

**POLICE USE OF FORCE AND  
HUMAN RIGHTS**

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# **POLICE USE OF FORCE AND HUMAN RIGHTS**

**Edited by Philip C. Stenning**

**Papers presented at a public forum held at  
the Harbour Centre Campus of  
Simon Fraser University  
in Vancouver, British Columbia, Canada  
on Wednesday 17<sup>th</sup> April, 2002**

and

**Summary Report of the Second Meeting of the  
International Comparative Research Project on the  
Use of Force by Police held at the Department of  
Justice Canada regional office, in Vancouver on  
17<sup>th</sup>-20<sup>th</sup> April, 2002**

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## **SUMMARY REPORT**

### **2ND MEETING OF THE INTERNATIONAL COMPARATIVE RESEARCH PROJECT ON THE USE OF FORCE BY POLICE<sup>1</sup>**

**Vancouver, Canada, April 17th-20th, 2002**

**Organizer: Philip Stenning, University of Toronto.**

#### **Antecedents**

This meeting of the international research project was a follow-up to an earlier meeting of the research group held in Merida, Venezuela, in March 2001. At that meeting, the broad outline of a comparative international research project on the use of force by police was discussed and agreed upon. Researchers from the following countries participated in that meeting: Venezuela, Brazil, Peru, Canada, the United Kingdom and Trinidad & Tobago. The researcher from Peru has since had to withdraw from the project, and unfortunately the researcher from Trinidad & Tobago was unable to attend the second meeting of the group. At its second meeting, however, the remaining participants at the first meeting were joined by researchers from Argentina and Germany, who have now joined the project.

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<sup>1</sup> Financial and in-kind support from the Ministry of the Solicitor General of Canada, the Department of Justice Canada, and the School of Criminology, Simon Fraser University (Burnaby, British Columbia) is gratefully acknowledged.

At the first meeting of the group, it was decided that an international comparative research project focusing on the normative frameworks (justifications) for the use of force by police which have emerged in the different countries represented by the research team would be developed. It was decided that such research could best be pursued through focus groups reflecting a variety of different groups and perspectives in each country<sup>2</sup>. The purpose of the second meeting of the group was to discuss and determine in detail the research questions, research instruments, methodology and funding for this research project. In addition, a number of the researchers participated in a public forum, at which presentations were made on the use of force by police in Brazil, Canada, the United Kingdom and Venezuela.

## Meeting participants

- The following members of the international research project team attended and participated in the meeting:
- 
- **Sergio R. de Abreu**  
Lieutenant-Colonel,  
Military Police,  
Porto Alegre,  
Rio Grande do Sul, Brazil
- **Yoana Monsalve Briceno**  
Professor of Criminology  
Universidad de Los Andes,  
Merida, Venezuela.
- **Christopher Birkbeck**  
Professor of Criminology  
Universidad de Los Andes,  
Merida, Venezuela.
- **Thomas Feltes**  
Profesor of Criminology,  
University of Bochum,  
Bochum, Germany

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<sup>2</sup> For a fuller account of the first meeting see “Summary Report - International Meeting on Use of Force by the Police, Merida, Venezuela, March 5-7, 2001”.

- **Enrique A. Font**  
Lecturer and Researcher,  
Centre for Research and Studies in  
Human Rights,  
National University,  
Rosario, Argentina.
- **Luis Gerardo Gabaldon**  
Professor of Criminology  
Universidad de Los Andes,  
Merida, Venezuela, and  
Andres Bello Catholic University,  
Caracas, Venezuela.
- **Eduardo Paes Machado**  
Professor of Social Theory and  
Methods,  
Federal University of Bahia,  
Salvador, Brazil.
- **Philip C. Stenning**  
Associate Professor of Criminology,  
University of Toronto,  
Toronto, Canada  
(Professor in Criminology Designate,  
Victoria University of Wellington,  
Wellington, New Zealand)
- **P.A.J. (“Tank”) Waddington**  
Professor of Political Science,  
University of Reading,  
Reading, England, U.K.

**Ms. Paola Wakeford**, a graduate student at the School of Criminology, Simon Fraser University, also attended the meeting, providing secretarial and other administrative assistance.

## **The Public Forum**

On Wednesday 17th April, from 2:00 – 5:00 p.m., a public forum was convened at the Harbour Centre, Simon Fraser University, at which four presentations were made about the use of force by police in different countries:

**Professor Waddington** spoke about the use of force by police in Northern Ireland.

**Professors Birkbeck, Gabaldon and Monsalve Briceno** spoke about the use of force by police in Venezuela.

**Professor Paes Machado** spoke about the use of force by police in Brazil

**Professor Stenning** spoke about the use of force by police in Canada.

These presentations were followed by a period of questions and discussion from the floor.

The four papers which were presented at this Public Forum will be available for distribution in hard copy, and will also be posted on the research group's new website (see below).

## **Private meeting of the research group**

The researchers who are involved in the project met privately on Thursday 18th, Friday 19th and Saturday 20th April, 2002, to discuss in detail the various elements of the international comparative research project. These meetings were held in the Public Consultation Room at the Vancouver Regional Office of the Department of Justice Canada, at 1185 Georgia Street, Vancouver. The Regional Office's donation of the use of this facility for this purpose is gratefully acknowledged.

The private research meetings were chaired throughout by Professor Birkbeck. Ms. Wakeford took extensive notes of the discussions.

### ***i. Rationale for research on use of force by police***

The private meeting began with a broad discussion of possible rationales for comparative international research on use of force by police. Various rationales were suggested, including:

- Use of force by police is critical to the relationship of the state to its citizens in a democracy (cf. Max Weber's argument that a monopoly over the legitimate use of force is a central defining feature of the modern state), and in particular to the legitimacy of the state in the eyes of its citizens.
- The use of force by police is a subject of great social ambivalence, and hence controversy – on the one hand citizens want the police to be able to use force to protect them against violent and other victimizations, but on the other they fear that force will be abused by police in ways which will be oppressive, undermine freedom and deny basic human and civil rights.
- The close association between the use of force by police and the observance and protection of fundamental human rights makes international comparative research on the use of force by police especially important in an era in which such human rights are increasingly at the centre of the international political agenda.

- “Globalization” has led, among other things, to greatly increased popular migration, as a result of which societies in many countries of the world are increasingly “multi-cultural” – understanding the cultural basis for different views about what is and what is not accepted as legitimate use of force by police is therefore increasingly important for effectively training police for their role in such multi-cultural societies.
- Such research might usefully inform the development of some minimum international standards for the use of force by police.

It was recognized that different normative frameworks (criteria of justification) with respect to the use of force by police in different countries/cultures may have their basis in social, cultural, political, religious and economic factors.

*ii. The research question and the scope of the research*

After a lot of discussion, it was initially agreed that the essential question which the research should address should be:

**“What are the different ways in which people in different societies justify and criticize the use of force by police?”**

The research would thus seek to identify varieties of **normative frameworks** which are invoked in public discussion, policy-making and legislation with respect to the use of force by police. Of particular interest would be to explore how, to what extent, and why such normative frameworks vary between different groups in society, and from one society to another. Also, how such frameworks which are invoked by people other than the police vary from the way the police themselves think about and justify their use of force.

Participants recognized two possible hypotheses for such research:

(1) the police (sub-)culture is distinct/different from the broader public culture; or,

(2) the police (sub-)culture is simply a reflection of the broader public culture.

The group discussed the usefulness of thinking of justifications of police use of force as falling into three broad categories:

1. Moral justifications – these are based in views about what various people (such as criminal suspects, protesters, homeless and street people, etc.) “deserve”
2. Instrumental justifications – these focus on what types and degrees of force people think are “necessary” in order to respond to, contain or control various kinds of behaviour.
3. Symbolic justifications – these relate to the need which police may feel to demonstrate that the law is being enforced, or to show that they are “in charge” in particular situations.

After further discussion, however, it was agreed that the research should be designed to allow normative frameworks to emerge and be identified from the data, without the constraint of pre-conceived categorizations of them.

There was a prolonged discussion about what groups in society would be chosen for participation in the research. This line of discussion was eventually overtaken, however, by concerns which were raised about sampling and representativeness. Specifically, questions were raised about how focus groups could be assembled which could be considered genuinely representative of the various broader groups (such as police, judges, lawyers, civil rights activists, etc.) from which they would be drawn. For without such representativeness, valid inter-group and cross-national comparative conclusions could not be drawn.

After much discussion of these issues, it was finally agreed (albeit somewhat reluctantly by some) that the research project should focus exclusively on the normative frameworks deployed by **police themselves** in justifying and criticizing the uses of force by police. It was felt that although this was not what had originally been envisaged at the earlier meeting of the group in Merida, Venezuela, given the time and likely resources available for the research, and the methodological problems associated with the more ambitious proposal that had been discussed, this would be a more realistically viable option. Furthermore, it would not preclude the possibility of more expansive research at some later date.

The central question for the research was thus re-framed as:

**“What are the different ways in which police personnel in different societies justify and criticize the use of force by police?”**

***iii. The proposed focus groups***

After considering other possible options for undertaking the research, the group agreed that focus groups, in which hypothetical scenarios involving possible use of force by police are presented to groups of police officers for recorded discussion, would provide the best means for exploring the research question in depth.

Researchers recognized, however, that the content (and perhaps complexity) of normative frameworks invoked by police might vary significantly within the police themselves. In order to explore such possible variation, the following possibilities for the composition of such police focus groups were suggested:

1. Routine, front-line (mobile) patrol officers.
2. Senior (supervisory and/or command) officers.
3. Special (armed) response officers.
4. Police trainers.
5. Detectives/investigators.
6. Internal Affairs investigators/staff.
7. Urban vs. rural officers.
8. Male vs. female officers.
9. Younger vs. older officers.

After much discussion, it was agreed that, given significant differences in both police organization and police work in different countries, it would not be appropriate (or perhaps even feasible) to try to assemble identically composed police focus groups in each country in which the research will be undertaken. Rather each researcher should assemble focus groups which were most realistic and feasible in his or her country. Possible problems of sampling and representativeness were again raised with respect to analysis of the data from different groups of police personnel. It was agreed that at best the range of police views about justifications for the use of force by police could be determined through such research, without necessarily being able to definitively ascribe different views to different classes of police officers.

Dr. Feltes agreed to provide members of the team with some tips on how best to run and record focus groups. It was agreed that focus groups should normally be comprised of about 8-10 participants.

## Scenarios for the research

The meeting turned to a discussion of the scenarios that might be used in order to stimulate discussion in the focus groups. A range of possibilities was discussed, including:

1. Complete scenarios – present groups with two or more complete scenarios (i.e. descriptions of complete events in which police force was or was not used), and invite discussion of these.
2. Incomplete scenarios – present groups with initially incomplete scenarios (i.e. descriptions of circumstances which could or could not lead to use of force by police depending on the police response), and invite participants to speculate on how police would respond and why.
3. Sequential scenario – present a single scenario in several stages (at each of which a decision about the use of force could be made) and, as each stage is presented, invite participants to comment on what they think police would do and why.

