democratic deficit” has long been recognized and attempts have been made to increase the responsiveness of the police to minority communities through the introduction of “consultative committees”, such as those recommended by Lord Scarman in his 1981 report on the Brixton riots. Independent monitoring is important because it offers the opportunity to provide transparency, openness and accountability in policing.

In practice, however, such processes face great challenges to their effectiveness. In many instances, consultative arrangements have offered few opportunities for local communities to exert any control over the police organization because consultation does not amount to accountability. Reviews of such mechanisms in England have concluded that they are of marginal importance to the principal areas of police activity.<sup>53</sup> Even the more effective consultation mechanisms—such as the Lambeth Community Police Consultative Group (CPCG)—has found that the police often act without informing or consulting the community. As one participant commented at a Lambeth CPCG Annual General meeting, “sometimes they call it consultation when they are just telling you what they are going to do”. Hence, the deficit in legal and political accountability is not fully redressed by the creation of new systems of “consultation”.

Along the same lines, Community Consultative Committees were formed in New South Wales in 1987 for a limited number of ethnic minority and Aboriginal communities (Chan 1997:198). Again, the literature on these mechanisms reveals mixed results. Some committees spent hours talking about trivia, with little monitoring of their effectiveness. Moreover, the members of the committee were not truly representative of the community, often representing business and middle-class interests and excluding young people; in some places it was clear that the membership of the group was “chosen for their compliance”. In general, the committees lacked influence in the determination and review of operational policing and were seen by the police as “predominantly vehicles to disseminate information to the community [in which] few saw operational issues as relevant topics for discussion”. One patrol commander cited by Chan commented that “in reality it did nothing” (Chan 1997:202). In other cases, however, senior managers were prepared to discuss operational issues raised by lay members, including the way in which police questioned suspects, and they were also willing to admit that the methods used by some police officers were unsatisfactory.<sup>54</sup>

In South Africa, the importance of civilian oversight was considered to be of central importance in creating a community-oriented and less militarized police force, which concentrates on problem solving and has the trust of the community it serves. The National Peace Accord established Local and Regional Dispute Resolution Committees (Brogden and Shearing 1993) and Community Police Forums (CPFs). The CPFs were set up in the early 1990s with varying degrees of effectiveness depending on the levels of violence in the area (Cawthra 1997). Since 1993 there have been pilot projects in place to set up community visiting schemes, which are closely connected to the CPFs and allow members of the community to observe and comment on conditions and treatment of suspects detained in police stations (Nel and Bezuidenhout 1995).

Diana Gordon describes the development of CPFs that were created as mechanisms for implementing community policing in South Africa. These fora were intended to build upon traditions of self-help within black communities and the history of civic associations, street committees and self-defence units that filled the vacuum in law enforcement during apartheid. The CPFs had a written constitution, a code of conduct and an annual general meeting. They involved police and residents acting in a voluntary capacity and were established by the 1993 interim

<sup>53</sup> See for example, Morgan (1989) and Commission for Racial Equality (1991:3).

<sup>54</sup> Bull and Stratta 1994, cited by Chan 1997:203.

constitution, and latterly by the Police Service Act. Gordon argues that, after a promising start, the influence of CPFs waned, the range of activities narrowed and participation dwindled (Gordon 2001:134), leading her to the conclusion that “opportunities for civilian participation in police decision-making are no longer seen as important in the vision for democratic policing” (Gordon 2001:135). Thus, the mechanism that was intended to make citizen scrutiny of police activity a routine aspect of democracy in South Africa has “largely fallen by the wayside” (Gordon 2001:135). Crucially, in 1998 a white paper on Safety and Security shifted the CPF functions from “oversight” of the police to that of “assistance”.

The reasons that this has occurred in South Africa were that the police resisted CPF criticism and were hostile to intrusion into their discretionary domain. The committees were not representative of the community, excluding young people and tending to be comprised of the elite within poor communities, and often based on party loyalties. Early CPF leaders moved into local politics or resigned for other reasons and were never replaced by people with the strengths and commitment of the pioneering members. Most controversially, the CPFs were sometimes seen as spies for the police. Although there is little agreement on what counts as “success” in this context, Gordon concludes that there is little evidence of significant impact on police accountability. She warns that there is a risk that without the CPFs or other mechanisms for deepening democracy in law enforcement, the police may regress to unresponsiveness and routine violence (Gordon 2001:174).

Despite the sometimes disappointing results of mechanisms to ensure police accountability to the community, it is clear that this is one of the most important spheres for future work. Until recently in the United Kingdom, independent monitoring groups have been thought of as obstructive and unhelpful by the police. However, in recent years senior police officers have become increasingly conscious of the fact that such organizations provide information about crime as well as constructive criticism of policing that can be gained from no other source. Independent monitoring and advisory groups have the potential to provide a great benefit in both crime reduction and oversight of the police. Crucially, they provide a bridge between police and community that can restore confidence and trust necessary for the development of effective partnerships. Independent advisory groups, if they can overcome some of the problems outlined above, can also play a role in creating greater transparency in policing practices (by using the media and public meetings, for example) and posing a challenge to stereotypical, narrow and discriminatory thinking among police officers.

### ***Accountability for wrongdoing: Complaint investigation and civilian oversight***

The process by which the public can formally complain about instances of error and misconduct is the “touchstone” of police accountability. It is through this process that the police may be called upon to explain and account for allegations of misconduct and impropriety, and, where necessary, provide redress for injury arising from the abuse of force. If the most serious cases are not dealt with in a way that satisfies those who have suffered the abuse of police powers, it is unlikely that the police can be accountable for other aspects of their conduct. Research shows that a higher success rate for complainants, greater understanding and sympathy for those alleging discrimination, and more effective procedures and remedies will enhance the credibility of the law in the eyes of ethnic minorities both within and outside of the force (Rotterdam Charter 1996).