After much discussion, in which the possible content of various different scenarios was also considered, it was decided that the third option (a single sequential scenario) would be the best. A single scenario which was felt to be relevant for all the jurisdictions involved, was developed and refined through further discussion. It was agreed that this scenario would be adopted as a template for the research in each country, with individual researchers free to adjust the details of the scenario to fit the particular conditions in their own country, without departing from the basic content of the scenario. This, of course, would also require translation into the relevant language. Researchers would all share their “customized” version of the scenario with the other members of the research team.

The group discussed the procedure for presenting the scenario. The need to give focus group participants time to consider and discuss their responses was

emphasized. The need to ensure that participants were fully informed about the objectives of the research was also discussed. It was also agreed that, once finalized, the scenarios would need to be pre-tested in each country before being used in the main study. It was agreed that whether or not (and if so in what manner) participants should be compensated for their participation in the research is a matter to be determined by the researchers in each country, since in some countries this would be appropriate (and perhaps even expected), while in others it would not.

**iv. *Timetable***

After discussion, it was agreed that researchers in each country would aim to circulate their finalized scenario version by September or October, and undertake pre-testing by the end of November 2002. The general consensus was that the main research would not be done in most countries before early or mid-2003, since this would depend on success in acquiring the necessary funding and access to police subjects.

The group agreed that it should organize another meeting to follow the meeting of the World Congress of Criminology in Rio de Janeiro, Brazil, in August 2003, and that the group would present a panel on the research project at the World Congress itself. The researchers from Venezuela agreed to organize this panel, while those from Brazil agreed to organize the meeting of the group which would follow (possibly to be held at the Federal University of Bahia in Salvador, Brazil, rather than in Rio de Janeiro).

Professor Waddington agreed to look into the possibility of organizing a further meeting of the group in England in mid-2004, to discuss and evaluate the results of the research.

**v. *Project website***

Professor Feltes kindly agreed to start the process of setting up a project website on which information about the project and the researchers involved can be posted. This site has now been established, and can be accessed at: [www.policeuseofforce.org](http://www.policeuseofforce.org). In addition, the complete report or copies of individual papers are available on the CRC Website, [www.sfu.ca/crc](http://www.sfu.ca/crc).

# **HUMAN RIGHTS AND POLICE USE OF FORCE IN THE TERRORIST CONTEXT**

**Professor P.A.J. Waddington**

**University of Reading, England, U.K.**

## **The Use of Force Spectrum in the UK**

The British police have long occupied an enviable position at one pole of the police use of force spectrum. They share with a handful of other jurisdictions the distinction of being routinely unarmed. ‘Unarmed’ in this context means, of course, that British police officers only rarely carry firearms and when they do so it is a task overwhelmingly reserved for specialist units. Officers engaged in routine patrol work are probably more accurately described as ‘lightly armed’, since they are equipped with a baton, handcuffs and (almost invariably) an incapacitant spray. Nevertheless, there is clearly a quantum leap between the forcefulness of this weaponry and the possession of a handgun with its lethal capacity.

However, those of us who live in the islands off the north west coast of Europe belong to a complex set of overlapping jurisdictions. Policing is separately organized in England and Wales, Scotland and Northern Ireland. Northern Ireland is distinctive from the remainder of the United Kingdom, for it is heir to a legacy that can be traced to the origins of professional policing. Before Robert Peel commenced

his now famous policing experiment in London in 1829, he had previously established a professional police force in Ireland. What is remarkable, is that both police forces were the creations of the same coterie of reformers, achieved against the chorus of the same kind of opposition, and yet from the outset charted quite different trajectories (Palmer 1988). The force that would eventually become the Royal Irish Constabulary (RIC) very quickly acquired all the hallmarks of an armed paramilitary gendarmerie in contradistinction to the London Metropolitan Police who became the model of civil policing. Royal Irish Constabulary officers were routinely armed, often patrolled in squads, and housed in barracks. It was a tradition that culminated in a force officially described as being ‘out of control’ and perpetrating the infamous ‘Bloody Sunday’ massacre at Croke Park on 21 November 1920 (Ryder 1989; Townshend 1992; 1993).

After the partition of Ireland, Royal Irish Constabulary traditions continued in the semi-autonomous province of Northern Ireland where, in a context of persistent threat of insurgency, the imposition of a state of emergency has been a *de facto* way of life. In one crucial respect, the police of Ireland and then Northern Ireland remained distinctive from their counterparts in Britain<sup>3</sup> and that is that they were always routinely armed. But that was just one token of a very different relationship that existed between the police in colonial Ireland and later Northern Ireland and their civil populations. For their role was, from its inception, to impose the authority of the British crown upon a reluctant and occasionally rebellious – predominantly Catholic

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<sup>3</sup> ‘Britain’ or ‘Great Britain’ refers to England, Wales and Scotland.

and nationalist – populous. Northern Ireland was conceived as a haven for Protestants in which the presence of Catholics and nationalists was barely tolerated (Ellison and Smyth 2000; Ewing and Gearty 2000). It was not for nothing that when the British Empire sought to staff its colonial police forces around the globe that the authorities turned to Dublin and then Belfast for suitable personnel and appropriate training (Anderson and Killingray 1991; 1992).

In the late 1960s when nationalist and republican sentiments found a voice in the Civil Rights Movement it was virtually inevitable that protesters would come into conflict with the Royal Ulster Constabulary (RUC) (Ryder 1989; Ellison and Smyth 2000). Moreover, that conflict was not merely incidental to a wider campaign, but was symptomatic of the oppression of which protesters complained (Ellison and Martin 2000). As sectarian strife reached a pitch that exceeded the capacity of the Royal Ulster Constabulary to contain in 1969, the military were drafted into the province in a peacekeeping role.

## **Militarisation**

Military intervention in civil affairs in liberal democracies is invariably a politically sensitive issue. I have argued elsewhere (Waddington 1999) that the installation of civil police nearly two centuries ago amounted to the creation of a duopoly of the state's capacity for force. Hitherto, the state relied on the military as sole custodians of its monopoly of force, but with growth of the notion of citizenship (Marshall 1950; Tilly 1995) the police became the instrument for the exercise of state force over its own civil population. The military directed force against enemies

beyond the bounds of the state's territory. Re-introducing the military as a forceful arm of the state against its own civil population has two implications – tactical and symbolic.

## **Tactical implications**

Tactically, what distinguishes the police and military is their relationship to the use of force. Military strategy is dictated by the need to eliminate threat and their weaponry reflects this. The standard military tactic is to create a field of fire that is non-survivable. In infantry combat desirable weapons are hand-grenades and mines, for these are lethal to the enemy without disclosing the location of one's own forces (as might the muzzle flashes from firearms). Hand-grenades and mines are also indiscriminate, but this only enhances their military appeal for soldiers do not aim simply to kill and injure specific enemy combatants, but to kill and injure as many of them as possible. Police act very differently, especially in jurisdictions laying claim to liberal democratic values. Force used by police officers should be both necessary and proportionate (Harlow 1974; Ashworth 1975), but most important of all must be *targeted* at specific wrongdoers. Consider the question of fire suppression: if military personnel come under enemy fire, their response will be to suppress that threat by returning fire of such intensity that the enemy is either eliminated or pinned down whilst soldiers counter-attack through 'fire and move' tactics. Police who come under fire from criminals, by contrast, habitually find cover and return fire at clearly identified targets continuing to pose a threat. The weapons each use reflect these distinctive purposes: the standard military weapon is the automatic assault rifle,

whereas police rarely use automatic weapons and when they do, they usually fire single shots.

So, the tactical problem of employing the military in civil affairs is that soldiers are ill-suited to the role (Everleigh 1979; Rowe 1985; Dewar 1987). This is reflected in the special measures taken to issue all military personnel serving in Northern Ireland with a card stipulating the ‘rules of engagement’ that corresponded exactly with those that govern police officers. For instance, whilst they continued to carry and use their automatic weapons, they were expressly instructed only to fire single shots at clearly identified targets. In order to prepare officers for these very different operational conditions, the British Army constructed a large training area that simulated urban terrain. In other words, soldiers in Northern Ireland were expected to act like police officers.

## **Symbolic implications**

What restrains police from using indiscriminate lethal force in a military fashion? It is an idea: the notion that arose in the 16<sup>th</sup> and 17<sup>th</sup> centuries from the ashes of feudalism that members of the civil population were *citizens* who possessed *rights*. The relationship between the state and its citizens is articulated through the language of a contract (albeit implicit) and no contracting party could be imagined to consent to their own elimination. Hence the force of the state can only be used against those specific citizens who breach the terms of the contract – that is ‘criminals’ – and only then insofar as it is necessary to restore the contract. But, of course, non-contracting parties – aliens and enemies – cannot expect such restraint and neither

have they received it. The same state that increasingly trod carefully in relation to its own citizens (even when they rebelled), was perfectly willing to act with more or less unbridled savagery against colonial peoples throughout the Empire. A notable example being the massacre of many hundreds of unarmed protesters in the Indian city of Amritsar at the hands of General Dyer's soldiers in 1919 (Furieux 1963).

The symbolic significance of using the military to suppress the civil population is that it suggests that citizenship is being denied or revoked. It is also why the accusation that the police are acting in a 'militaristic' – or, less accurately, 'paramilitary' (Hills 1995) – fashion carries such rhetorical force. This is particularly so in the context of Northern Ireland, for (as has been already noted) Ireland was for many generations Britain's most proximate colony and the post-partition experience had left a lingering ambiguity over the *de facto* status of Catholics and Nationalists living in the province.

## **Terrorism and terrorists**

The term 'terrorist' is both pejorative and opens a Pandora's box of conceptual confusion. However, in one respect those who are called 'terrorists' (at least, in a domestic context) pose a clear and fundamental dilemma for the exercise of the state's monopoly of legitimate force. The domestic terrorist effectively declares war on the state of which he or she is notionally a citizen. Someone or some organization that explodes a bomb designed to kill as many of the government as possible – as did the Provisional IRA (PIRA) when they bombed the Grand Hotel, Brighton, in 1984 during the Conservative Party Conference – is clearly engaged in a

war-like act. Quite literally, then, the terrorist organization becomes an ‘enemy within’: the social contract is abrogated and terrorists eschew their own citizenship. However, in doing so terrorists also abrogate the rights that are enjoyed by citizens, including the restraints that such rights impose upon the state.

Yet, the abrogation of the rights of citizenship does not place the terrorist in a ‘free-fire zone’ so far as the agents of the state are concerned. On the contrary, it locates them in the realm of utter ambiguity, for whilst terrorists have effectively declared war on their own state, they cannot be treated as an ‘enemy’ either, for only nation states can engage in warfare and only the military of these states are subject to and beneficiaries of the ‘laws of war’<sup>4</sup>. States habitually respond to this ambiguity by insisting that terrorists are merely ‘common criminals’ and treating them as such, but (as we shall see) this creates more problems than solutions, since ‘criminals’ remain citizens with rights.

## **Primacy**

These were not abstract background conditions surrounding military intervention in Northern Ireland, but matters of practical political discussion. The military were enlisted ‘in support of the civil power’ (Everlegh 1979; Rowe 1985; Dewar 1987). However, given the failure of the Royal Ulster Constabulary to maintain order and the increasingly discredited Stormont regime, the military quickly

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<sup>4</sup> This is not a problem unique to either Northern Ireland or domestic terrorism. The United States found itself in a legal vacuum in its treatment of ‘illegal combatants’ and their incarceration at Guantanamo, Cuba following action in Afghanistan.

acquired a position of pre-eminence. In the mid-1970s the *de facto* superiority of the military was challenged by the assertion of the doctrine of ‘police primacy’ (Ryder 1989; Ellison and Smyth 2000). However, the relationship between the police and the military remained contested through virtually the entire period of the republic insurgency. Central to that contestation was the issue of the use of force and the rights to be accorded to terrorist suspects.

## ***Causes Celebre* in Northern Ireland**

The conflict in Northern Ireland, lasting over 30 years and claiming the lives of over 3000 people, raises many issues. Here, I want to examine just two of them that lie at the heart of the state’s relationship with its civil population: due process and the use of physical force. The aim is not to condemn, but to grapple with the genuine dilemmas that arise in counter-terrorist operations.

## **Due Process**

Early in the conflict and confronted by escalating levels of paramilitary violence a commission headed by Lord Diplock recommended a separate procedure for the trial of suspected terrorists (Diplock Commission 1972). In sum, what it recommended was the abolition of juries in terrorist cases and lower standards for the admissibility of evidence – for instance, hearsay evidence that was otherwise inadmissible in criminal trials would be permitted under the Diplock proposals. ‘Diplock Courts’ as these tribunals came to be known acquired notoriety not only for the convictions of suspected terrorists on what appeared to many to be flimsy

grounds, but also their willingness to acquit members of the security forces accused of criminal offences connected with counter-terrorism.

Ellison and Smyth (2000) link the Diplock Courts to parallel controversial developments, namely the establishment of special interrogation centres and the extensive use of former members of paramilitary organisations as ‘supergrasses’. Following a decision of the campaigning organisation, Amnesty International, to investigate allegations of torture at these interrogation centres, the British government established an official inquiry (Bennett 1979) that confirmed that some brutality had occurred and recommended safeguards to prevent its recurrence. However, whilst the standards of treatment did not live up to those demanded by the criminal law, they were not as rigorous as might be suffered by combatants captured in war. Geneva Conventions govern and the Red Cross monitors compliance with standards of detention of prisoners of war. Military personnel can be expected to suffer interrogation and those units most likely to be exposed to this risk undergo training designed to resist the intense pressures to which they can expect to be exposed.<sup>5</sup>

Moreover, in war the detention of enemy personnel is not reliant upon proof that they had actually performed some hostile action or other. Prisoners of war are detained solely on the basis that they are members of the enemy force. Of course, this was the logic underlying internment that became a propaganda coup for the Provisional IRA precisely because it did treat notional citizens as if they were an enemy.

As Ellison and Smyth (2000) argue, these problems arose from the attempt to ‘criminalise’ republic insurgents and thereby deny them and their cause legitimacy. However, this is plainly an unsustainable strategy precisely because terrorists are not criminals. Criminal activity is rarely organised on the same scale that terrorism habitually is. One obvious corollary to such organisation is that terrorists have the capacity for intimidation of witnesses and juries that extends well beyond that available to even the most serious criminal gangs. Moreover, terrorism is ideologically justified in ways likely to garner support from what social movement theorists call a ‘conscience constituency’ (McCarthy and Zald 1977) that whilst not necessarily in favour of violence, might be disinclined to undermine even the most militant fringes of the wider movement. To aspire to maintain the full panoply of the criminal justice system, with its safeguards for suspects, in this context is plainly facile. As happened in Northern Ireland, security forces will find themselves compelled to rely more or less exclusively upon confessions extracted under interrogation and the questionable evidence of a handful of ‘supergrass’.

## **Use of force**

The conflict in Northern Ireland was punctuated by a succession of allegations that the security forces – police or military – had used excessive force in apprehending suspected terrorists. This came to be known as the alleged ‘shoot to kill’ policy, but is more accurately described as a tactic of summary execution (Asmal

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<sup>5</sup> Incidentally, PROVISIONAL IRA terrorists appeared to also have been trained in these techniques.

1985; Amnesty International 1988). Many of these incidents, especially those involving police, remain clouded in controversy not least because an investigation headed by a senior British police officer, John Stalker, was itself surrounded by controversy when he was summarily suspended from duty amid claims of skulduggery by the British security service and Royal Ulster Constabulary (Taylor 1987; Stalker 1988).

However, there are some instances of the use of lethal force that remain virtually uncontested. For these purposes we need examine only one illustration, the ambush by SAS troopers of two Provisional IRA Active Service Units (ASUs) during an attack by the latter on a police station at the isolated village of Loughgall in May 1987. According to Mark Urban's authoritative account (Urban 1992), acting on intelligence, units of the British Special Air Service (SAS) staked out the police station. They were heavily armed, with at least two belt-fed general purpose machine guns covering the front of the police station and other troops equipped with assault rifles strategically located to cut off escape. The Provisional IRA Active Service Units arrived in two vehicles: six members traveled in a van and two others were aboard a JCB tractor that carried a bomb in the hydraulic bucket. Upon arrival, two of the Provisional IRA members leapt from the van and began firing their AK47 rifles at the police station in what appears to have been a display of bravado. This was the trigger that initiated an intense fusillade from the surrounding troops. Those Provisional IRA members caught in the open were immediately cut down; others who remained or sought cover inside the van were killed as the van was riddled with machine gun fire. The JCB was able to deposit the bomb over the security fence

surrounding the police station, which detonated shortly afterwards, demolishing part of the building. Those on board the JCB died almost immediately after they had detonated their cargo. Urban reports that 1200 rounds of ammunition were claimed to have been fired on that occasion, an estimate to which he lends credibility by his own observation of the scene. Apart from the Provisional IRA terrorists, two brothers found themselves caught in this ‘field of fire’ – Oliver and Anthony Hughes. Anthony was killed and Oliver seriously wounded.

What are we to make of this? Obviously, this was a standard military ambush. The ‘enemy force’ entered the killing zone and the ambushing troops poured fire into that zone with a view to killing as many of them as possible before they could return fire. That is what soldiers do. It is not, however, what police normally do. Armed police in Britain intercepting armed criminals would not be equipped with automatic weapons, they would almost certainly have issued a warning and instructed their adversaries to surrender, their shots would need to be aimed at specific targets, they would not fire into a van to hit adversaries that were hidden from view for fear that they hit innocent people by mistake. Was this how the SAS troops should have behaved? Well, they were not confronting criminals, but dedicated heavily-armed terrorists, who (however mistakenly) considered themselves to be engaged in a war of liberation. They represented not just a threat to fellow citizens, but a threat to the state that the military are duty-bound to protect. Whilst the force used in war must be proportionate, many might conclude that this ambush met the proportionality requirement.

Then there is the unfortunate killing of Anthony Hughes and the wounding of his brother. For the police such a consequence would be considered a disaster. When innocent parties have been mistakenly shot by armed officers seeking to arrest criminals, the officers concerned have often found themselves charged with very serious criminal offences themselves. In war, on the other hand, ‘collateral damage’ is a recognised hazard. Whilst attacking forces are duty-bound to avoid needless death and injury to non-combatants, this cannot be eliminated entirely. Indeed, it is contrary to the rules of war to shield behind non-combatants, for instance by locating strategic and tactical targets in residential areas thereby attracting enemy fire that jeopardises those non-combatants. One might take the view that terrorism, by its very nature, does precisely this: terrorists hide amongst the civil population from which they launch their attacks on the state.

## **An International Convention on Counter-Terrorism?**

Domestic terrorism challenges the established duopoly of state-sanctioned force. Terrorists abrogate their own citizenship by effectively declaring war upon the state of which they would otherwise be citizens. For the state to treat them as criminals is counter-productive, for criminals enjoy rights that cannot be extended to terrorists without neutering counter-terrorism. On the other hand, terrorists cannot be regarded (as they would no doubt wish to regard themselves) as soldiers engaged in warfare, since war is a game in which only states can play. Yet, for all its negative associations, warfare is an exquisitely rule-governed activity, subject to international conventions and monitoring organizations.

Perhaps now is the occasion for states to consider the establishment of a new set of international conventions to regulate the rules of counter-terrorism. States should be allowed to declare that a state of terrorism exists and have that ratified by an independent international tribunal. Once ratified, states would be able to pursue counter-terrorism according to rules that recognize the strategic and tactical necessities, whilst protecting the rights of combatants and non-combatants. Of course, unlike warfare, counter-terrorism cannot occur between equal contracting parties, it would be a unilateral act on the part of the signatory states. However, there is no reason why an international convention could not impose obligations on terrorists, the breach of which would amount to the commission of international crimes on a par with war crimes and possibly subject to trial before the International War Crimes Court.

Why would states want to subject themselves to the restraints of such a convention? For states the ambiguous status of terrorists is one of the ideological weapons that is used against the state. For instance, one of the notorious alleged 'shoot to kill' incidents involved the deaths of Gervaise McKerr, Eugene Toman and Sean Burns who died in a hail of gunfire despite them apparently being unarmed. All three were buried with Provisional IRA 'full military honours' and there can be little doubt that they were members of an Active Service Unit (Ryder 1989). As combatants in a war-like situation, their deaths would be considered simply part of the risks of combatant status. As citizens with rights, their deaths became a *cause célèbre*. In the confusion that currently surrounds terrorism, terrorist organisations are able to switch between asserting the combatant status of an enemy (such as

demanding special conditions of detention) and the rights of citizenship as and when convenient. Clarification under international auspice would remove, or at least severely restrict, such room for ideological manoeuvre by terrorist organisations.

The terms of any such convention would obviously need to be negotiated between states and this brief article cannot begin to anticipate what those terms might be. What is certain, however, is that almost any arrangement along these lines would be preferable to the confusion and ambiguity that currently suffuses this topic.

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# **ACCOUNTS AND ACCOUNTABILITY: MONITORING THE USE OF FORCE BY POLICE IN VENEZUELA**

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## **INTRODUCTION**

A frequent focus of current critical commentaries on the use of force by Venezuelan police is the “shoot-out.” This is a phenomenon that is found in other Latin America countries (Chevigny, 1995) and has been a source of longstanding concern in Venezuela (del Olmo, 1983), but is one that is apparently increasing dramatically. A “shoot-out” is a shorthand description of an encounter in which the police kill one or more civilians, usually alleged criminals, who had supposedly fired on them first. According to a recent newspaper article, the Venezuelan government reported that “more than 2,000” civilians died during 2000 in shoot-outs with the police, representing at least a quarter of the country’s 7,779 homicide victims (Poleo Zerpa, 2001a). Complaints to PROVEA, one of the leading human rights NGOs,

regarding inappropriate use of force by the police increased by 68.5% between 1999 and 2000 (PROVEA, 2000), and of these, 43.5% concerned questionable shoot-outs between civilians and the police<sup>6</sup>.