In Britain, the way in which complaints against the police by African, Caribbean and Asian people have been handled has been the subject of much criticism from both within and outside the service. The Police Complaints Authority of Britain does not provide breakdowns of complaints against the police by ethnic origin, but since 1990 has collected separate figures for complaints of racially discriminatory behaviour by police officers. In the first full year of recording (1991), there were 49 such complaints, which have increased 12-fold in a decade to 579 in 2000 (Police Complaints Authority 2000:19). The substantiation rate for all complaints is about 2 per cent, while that for allegations of racially discriminatory conduct is substantially lower.

The police complaints system in South Africa has also been entirely unsatisfactory, as complaints have generally been handled internally and destruction of evidence has been a major problem. However, under the new Constitution, the police can be held criminally liable for any violations of citizens' rights (Nel and Bezuidenhout 1995). In 1997, the Independent Complaints Directorate (ICD) was established. It employs non-police personnel to investigate serious criminal complaints and has the power to launch its own investigations on its own initiative. The requirement that all deaths in custody and as a result of police action be referred to this body for investigation is an important development (Melville 1999). Despite the fact that the ICD's formal powers go well beyond those in most other jurisdictions, there are serious limitations on the operation of the process in practice. The ICD has reported "passive obstruction" and "pockets of resistance" to its work. Sometimes there are significant time delays in referral and the directorate is not able to compel officers to be interviewed, nor to initiate its own prosecutions. There appears to be hostility from the public toward the investigation process—on one side from those who think that it is not fully independent and from the other side by those who think that the police should be unfettered in the "fight against crime". Perhaps the most significant problem, however, is a lack of resources; the ICD has a total of 37 investigators responsible for examining, at a minimum, the circumstances of 800 "police involved" deaths.

### ***Civil litigation***

In Britain, perceived and actual ineffectiveness of police complaints procedures, and "fear of themselves being criminalized or harassed" (Institute of Race Relations 1987), have led victims of alleged police misconduct to forgo the official complaints procedure and instead pursue civil court proceedings for damages against the police. Legal action has a multifaceted purpose. It first identifies and makes explicit the problems faced, highlights the plight of a group and acts as a stimulus for employers to take remedial action. Legal reactions can also play a role in raising consciousness, as well as being both an incentive and deterrent (for example, through large monetary sanctions) so that the leaders of police organizations are more likely to comply.

In London, the use of the civil courts has increased dramatically over the past two decades. In 1979, only seven cases against the Metropolitan Police were heard, resulting in damages of only £1,991 being paid; in 1986, there were 126 cases heard, resulting in damages to victims of £373,000 (Institute of Race Relations 1987:86). In the Metropolitan Police Force, this had leapt to 731 threatened actions by 1994–1995, with 1,000 in 1996–1997 (Metropolitan Police 1997:83), while damage payments tripled from £1.3 million in 1994–1995 to £3.9 million in 1999–2000 (Metropolitan Police 1997:83). Figures from the United States also indicate very extensive payouts for misconduct. In the five years following the 1991 riots in Los Angeles, the LAPD paid out \$79 million in damages.<sup>55</sup>

While the extent of injury settlements suggests that complainants are at least receiving redress for the abuse of police powers, there are a number of reasons to be hesitant about calling this a success. Most obviously, it would be far better to spend the funds allocated for compensation, plus the costs of administering and defending these cases, on measures to improve public protection. Only a minority of complaints of abuse result in the award of compensation, leaving many complainants dissatisfied and without redress. Finally, the evidence that punitive damages are actually having the effect of improving police practices or restraining the abuse of police powers is equivocal. Civil remedies must always be available, but they cannot substitute for robust mechanisms for complaint investigation and accountability.

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<sup>55</sup> Human Rights Watch 1998. Skolnick and Fyfe (1993) remark that this is regarded by the LAPD and local government as the "price of doing business". Despite years of heavy damages claims arising from the activities of a particular specialist LAPD squad, it was not disbanded.

## Conclusion

Discrimination, xenophobia, intolerance and the abuse of power in police work have wide-ranging consequences. Abusive practices lead to unnecessary deaths, physical and psychological injuries, disaffection and frustration. Abusive policing strikes at the very core of the idea of democracy. The police are not only guardians of liberty, but also the gatekeepers of the criminal process. Consequently, abusive or discriminatory policing can be a first step toward criminalization of marginalized communities, especially in contexts where prejudice and discrimination in the criminal justice process support or compound police decision making. While it is tempting to resort to the “military model” of policing in the face of rising or stubbornly high rates of crime and violence, the evidence suggests that this is not only likely to undermine fundamental human rights, but is most likely to be counterproductive. Paramilitary policing is part of a vicious cycle that contributes to the criminalization of marginalized communities, undermines the legitimacy of the state, inhibits voluntary compliance with the rule of law and can ultimately cause the escalation of violence in the community.

This paper has examined the various mechanisms through which police reform has been implemented. The starting point must be a clear and overt commitment to the implementation of democratic policing, based upon responsiveness and accountability to the community and adherence to internationally recognized human rights standards. Building on these principles, there must be mechanisms to ensure that the axioms of policing are based upon the maintenance of peace and the protection of the rights to life, liberty and security of the person, and that police forces are internally democratic, reflect the demography of the communities served and are accountable to these communities. The road to reform is by no means a straightforward one and there are powerful forces pushing the police back toward militarism. In coming years, national and local governments, international observers, academics and most importantly, progressive police officers—from senior managers to the officer on patrol—will need to make substantial efforts to translate a stated commitment to policing for human rights into effective and fair practices on the street.



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