The motive of concern is, of course, not difficult to discover. Critics suspect that many shoot-outs conceal the unjustified use of force by the police who, for a variety of reasons, decide to kill certain individuals. The suspicion is that some of the dead may not have fired on the police, indeed may not have been armed with a gun, and that the police not only fired first but may also have planted a gun on the victim. Thus, the description of the encounter as a shoot-out misrepresents the character, and especially the behavior, of those involved.

The frequent use of the shoot-out to catalog civilian deaths at the hands of the police highlights a key problem for accountability<sup>7</sup>. Evaluation of the circumstances in which police officers use force is an essential prerequisite of accountability, and an essential prerequisite of evaluation is description: an account of what took place in the interaction between police officers and citizens<sup>8</sup>. Descriptions are therefore a

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<sup>6</sup> Shoot-outs are not the only focus of contemporary criticism of the Venezuelan police. In mid-2001, allegations surfaced regarding the existence of a death squad in one of the country's state police forces, that had supposedly killed 60 criminals over a two year period (Poleo Zerpa, 2001b). This was the catalyst for allegations regarding similar phenomena in six other state police forces (Cárquez, 2001). However, because death squads (if they exist) are undisputedly deviant and therefore hidden from institutional review, they are subject to somewhat different mechanisms and standards of accountability than shoot-outs and other encounters in which the use of force is acknowledged by the police. We do not deal in this essay with accountability for explicit police deviance, although some of our discussion is directly relevant to that topic.

<sup>7</sup> We define accountability as the institutional provision for positive or negative sanctions for police behavior.

<sup>8</sup> We use the term "account" in its general sense (a narrative or description), rather than its more restricted meaning in sociology ("a statement made...to explain unanticipated or untoward behavior")

prerequisite of accountability and the quality of accountability depends, in part, on the quality of information regarding police behavior. The superficial description offered by the shoot-out signifies a weak accounting procedure and impedes adequate control of the police.

In what follows, we offer a preliminary discussion of some problems in developing adequate accounts of the use of force by Venezuelan police. Along with superficial descriptions, we identify two additional problems in descriptions of use of force by the police: the relative infrequency of accounting and the differential weight given to accounts depending on the social status of the narrator. These problems affect accountability for the use of force and must be addressed if potential violations of human rights by the police are to be avoided. Definitive analysis requires more information than is currently available and offers an interesting agenda for future research.

## **POLICE IN VENEZUELA**

Venezuela is a democratic republic with an estimated population of 24.6 million people (OCEI, 2000). It attained formal independence from Spain in 1830 and was largely ruled by autocrats until 1958, when democratic movements ousted the military President Marcos Pérez Jiménez. During the Nineteenth Century, Venezuela's economy was overwhelmingly agrarian, but the discovery and

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[Scott and Lyman, 1968:46]). This is because incidents of use of force by the police are not always considered unanticipated or untoward.

exploitation, starting in 1907, of rich petroleum reserves marked the transition to an oil-based economy. During the second half of the Twentieth Century, the country experienced a rapid process of modernization with the development of manufacturing and the movement of the population from rural to urban areas. Currently, 87% of the population is estimated to live in settlements of more than 2,500 inhabitants. The capital city, Caracas, has an estimated population of 2.3 million (OCEI, 2000).

The police are organized by level of government and partially differentiated by function. At the national level, there are four main agencies. The Judicial Police (*Cuerpo de Investigaciones Científicas, Penales y Criminalísticas*) is the primary investigative agency for common crimes and works closely with the Public Prosecutor. The Political Police (*Dirección de Servicios de Inteligencia y Prevención*) investigates political crimes and occasionally other offenses, such as drug trafficking. The National Guard (*Fuerzas Armadas de Cooperación*) controls contraband, drug trafficking, environmental crime and, occasionally, public order. The Traffic Police (*Cuerpo Técnico de Vigilancia del Tránsito y Transporte Terrestre*) is responsible for, among other things, surveillance, preliminary investigation and arrest in traffic offenses that involve violations of the criminal law.

Twenty-two of the country's 23 states, and the Caracas Metropolitan Area, each have a police force<sup>9</sup>. The state police are responsible for patrol work and public order, arrests (when offenders are apprehended at or near the scene of the crime), and

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<sup>9</sup> Only Vargas State, just north of Caracas, has no state police force. It is served by a municipal police force.

community service. State police commanders have, with few exceptions, been picked from the National Guard, which reinforces some of the quasi-military characteristics of these forces (drilling, obedience, etc.). However, the uniformed police are a branch of state government, and the Governor is the commander in chief (in Caracas, the Metropolitan Police are under the Capital District Mayor's office). State police forces are regulated by a state Police Code, and also coordinated by an office in the Ministry of the Interior and Justice, which sets guidelines for internal procedures and compiles selected statistics.

Finally, beginning in 1990, wealthier municipalities in the country's largest cities began to set up municipal police forces. As of July 2001, there were 77 municipal forces in the country (MIJ/DGCP, 2001). They are attached to the mayors' offices and regulated by the state's Police Code and by municipal ordinance. Their functions are very similar to those of state police forces.

Given this relatively complex differentiation of police forces, it is perhaps not surprising that there have been recent legislative efforts aimed at integration. With regard to functional integration, the new Criminal Procedure Code and the Law on Criminal Investigative Police, both enacted in 1998 (Venezuela, 1998a; 1998b), sought to abolish the prior distinction between "judicial" and "public order" police, by making crime investigation an activity of all police forces and placing them, for the purposes of that activity, under the direction of the Public Prosecutor. In terms of administrative integration, proposals are currently being considered in the National Assembly to create a single "uniformed" police by merging state and municipal police forces, together with the Traffic Police (Asamblea Nacional, 2002).

## **IMPEDIMENTS TO ACCOUNTABILITY (I): INFREQUENT ACCOUNTING**

As in other countries, control of the use of force by the Venezuelan police is exercised in both the administrative and legal domains. The first corresponds to the police agency itself; the second to the criminal justice system. Administrative and legal controls are institutionally separate, although each may trigger action in the other domain.

Administrative control of the use of force can proceed by routine registration of police activities or through inquiry. In the first case, officers file reports on encounters in which force was used. In the second, the police administration gathers information on cases brought to its attention, usually through complaints from citizens. No comprehensive information exists on administrative monitoring of the use of force in Venezuela, but our impression is that control in this domain proceeds almost entirely through inquiry. In research conducted over the last eight years in four state police departments and one municipal department, we have not encountered a department that requires forms to be filled out when force has been used by one or more officers, nor did our informants mention the existence of such a procedure in other departments around the country. Indeed, paperwork is a scarce component of police work in Venezuela and, in these bureaucracies at least, oral communication is the norm<sup>10</sup>. At most, police officers are required to account for bullets used, but the objective is to control inventory rather than evaluate behavior. Such a situation can

be contrasted with police work in the United States, where a national survey found that more than 90% of police departments mandated the reporting of lethal force, and as many as two thirds required the reporting of non-lethal force (Pate and Fridell, 1993). At least half of the departments with mandatory reporting requirements reviewed all reports submitted.

In terms of monitoring through inquiry, each police department has an internal affairs division (often called the General Inspectorate) that is responsible for enforcing the disciplinary code (which includes sanctions for the inappropriate use of force ranging from arrest to termination). Likewise, the public prosecutor's office receives and processes complaints about police use of force and has the task of prosecuting officers when preliminary investigations reveal that the use of force was probably illegal. In both institutions, the vast majority of inquiries appear to be triggered by complaints – from the alleged victims of force, their families, friends or other witnesses – for the obvious reason that officers prefer to avoid administrative or legal evaluation of their behavior and rarely volunteer information to their controllers.

No systematic data exist on the proportion of use-of-force incidents that generate complaints, but there are some indications that it is low. For example, if, as has been reported, more than 2,000 civilians were killed by the police during 2000, it is striking that during almost the same period (October 1999 to September 2000) only 170 complaints regarding civilian deaths were received by the country's leading

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<sup>10</sup> Jordan (1996), comparing a U.S. and a Venezuelan jail, found that institutional communication was mainly by document in the former and face to face in the latter.

human rights NGO (PROVEA, 2000). Although many complaints were undoubtedly made to police departments and public prosecutors, one might expect the gravity of these cases to generate greater social concern, including the recourse to human rights groups.

A very different example comes from Mérida State in the west of the country, where we have conducted much of our research on the police. There, an interview with the public prosecutor's office in 1996 indicated that "ten to fifteen" complaints about police use of force were received each month; while the average monthly arrests made by the Mérida State Police during 1996 was approximately 200 (Birkbeck et al., 2001). In absolute terms, a rate of complaints that is somewhere between 5% and 7.5% of arrests indicates a relatively infrequent questioning of police behavior.

Complaints, of course, represent a fuller accounting of police behavior because they include the complainant's account of what happened in the situation. Additionally, they often elicit further accounting by the police agency involved. Thus, the volume of complaints is directly associated with the volume of accounting. If complaints are comparatively infrequent, it is an indicator that many instances of force use are considered "natural," for they generate no social reaction.

## **IMPEDIMENTS TO ACCOUNTABILITY (II): SUPERFICIAL ACCOUNTING**

### ***Rules and Training for the Use of Force: A “Culture of Generality”***

Rules for the use of force by the Venezuelan police are expressed as both *prescriptions* and *prohibitions*. Prescriptions specify when force may be used and are found in legal texts ranging from the Constitution to the procedural rules in each department. Prohibitions indicate when force may not be used and are found in the disciplinary codes in each department.

Prescriptions for the use of force by Venezuelan police are very general. Articles 55 and 68 of the Constitution (Venezuela, 1999) call for the protection of dignity and human rights by government, at the same time limiting the use of firearms and toxic substances by the police. The Penal Code (Venezuela, 1964), in Article 65, provides for the legitimate exercise of authority, including the lawful use of firearms by the police; and also for self-defense, provided that the means used in self-defense are proportional to the threat and that there has been no prior provocation of the aggressor by the person who acts in self-defense. Article 282 of the Penal Code restricts the use of firearms by the police to self-defense or the maintenance of public order.

As an example of departmental rules on the use of force, we may look at the Caracas Metropolitan Police<sup>11</sup> (Venezuela, 1995). These specify, in Article 67, that

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<sup>11</sup> The Caracas Metropolitan Police is probably the largest force in Venezuela, with 11,000 employees. Of these, 9,500 are officers, 650 of them in supervisory ranks. Seven hundred officers are women. The Metropolitan Police has been a model for other state police forces in the country.

police officers must use non-violent means for the purposes of maintaining order and keeping the peace. Article 68, referring specifically to the use of firearms, is a near textual copy of Point 9 of the Basic Principles on the Use of Force or Firearms by Law Enforcement Officials, approved during the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders held in Cuba in 1990 (United Nations, 1990):

*Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting authority or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life<sup>12</sup>.*

Nothing is indicated in the General Rules about the use of non-lethal force. However the Operations Manual of the Metropolitan Police (PM, 1982), which is a kind of “pocket guide” for procedures on the street, outlines a number of situations in which “physical arrest” may be made. Thus, such arrests can be made for robbery, brawls, failure to comply, and illegal public meetings if participants do not disperse. Persuasion is recommended if there is failure to comply, while the incorrect use of the baton is to be avoided. However, “incorrect” uses of the baton are not specified, nor the manner in which a “physical arrest” should be made.

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<sup>12</sup> The copy is **near** textual, because Article 67 contains a notable transcription error. Instead of indicating the use of a firearm to arrest (*detener*) “a person presenting such a danger,” it indicates its use to defend (*defender*) such a person! This is not a problem of translation, because the UN Basic Principles have always been available in Spanish. It is, rather, a typographical error, and its

Prohibitions on the use of force are found in the Disciplinary Regulations of the Metropolitan Police (PM, 2001). According to Article 64, officers will be terminated if they “cause injury to others by shooting, or otherwise using firearms or other weapons, in an improper, imprudent or negligent manner.” Unauthorized carrying of a service firearm while off duty leads to a written warning, as does carelessness or negligence in the use of equipment, including batons (Article 63). These disciplinary regulations, like those in place in other departments, do little to indicate specific behaviors or situations that are to be avoided. A judgment regarding the “improper,” “imprudent,” or “negligent” use of force essentially shifts the focus of evaluation to authorized uses (i.e., where force would not be authorized, it can be designated “improper”). Thus, prohibitions on the use of force add little specificity to prescriptions for the use of force.

The generality of the rules for the use of force is perhaps unavoidable, given the need to provide clear guidelines that are unencumbered by detailed descriptions of the variety of situations and sequences of interaction between officers and citizens that arise in the course of everyday police work. More problematic is the partial nature of these rules (for they provide only incomplete indications about the appropriate uses of non-lethal force), and the failure to accompany them with sufficient training. Training courses for state police officers last for six months, during which some attention is given to rules for the use of force (mainly lethal force) but more attention is given to target practice. While follow-up courses are a pre-

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appearance in the Regulations suggests that no great attention was paid to the rules for the use of

requisite for promotion, these do not appear to include refresher training for the use of force. Thus, formal rules for the use of force do not loom large on police officers' horizons, and they acquire only a general notion of its justified uses.

In prior research on officers' criteria for the use of force conducted in Mérida State, we found that although all of the uses of force were present in the sum of officers' responses to our questions, no officer gave a verbatim exposition of the departmental guidelines (Birkbeck and Gabaldón, 1996). In addition, it was noteworthy that officers included many circumstances – such as the need to respond to insults, or to punish citizens – that were not listed in the guidelines. Our conclusion was that not only did officers have a very superficial knowledge of the rules for the use of force, but that they were sometimes incorrect in their understanding of these rules<sup>13</sup>.

In sum, institutional provisions foster a “culture of generality” in rules for the use of force, in which detailed attention is not given to three aspects of the encounter which are arguably essential constituents of an adequate use of force policy: the citizen's behavior; the type of force used; and the specific objective behind the force to be used.

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firearms.

<sup>13</sup> One of the authors was intrigued to discover, in a workshop held recently with supervisory officers in Mérida State, that the rules for the use of force (read to them from the departmental manual) were apparently unknown to them. Our colleague, Yoana Monsalve, was also surprised to find that when she asked for a copy of the Caracas Metropolitan Police Operations Manual, this had to be searched for in the basement. Finally, a copy was produced and presented as “the Department's copy.” This, for a police force with 9,500 officers.

## **Minimal Accounting**

We have already referred to shoot-outs as a problem in accounting for the use of force, in part because they may misrepresent what actually happened in the encounter. That misrepresentation can occur is facilitated by two characteristics of the shoot-out. The first is the brevity of the account, as illustrated by the typical newspaper report that follows:

### **CRIMINAL KILLED IN SHOOT-OUT WITH THE POLICE**

BARCELONA (Anzoátegui State)(20/01/01)

*With the death of Willian José Chaguán, 34, the number of criminals killed since the New Year by members of the Anzoátegui State Police Operations Support Command rises to 17. The State Police Headquarters, in a press release, reported that the alleged offender, known as “The Sorcerer,” was killed during an exchange of shots with a police patrol that was trying to detain him in the Sucre neighborhood of Barcelona. According to the medical examination at the Luis Razetti Central Hospital, Chaguán died from two gunshot wounds; one in the left rib cage and the other in the lower jaw. A .38 Pucará revolver, found at the scene of the encounter, was said by police sources to be Chaguán’s. Chaguán had a record of property crimes, robberies and drug possession dating back 14 years. He was also considered a dangerous threat to the neighborhoods and had been wanted for robbery since 1997 (Marín, 2001)<sup>14</sup>.*

Here, nothing specific is said about the exchange of shots, or about the circumstances leading up to it. But an adequate evaluation of police behavior would require answers to many questions. Where did the exchange of shots take place? How did the police patrol get there? How many were in the patrol? Where was Willian Chaguán when the police first spotted him? What was he doing? Did the

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<sup>14</sup> This type of brief account may be compared with the detailed narration and critique (46 paragraphs) of a fatal police shooting in the United Kingdom, recently published in a leading newspaper there (Davies, 2001).

police tell him why they were there? Did Chaguán make any moves to resist arrest, or to escape? Where was the revolver found? Did Chaguán use it? Who shot first? How many shots were fired? How long did it take to get Chaguán to hospital?

The brevity of the account suggests that the police felt comfortable with providing only the information found here (and we should note that the journalist does little more than transcribe this brief account for the newspaper). And a second feature of the article provides a clue to the success of shoot-outs as accounts of police use of force. This is the description of the victim as a serious offender: his “record” was supposedly lengthy, he was considered a “dangerous threat” to neighborhood safety, and he was alleged to have a nickname (which would imply stable participation in the underworld). As we have commented in prior research (Birkbeck and Gabaldón, 1996), a common strategy used by Venezuelan police officers when challenged to account for their use of force is to portray the citizen as deviant or delinquent. In so doing, they tap into a near universal characteristic of social reaction that accords fewer rights and less respect and protection for the morally disreputable (Scott and Lyman, 1968; Sykes and Matza, 1957).

Violent crime rates in Venezuela have increased dramatically during the last 15 years. Most notably, homicide rates doubled from 8 per 100,000 in 1987 to 16 per 100,000 in 1992, and then doubled again to 33 per 100,000 by 2000. This trend has undoubtedly fueled social anxiety about crime and personal safety, especially in the nation’s capital where the homicide rate reached 101 per 100,000 in 2000. In a survey carried out in September 2000, crime (31% of respondents) was second only to unemployment (38%) as the country’s most serious perceived problem (Cortes,

2000). In a Caracas Metropolitan Area 1996 survey on urban violence (Briceño-León et al., 1997), more than 70% of respondents reported feeling “unsafe” or “very unsafe” in different parts of the city, including when they were at home. The same survey also revealed quite negative opinions regarding the criminal justice system. Half of the respondents judged the efficiency of the courts to be “poor” or “very poor.”

With such high levels of concern about crime and personal safety, and with only lukewarm opinions about the effectiveness of legal crime control, one response to the crime problem has been the use of violence against presumed criminals in some of the low-income neighborhoods of the larger cities, occasionally ending in death. These “lynching” incidents, as they are locally known, are not recorded separately in police statistics and can only be tracked if they are reported in the press. A 1998 study found 26 cases reported during 1995 (twelve deaths, 14 injured) and 26 in 1996 (seven deaths, 19 injured) (Han Chen, 1998). Despite their relative infrequency, there appears to be quite widespread support for, or at least tolerance of, this kind of behavior. A 1995 national opinion survey found that 57.2% of respondents approved of lynching as an alternative form of justice (Han Chen, 1998). The Caracas Metropolitan Area 1996 survey on urban violence found that 53% of respondents in low-income neighborhoods, and 36% of respondents in middle- and upper-income neighborhoods thought that it is acceptable to take the law into one’s own hands. Nor is the acceptance of extralegal responses to crime confined to civilian violence.

Almost one third of the sample (32%) in the same survey agreed with the statement: “the police have the right to kill criminals”<sup>15</sup> (Briceño-León et al., 2000).<sup>16</sup>

The shoot-out therefore represents a stereotypical account of the use of force in which the alleged disrepute of the citizen compensates for the lack of detail about what happened.<sup>17</sup> The result is that force becomes a “normal” phenomenon, requiring no special monitoring or inquiry.

From the perspective of this paper, it is interesting to note that counter-claims about what happened appear to focus more on defending the victim’s status than providing a detailed description of the sequence of events. Thus, of the 74 denunciations regarding false shoot-outs received by PROVEA for the period October 1999 to September 2000, only two acknowledged criminal behavior by the victim. The other reports used one of the following presentational strategies: criminal behavior was “alleged by the police;” it was a case of mistaken identity; or the victim was a “respectable” citizen (worker, student, etc.)<sup>18</sup>. In this contest over status, the situation tended to fade from view, as in the following example:

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<sup>15</sup> Note the extreme abstraction of this statement, devoid of any situational detail. This could be cited as another example of the (social, rather than institutional) culture of generality surrounding the use of force by the police.

<sup>16</sup> Attitudes toward offenders, and the unwillingness to grant them some of the same rights as other citizens, appear to be similar in Brazil (see Mitchell and Wood, 1998).

<sup>17</sup> For example, in earlier research involving interviews with supervisory officers of the Mérida State police, we heard the following commentary: “Some time ago in -----, a guy tried to escape from a police officer, and the latter shot and killed him. This could have caused problems for the officer, *but they were able to show that the dead man was a “bad” guy*” (Birkbeck and Gabaldón, 1996:121, emphasis in original).

<sup>18</sup> In a few cases, no information was provided on the victim’s status.

PEÑA, Douglas. 33 years old. La Victoria, Aragua State, 18.04.00  
*Peña was helping a woman who sells fruit and vegetables, when a group of policemen went up to him and shot him at point-blank range. Official version: shootout. (PROVEA, 2000:380)*

Here, the information is so scarce that it is impossible to make sense of what might have happened<sup>19</sup>.

### **IMPEDIMENTS TO ACCOUNTABILITY (III): DIFFERENTIAL “ACCOUNT - ABILITY”**

For obvious reasons, most encounters between police and citizens are only known about second-hand, through accounts of what took place. A given incident could generate several accounts – by the victim, bystanders, police officers involved, medical examiners, prosecutors, defense attorneys, journalists, etc. – which vary in level of detail and type of content. There may be contradictions between these accounts, as frequently revealed by complaints which pose the victim’s version of events against the officer’s. Accountability requires a decision regarding the version of events to be accepted as authoritative.

One strategy for evaluating accounts is to look at their content. If they are incomplete or inconsistent, there are reasons for doubting their validity. Thus, the Chief of the Mérida State Police commented: “When two officers are involved in an incident, you can find the truth. Because if there’s something wrong, there will

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<sup>19</sup> In fairness to PROVEA, we should note that this account is taken from an Appendix to its Annual Report, in which each of the 170 cases of alleged misuse of force is presented in summary form. It is possible that fuller accounts are available in the organization’s files, but it is nevertheless interesting to note that the case narratives are, in general, as superficial as the “shoot-outs” they seek to question.

always be one contradiction or another” (Interview, 04/04/96). His view, however, was not shared by a local judge, who felt that the police never accept blame and fabricate a version of events that they all stick to when under inquiry. When we asked her how she dealt with conflicting accounts of an incident, her reply was very revealing:

*Conflicting accounts are easily resolved by weighing the evidence. For example, if three witnesses say one thing and the officer says another; you throw out the officer’s version because you have three accounts against one. You need at least two witnesses to establish the truth of the account. (Interview, 11/06/96)*

Here the judge was describing the method for comparing accounts that was, and still is, widely present in Venezuelan judicial practice. Rather than evaluating accounts by content, attention shifts to the number of accounts presented by each side. The winning account is decided by numerical advantage, even if all witnesses for the winning side give an unashamedly identical description of what allegedly happened.

Apart from accounts provided by the police, the victims, and witnesses, additional information can also be crucial in helping to construct an adequate narrative of the incident. In that regard, medical examinations can often provide important data, at least in cases where firearms are used. Thus, it is no surprise that human rights organizations often include information about the number and location of bullet wounds in their denunciations of police violence. For example, a victim that

has nine bullet wounds – many of them in the back – was probably subjected to execution rather than control<sup>20</sup>.

But another reference that is frequently used in evaluating narratives and deciding on an authoritative account is the status of the narrator. The following comment from our judge, concerning doubts about the legitimacy of police actions in response to an armed robbery, is also revealing:

*But I think the case was very clear, because they fired on the police. Also, you can see that they are very dangerous individuals. One of them is always sending me notes, asking me to release him from prison. But the other one looks very dangerous. In fact, I don't even like him to come to court, nor the way he looks at me. (Interview 11/06/96)*

One wonders how much credibility was given to evidence offered by these defendants. The following case, narrated by a supervisory officer from the Mérida State Police shows how low status can negate the credibility of a complaint:

*Once when I was on patrol, we arrested a guy on a motorbike who was a marijuana dealer. We got him into the patrol vehicle, which had no partition between the front and the back. I was riding in the front when suddenly the guy hit me very hard on the side of my face. I turned round and punched him so hard that I knocked out two of his teeth. The next day the arrestee and his lawyer presented a complaint to the Chief. He still had the two teeth in his hand. But when they called me in they could see that my face was still swollen. Also, we had the marijuana to prove that the guy was a drug dealer. The Chief turned to the lawyer and said "Your client isn't a decent citizen, he's a criminal," and dismissed the complaint. (Birkbeck and Gabaldón, 1996)*

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<sup>20</sup> An impressive example of medical evidence used to counter alleged "shoot outs" can be found in Cano (1997).

In many examples collected during the course of our research, it has become clear that the greater the social status of the accountant, the greater the probability that his or her account will be accepted by others. To this effect of social status on credibility, must be added its effect on the capacity to construct and circulate accounts. Once again, higher social status means greater resources for constructing accounts (by mobilizing witnesses and official or unofficial inquiries) and for circulating them (by access to government, NGO's, the media, etc.). "Account – ability," the capacity to construct and circulate accounts and have them believed, is therefore a crucial dimension in the evaluation procedure that is a prerequisite of legal and administrative accountability. Our research suggests that the Venezuelan police are at a comparative advantage when defending a definition of the situation against the counter-claims of petty criminals, but that they are at a comparative disadvantage when faced with politicians and other prominent citizens.

## **CONCLUSION**

Accounts of the use of force by the Venezuelan police are relatively infrequent, comparatively superficial and weighted positively or negatively by the perceived status of the narrator. These characteristics represent serious impediments to the evaluation of police behavior and substantially weaken the possibility for adequate accountability.

Three strategies suggest themselves as partial solutions to the situation we have described. First, police agencies could implement reporting requirements for the use of force, notably lethal force. This would augment the frequency with which

accounts of use-of-force incidents are prepared. Second, provisions could be made for the review of use-of-force reports by police administrators and public prosecutors, thereby strengthening the monitoring process. Third, and perhaps most importantly, mechanisms could be set up to strengthen the complaints procedure by providing greater access to, and assistance for, the public. In this regard, it is interesting to note that the General Rules of the Caracas Metropolitan Police (Venezuela, 1995) include a provision for a Commissioner for Human Rights and the Police, who would receive complaints, process them within the Department and, when necessary, forward them to the Public Prosecutor<sup>21</sup>. However, this provision has not yet been implemented. Doing so would undoubtedly provide some counter-balance (even if small) to the differential account – ability that we have described in this paper.

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<sup>21</sup> The same figure is included in the proposal to create a single uniformed police force (Asamblea Nacional, 2002).

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# **INFORMALITY AND MISTRUST AMONG POLICE OFFICERS IN VENEZUELA.**

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## **The context**

The police, as an institution, reflects affirmation of the State power. With the increase of modern urbanization, pressure on the police all increases. Small cities require lower profile and less sophisticated social control agencies than metropolis, including the police. As far as the police keep pace with urban development, new branches and demands for social control develop. Latin American cities are not an exception, and with rising inequality, poverty, migration and crime, tasks and demands on the police become more burdensome. As far as crime rate rises there is more constrain for social control, even if resources do not increase, both in real terms or as perceived by police officers. Besides, these officers must comply with procedural rules in order to bring suspects to prosecutors and judges, those formally in charge of the punishment and the neutralization of wrongdoers. If the police deal with matters only within the procedural rules, their action could be perceived as insufficient and inefficient. Thus the tendency to develop flexible means for dealing with situations and individuals deserving social control.

The purpose of the following discussion is to present some facts and perceptions about the police behavior related to social control, as they emerge from a study using participant observation among metropolitan police officers in Caracas, Venezuela, between September 1997 and November 1998, within a broader research project on informal rules of police behavior in three Latin American countries (Venezuela, Bolivia and Chile). The study addressed satisfaction in their job by officers and work efficacy, particularly considering support the hierarchy and by the fellow officers. It addressed, as well, the position of the police in the criminal justice system, in particular the trust about other agents of that system, i.e. the prosecutors and the judges, assuming that interaction between agents is crucial for forecasting outputs in criminal justice. The preliminary ideas which oriented the research project were related to the intuitive and widespread belief about the peripheral role of written rules for governing police actions in Latin America. The relatively low weight of such rules for setting the pace of police behavior could have to do both with increased perceived external pressure from community to act efficiently against crime, as with the internal belief among police officers about the unreliability of the formal criminal justice system to punish and deter properly the offenders. The research was oriented to explore these perceptions and to reconstruct the discourse and the arguments for more flexible and alternative mechanisms for social control applied by the police, while excluding or minimizing the participation of other formal agencies for social control.

## **First profile: Police responses to community expectations.**

Even if within the modern State formal procedures are established for governing the action of formal social control agents, there are principles and expectations which are not regulated through formal rules. The development of the latter operates through informal norms forged by the police during everyday routines. They are intended to respond to what police officers perceive as the community demand (Bayley and Bittner, 1997). In such a way, community expectations become an important source for discretion and police officers justify their behavior upon the authority delegated by the community for doing their job (Cohen, 1985). The array of informal norms developed by the police can be consistent with legal rules, being thus a development of these, or can be incompatible with them, becoming administrative or criminal infractions. The central issue about the study of such informal norms is not only what the police do but the reasons the police officers give for what they do. These rationalizations in the aftermath of their actions is an expression of what the officers believe they have to do for responding to society requirements (Cohen, 1985), and this is consistent with what Bayley and Bittner (1987) mention as skillfulness in police work, understood as expediency and ability to solve on the ground different conflicts, a matter which, as the officers say, is not learned in the police academy nor is written in any police manual. It is a kind of skill for knowing the pertinent rule, or to create it, based on specific situations.

There is the possibility that police will perceive lack of support among other formal social agencies, as the judiciary. If this is the case, it becomes possible the use of force as an alternative for every day situations, particularly when the intervention

of the judiciary for restraining this form of punishment is unlikely and when such a use is perceived to be supported by fellow or by commanding officers.

Within this context becomes relevant the consistency between social expectations and police behavior. The consistency "coefficient" would measure the degree of satisfaction in the community about the police work. In case of great inconsistency would be expected a sense of disrespect and disobedience not fostering order and public safety; thus, a positive attitude by the community reveals, necessary, their involvement in monitoring police behavior (Cao, Stack and Sun, 1998).

## **Second profile: Police environment of work and solidarity.**

The quality of vertical and horizontal communication is an important variable in institutional efficacy and efficiency, considering that roles and institutional objectives become clearer as soon as communication is fluent and positive perceptions of support and consistency develop among members of the organization (Jordan, 1996). Research on the police has addressed this issue, showing the pattern of a police subculture defined by support and solidarity among fellow officers. In fact, between peers is developed support as a way to deal with dangerous situations and to provide defenses. The particular features of such a subculture define each police environment (Schmid, 1996). Support and solidarity sustain police work, and if it is true that sources for police authority are both the law and the discretion built upon community support (Cohen, 1985), satisfaction and efficiency at work depend upon internal cohesion, which is translated into support from the hierarchy and the fellow officers.

### **Third profile: Police confidence in the Criminal Justice System.**

According to Cain (1973: 18) and Schmid (1996: 369) the police bear the certitude about how is or is not guilty, and cynicism develops because the judiciary will not bear more knowledge or information than the police do, and thus the sentences eventually imposed will not be more legitimate than the punishment the police inflict on the criminal. In this perspective, the judiciary and formal procedure become a hindrance for justice. This perspective could be opposed to the common sense Latin American discourse on the police, according to which the latter is a part of the repressive apparatus of the State, in behalf of the wealthier classes (Zaffaroni 1987: 790; Pinheiro 1991: 175; in Gabaldón 1993). Within this discourse, police action is not viewed as a supplementary form of justice but as the expression of an authoritarian response by the State in two fronts, that of the judiciary and that of the police. Research on the police in Latin America, nevertheless, could alternatively address the question of the dysfunctional relationship between the police and the judiciary, a matter that would challenge the idea of common goals within the broader concept of the criminal justice system.

### **The data from the Caracas Study.**

Field work was carried out among Metropolitan Police of Caracas, the largest metropolitan police force in the highest crime rate city in Venezuela. The large east police percent n. 7 was selected as site for observation, which includes 6 urban boroughs (parroquias) and had 875 officers in the line of duty. The area covers a wide spectrum of residents, from high to middle class households, to 750 slums around the

Petare sector in the extreme east side of the city. Most common crimes include homicides, robberies, burglaries and use of firearms, particularly in the slums.

Sixty-six, both plain officers as commanding officers, were interviewed on a random basis, choosing on a daily basis those willing to talk and with time availability to do so. Interviews were transcribed and used after a revision of syntaxes and semantics in terms of basic semiotic analysis (Navarro Díaz, 1995). This allowed to disentangle, from descriptions and comments from officers, the criteria used for routine work and for solving situations. Reiterative mentions and meanings were consolidated in significant clusters in order to assess tendencies. In general, interviews were carried out openly and in a environment of trust between the researcher and the informants. The starting point was usually an event or a police dispatch call remembered by the interviewee, which allowed to elaborate and to reconstruct his/her behavior and the reasons given for it. This allowed to single out the officer attitude and dispositions toward the police work and to expand the dialogue.

Researchers were also admitted to join officers in street operations as routine patrol work, check points, swamps and visit to night entertainment places. Records were kept from these activities which allow to understand attitudes and dispositions of the officers toward citizens and situations. These observations, since the purpose of the research is not quantitative, but rather qualitative, help to give a broad perspective on the police, even in perspective of future studies on the subject.

### ***Support and cooperation with the Judiciary and the Public Ministry.***

In our research, 23 officers out of 24 interviewed who referred to the topic were emphatic claiming that not the judges nor the fiscal attorneys were cooperative and supporting; instead, they were viewed as a hindrance toward the police action and as a threat to police moral integrity. In case of abuse of a citizen by the police, the fiscal attorney would be ready to begin an internal investigation and to present charges. These attorneys block and criticize police action because they underestimate the risks the police officers face in duty. An officer put it this way:

*... you have to look for the criminals and they hide everywhere. They take advantage of a sort of immunity, because in case of death or wounds in a shoot out, soon appear the family, the fiscal attorneys and the lawyers.*

Regarding the judges, there seems to be a widespread perception of worthless agents for preventing and for fighting crime, because the police efforts are destroyed by negligence and corruption among judges, criminals and even the judicial police. An officer put it this way:

*Wish I would be treated as a criminal. Judges are flexible and there is bigger effort from the police for capturing them than the commitment of the judges for keeping them safe. There is big corruption.*

And another says:

*I have captured a guy four or five times for drugs and the following day he is out.*

Some of the officers defended direct punishment from the police due to the soft approach by the judges, and in order to compensate it. An officer put it this way:

*It would be nice to "break" the criminal, but you can not eliminate him because a shield of protection there is around there.*

In general, we could perceive that the police would prefer to ride a criminal policy which is not consistent with the action of other instances of the criminal justice system. This shows independence of goals among different institutions.

### **Support from the hierarchy.**

Police officers perceive that in case of a failure in duty that put them in risk of criminal prosecution, the hierarchy should offer them support for an effective defense in a criminal case. Seventeen officers out of 22 interviewed mentioning the issue declared not to receive any support from the legal aid department of the police, in such cases. Some of the narratives from the officers sustain this perceptions:

*There were 3 criminals whom we have to chase. I climbed on the barrio. There were a shoot out. The thugs were on a roof and one of them jumped from a height of 3 meters and ran on the pathway. I shot three times and killed him. A procedure was opened and I realized that I got no help in defense and being a cop does not pay. After a year of inquiry, finally the investigation was closed.*

The interviewed officers put it clearly that they expected legal assistance by lawyers, because the salary is insufficient for paying such costs, particularly considering that these issues arise in the course of regular and routine duty activities.

### **Support from the fellow officers.**

Most of the officers perceive support from their fellows, because they have to face equivalent risks, during regular duty. Twenty two officers out of 24 interviewed mentioning this issue gave a positive image about their fellow officers. The following account shows this pattern:

*There was a robbery and the situation went out of control. I was young and got a shot in the groin.. I did not feel anything but fell out. My fellow asked for back up. In a moment arrived 50 officers, and one of them said: when a fellow is wounded we intensify patrol.*

And one female officer expresses it this way:

*My fellows are with me as I am with them, if an arrestee escapes, all of us are a group.*

### **Availability of human and material resources.**

Officers complain about the equipment, which is viewed as outdated and ineffective as compared with weaponry in the hands of the criminals:

*Punks go better equipped than the police, with automatic pistols. Once the officers of a municipal force (Polisucré) left the punks leave because they have no training for proper use of arms. They even used stones. It is unconceivable that a consolidated police force should carry outdated weaponry.*

Two different claims underlie the above mentioned statement: the lack of proper equipment, in this case firearms, and the lack of training in their use, since seldom training while on duty or update techniques are applied, after graduation from the academy of the police.

### **Formal rules while on duty.**

Officers widely recognize informality in their daily routines. Thirty one interviewees out of 34 mentioning the issue said that the majority of the procedures and actions are carried in such a way. By formal rules they refer to written policies and by informal ones they refer to tactics used for solving situations on the ground.

Particularly in the dramatic situation of a shoot out there seem not to be a written rule to deal with it, and the important thing is to invent in order to control the situation and to escape alive from the shoot out. Some of the comments are emblematic in this sense:

*To stand by the book at any intervention is unlikely. The officer should act on own initiative, and using the firearm thinking in the Manual is risky. The officer should have ' long view, short step and malice '. There is difficult to know the written norms, because they are so many.*

To comply with formal rules would expose life. Norms will not tell what to do to safe yourself: “*Norms are secondary, first is life*”, said an officer. Another one told to us the following situation:

*We were by the slum at midnight. I found in my round a guy in underwear, who has been robbed. This guy came into the patrol car and soon we found the stolen car from the guy. My fellow officer said he was to stop suddenly, and then I shot a round. We got back everything and arrested the robber and got his firearm. In this situation the normal is neutral. I could not wait until the suspect shot at me. I acted promptly. This is the way it is, and you are side by side with your fellow officer. I don't know every norm, but I have learned from the elder fellows, following their instructions while on duty.*

Implied in the above mentioned account is the assumption that formal rules do not fit with reality, partly because not all the cases can be forecasted and partly because they do not satisfy expectations of the officers, and, in cases, to comply with them involves serious risk of life. Norms are perceived to protect ordinary citizens from police actions, instead of regulate strategies for controlling citizens in particular situations. Behind this judgement it is possible to speculate if such profile of the norms is, indeed, based on a perception of authoritarianism in the police that should be restricted by those who write such norms. And the predominance among officers

of accounts related to the use of force would be a way of disregard, in general, norms and rules not devised for reasonable procedures in less conspicuous cases.

## **Perspectives.**

Two important issues emerge from this study. Firstly, police officers usually say that routine police work is informal, in the sense that manuals do not contain precise criteria or guidelines for doing it, but instead they develop it through an informal process of learning from more experienced officers on the ground, ways which are a matter of trying and redressing. In this sense, many situations as shoot outs, arrests and internal investigations requiring access to law counseling seem to be devised "on the spot". Secondly, police officers seem to perceive themselves as an isolated body among the other agents of the criminal justice system, being their work tampered by judges and prosecutors.

The findings open a way for considering the power to punish developed by police officers as a separate and autonomous power from the State, which in modern societies restrict such a power to the judiciary, through formal rules of law. If the police do not consider themselves as an integrated part of the State system of justice, because prosecutors and judges "put free" criminals or restrict the police from some spaces and procedures, police officers could develop justifications and ways for punishment "informally", which can have a wide array of options and levels of intensity worthy of study, inventory and control, within the scope of rationalization of criminal justice. The next steps in our research point in this direction.

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# **THE GOVERNANCE OF THE USE OF POLICE FORCE IN BRAZIL**

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## **INTRODUCTION**

This text focuses on the rules and practices relative to the use of force by the Brazilian police, emphasizing the gross human rights violations and/or civilian executions carried out during the 1990s. Thus, the study reconstitutes and analyzes the structure and dynamics of the two main police forces, discussing the institutional terms which legitimate these actions.

This standard of police action is registered in the context of an incredible increase in homicide and other violent crimes, which, in turn, establish great challenges for agencies of social control such as the police force, which, besides being unprepared, reproduce authoritarian practices which go against the democratic transition initiated in the first half of the 1980s.

A brief description of the increase of violence in the country shows that, since the 1980s, and coinciding with democratic transition and economic crisis, homicides occupy a prominent place in the profile of mortality, constituting the second highest cause of death within the population in general, (Souza 1994).

Contradicting Brazil's self-image as being a tolerant and peaceful society, the homicide rate reached, in 1994, a level of 30.1 per 100,000 inhabitants<sup>22</sup>, only inferior to that of Colombia, (65 per 100,000), and superior to that of other countries of the Americas: Canada (2 per 100,000), Chile (2.8), USA (7.2), Equador (12.4), Mexico (14.6) and Venezuela (19) (OMS/OPS 1998).

The elevated mortality by means of homicide occurs in all average to large sized regions and cities, with variations in the nine metropolitan areas of the country. The highest coefficients in 1997 were in Rio de Janeiro (59.4 per 100,000), São Paulo (55.6 per 100,000), Recife (45.5 per 100,000), and Salvador (33.6 per 100,000). While the lowest figures were found in Belo Horizonte (16 per 100,000), Belém (19.5 per 100,000), and Curitiba (19.2 per 100,000) (Ministerio da Saude 1997).

The most shocking figures refer to the masculine segment within the age bracket of 15 to 24, in which mortality by means of homicide (86.7 per 100,000), classify the country in the leading position in world ranking (PAHO). Such

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<sup>22</sup> Brazil is a federal republic with a territory measuring 8,514,215 Km<sup>2</sup> in which political and administrative organization comprehends the Union, the States, the Federal District, and the Municipal Districts. In the year 2000, the population had reached 165,906,693 million inhabitants, living in a more concentrated manner in the southeastern, northeastern, and southern regions of the country.

proportion is also much higher than that of other countries in the Americas: Mexico (39.7), USA (27.9), Argentina (10.7), Chile (6.1), and Canada (3.0) (PAHO 2002).

The mortality coefficients accompany social exclusion (Drache 2002) affecting poor workers and non-whites more than individuals of other social levels. This is shown in data from Salvador, the third most populated city in the country, where, in the poor districts, the homicide rate reached, in 1994, 101.8 per 100,000, while in the wealthier districts, the rate was only 3.6 deaths per 100,000 (CEDEC 1997).

As far as economic cost is concerned (measured by doctor and hospital expenses as well as those of public and private security), the result was estimated by means of research financed by the Interamerican Bank of Development as 10.5% of Gross Domestic Product (GDP) in 1996 (Conjuntura Criminal 1999) – a significant volume of resources which, if it were applied to the prevention of violence, could have more effective results.

Socio-institutional costs refer to the dissemination of insecurity and fear, disintegrating communities, aggravating segregation, and intensifying the intolerance among the wider segments of society (Noronha 2000). Such reactions explain the social support given in Brazil, such as that which occurs in some countries in the north-western hemisphere, to the hard and arbitrary criminal policies which hold as their targets preferential individuals belonging to the so-called dangerous classes of society (Garland 2000; Young 1999).

For now, as in the case of those countries, police act with greater intolerance against deviants. Keeping within certain limits such as having respect for the physical integrity of human beings does not happen in Brazil. Here, the police, in the war on crime, vastly utilize lethal force against delinquents and suspicious characters.

## **POLICE EXECUTIONS**

Apart from abuses inflicted by authorities in other democratic societies (Stenning 2001), the Brazilian police forces use many other arbitrary and violent resources, among which homicides stand out (Chevigny 1995; Hugguins 2000; Cano 1997; Cedec 1997; Lemos-Nelson 2001; Paes- Machado et al. 2001; Paes-Machado et al. 2002).

The high number of Brazilian police homicides reflects the type of mandate for policing. The three most populous Brazilian cities are Sao Paulo, Rio de Janeiro, and Salvador. In Sao Paulo, the police killed 1,428 people in 1992 (1,421 by the Military Police and 7 by the Civil Police). Although this violence declined in 1993 to 300 annual murders, it rose again to 430, in 1998, and 664 in 1999.

In Rio de Janeiro, police homicides doubled between 1997 and 1998, with 430 civilians dead in 1998, totaling 38 violent deaths a month. While in the more prosperous areas, one policeman was killed for each 35 murdered people, in the slums this proportion increased to one policeman for each 75 killed civilians.

Proportionally, Rio's rate of lethal violence is double Sao Paulo's (Cano 1997; Hugguins 2000).

In Salvador, the proportion of police homicides was 21% (Cedec 1997) in 1994, which surpassed that of São Paulo and Rio de Janeiro (10%) (Cano 1997).

Among these victims are numerous people who were killed trying to escape (Cano 1997), or were represented as such by police (Barcelos 1991). In the first case, the suspects take the initiative of running away from the representatives of the law; in the second, the policemen fake situations of escape, obliging suspects under their responsibility to run in order to permit the police to shoot them. An analysis of autopsies showed that the poorest victims had four or more bullet wounds, mostly in the back, in the thorax, and the head. Shot in the back, the victims were escaping from and not confronting the police (Cano 1997) as was claimed by the police and reported by the press.

The desegregation of these rates by the distinct social levels proves that poor juvenile males (Cedec 1997; Sousa Santos 2000; Birkbeck 1996; Zaluar 1994) and non-whites (Adorno 1999) are the main target of the policing policies of the poor workers (Cray 1972; Lee 1981) and of the war against crime.

In Sao Paulo, of the 664 victims of police violence in 1999, 48% lived in lower class districts in the capital city, 55% were black, 51% were between 18 and 25 years of age (11% were under age), and 58% did not possess criminal records (Police Ombudsmen of the State of Sao Paulo 1999).

In Rio de Janeiro, the characteristics of the victims are similar: 70% were young people between the ages of 18 and 25, black (62%), poor, and without criminal records (Cano 1997). In Salvador, on the other hand, 97% of the fatal victims of the

police in 1997 were male, 47% were between 15 to 29 years of age, 76% had had only an incomplete elementary school education, and 99% were black-mestizos (Sousa Santos et al. 2000).

If a significant part of these homicides were committed by agents on duty, another part occurred when the policemen were off duty, working for private companies or persons, death squads, and groups of security guards (Huggins 2000). In Sao Paulo, in the year 1999, 63% of 109 civilians eliminated by military policemen were killed by policemen working for those companies. Among the civilian deaths caused by the Civil Police (CP) in the same state in 1999, half occurred when the agents of this police force were working off duty for public security (Huggins 2000).

By expressed order or imitation of poor policing models (Shearing 1992), these policemen make use of lethal force with the support of their private contractors and the negligence or approval of authorities.

On the inaccurate frontiers which separate the formal and informal, legal and illegal security market, data for the metropolitan area of Salvador corresponding to the period 1996 to 1999 show that of a total of 4,248 murders, 8% were the result of action taken by death squads and extermination groups composed of civil and military policemen (Ribeiro 2000) at the service of merchants, poor inhabitants, and others<sup>23</sup>.

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<sup>23</sup> The homicides, with the participation of groups of extermination, are denominated “slaughters” when they reach more than one person (Noronha 2000). The systematic accompaniment of information published in the press in Salvador indicates that in 1995 there were only 25 slaughters of this kind, killing a total of 68 people (Pellegrino 1997). Likewise, the most famous slaughters were those of the 111 rebelling prisoners in Carandiru Prison in São Paulo in 1992, of 8 boys living in the

In most of these events, the victims are immobilized and tortured before dying. The police agents involved seek to prevent the identification of the victims by removing the bodies from the site of execution, destroying their identity documents, burying and deforming the bodies, etc.

In this great market of in-security, the demands range from security actions against poor people who problematize the image of certain places – frightening off consumers and disturbing the inhabitants' peace – to actions of a more drastic character against delinquents or “marginal citizens” (Paes Machado et al. 1997).

The most valued workers in this role are those policemen who, besides their service experience, rely on the rear-guard and the power of retaliation of the public police to intimidate and, if necessary, eliminate delinquents for amounts equal to or less than US\$400.00 (Paes Machado et al. 1997; Paes Machado et al. 2001).

Reasons for murder by police do not stop here; there is evidence of police participation in illegal markets of stolen goods (Paes Machado et al. 1996) and drugs (Lemos-Nelson 2001). Making use of their power of retaliation, the policemen become agents, partners, and leaders of criminal enterprises, dedicating themselves to collecting their “payola” or actually monopolizing illegal business. This huge scale of use of lethal force is related to policing organization and accountability.

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streets of Rio de Janeiro in 1993, of 21 slum inhabitants in the same city in the same year, and of 19 rural workers in the state of Pará in 1996.

## POLICE ORGANIZATION

### **Background**

The Police force goes back to Brazil as a colony and during the period of slavery where, apart from private policing carried out in the sugar plantations by overseers or country captains, there was public policing to assist the troops responsible for territorial defense.

Such a type of policing persisted until the first decade of the 19th century when the first specialized police force was created: The General Superintendency of the Police and The Royal Guards of the Police, the former having been inspired in the French institution *Lieutenant General de Police* (Waldman 1996; Tavares dos Santos 1997; Bretas 1997).

By means of these two police forces, the state began to provide instruments of control – which before this were entrusted only to the class of land-owners and their private agents – in order to repress and exclude the segments of the population which received little or nothing of the benefits guaranteed for the ruling minority (Holloway 1997). This system, created for the purpose of facing the virtual political rebellions of urban slaves, began to fulfill new functions in a changing socioeconomic context, maintaining, however, a reasonable continuity regarding structure and procedure (Holloway, 1997).

The General Superintendency of the Police took care of the administrative supervision and lawsuits, and was managed by the Minister of Justice himself who, besides being responsible for policing the capital, appointed the chiefs of police of the

provinces. Staffed for several decades by unpaid officers such as justices of the peace, subordinate chiefs of police, and subordinate inspectors, the Superintendency began to compensate its chiefs in 1871, a period in which it also lost part of its judicial powers (Holloway 1997; Bretas 1997). The Superintendency took on functions of political control, supporting fraudulent electoral schemes and the intimidation of political adversaries (Lemos-Nelson 2001).

Created for the purpose of patrolling the streets, the Royal Guard was substituted in 1831 by the Military Police, conceived as the Armed Forces of the Police of Rio de Janeiro, then capital of the Empire and model for similar organizations in the rest of the country (Mattoso 1992; Waldman 1996; Holloway 1997). From its beginning, the Military Police applied punishment and employed policing techniques such as humiliations, threats, and physical aggressions which reinforced public hostility. In rural areas, local private authorities, linked to groups of land-owners and merchants, incorporated part of the new policing model in order to maintain the existing relationships of power (Mattoso 1992; Holloway 1997).

The Republic, proclaimed in 1889, contributed to the improvement of qualifications and in making the police a little less subject to the game of political influence. It also created a new uniformed force – the Civil Guard – to complement the action of the Military Police as important material and managerial improvements were carried out in the Civil Police (Bretas 1997).

Amid these advances, the police reaffirmed client-like relationships with the elite in power, who tolerated police violence and corruption as long as they were only

being directed towards the popular classes. The expectation of the elite was that public order be maintained, no matter what methods were used by the policemen against the masses which were considered uncontrollable and inferior (Bretas 1997).

With the Revolution of 1930, the power of the local private authorities was reduced and the first police academies were founded. The Civil Police, in turn, was refashioned to act as a secret political police force against the political adversaries of the dictatorial regime of Getúlio Vargas.

This legacy prevailed in the following decades when new authoritarian impulses, such as the 1964 coup d'état, prioritized the ideology of the cold war and the fight against domestic allies of international socialism and communism. For this reason, policemen began to be trained in anti-guerrilla techniques by qualified instructors from North American military academies. The police forces were armed with machine guns, developing coordinated actions among themselves and with the armed forces to watch, arrest, extract information, and to eliminate members of political organizations considered subversive.

It was also a time in which the death squads – which initially arose in São Paulo in the Civil Police Force at the end of the 1950's in order to execute delinquents – began to integrate the repression of political opponents of the government, intensifying the elimination of suspects and eventually becoming an important link to organized crime in the 1980's (Barcellos 2001; Mingardi 1991).

During the transition from a military to a civilian regime, from 1979 to 1985, the congressional lobby of the military police obstructed (as it continues to obstruct)

reforms by members of parliament who feared being accused of retaliation against the authoritarian regime, and thus kept the old police model intact.

### ***Current Situation***

The Constitution defines safety as a universal condition for the development of personality and collective coexistence, an obligation for the state and a right of the citizens, to be exercised for the preservation of public order and property (Brasil 1988; Cretella Júnior 1988)<sup>24</sup>. Responsibility for public safety is allotted to various agencies at the federal, state and municipal levels by means of a hierarchy of police forces (Brasil 1988).

The Federal Police (Table 1) has more extensive responsibilities. In order to fulfill them, the Federal Police (henceforth FP) which is subordinate to the Justice Department, has regional superintendencies, police stations, branch offices, and river and land bases. The FP was directed by military officers and actively participated, along with other police forces, in the repression of the political dissidents of the dictatorial regime during the 1960's and 70's. In general, the FP is very far from fulfilling its functions in controlling illegal activities (drug traffic, commercialization

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<sup>24</sup> In almost 180 years of history as an independent country, Brazil has had eight Constitutions. The first was written in 1824 when the country gained its independence, the second was inaugurated in 1891 soon after the fall of the monarchic regime and the creation of the Republic. After the Revolution of 1930, the dictatorial government of Getúlio Vargas instituted the Constitutions of 1934 and 1937. With the fall of the dictator and the return to free elections, the Constitution of 1946 was created. At this time, Brazil had a short and vigorous democratic period which was interrupted by the coup d'état of 1964. At this moment of political intolerance, the provisional government of 1964 introduced an amendment to the Constitution of 1946 which remained in effect until the second half of the 1980's and was then substituted by the Constitution of 1988.

of weapons, smuggling and shipping of money outside of the country) and security supervision.

The Military and Civil Police Forces (from now on referred to as MP and CP), act within the limits and under the administration of the 26 states of the Union. The MP and the CP have differentiated responsibilities of preventive and investigative policing, which, in the majority of modern police forces, are gathered into a single organization. The consequences of this fragmentation of activities, called police dualism (Soares 2001), go beyond the traditional rivalry among police departments (Maguire and Norris 1992; Hobbs 1988), increasing the competition for scarce resources, limiting communication, and impeding joint decision-making.

Both police forces nominally owe obedience to the state governments under specific secretariats which have variable denominations across the country, and which, with varying other responsibilities, coordinate the activities of the two police forces. However, only the CP is effectively subordinate to the state governments, given that the MP is under their administration and at the same time under the control and coordination of the federal government, and, in particular, the armed forces (Cretella Jr. 1988).

Though a subversion of federative principle (Soares 2001), the juridical statute of the MP, as an auxiliary force to the Army, guarantees the power of the latter over civilian political institutions in controlling the MP, restricting the authority of the states, and reducing accountability (Bayley 1985; Brodeur 1994).

If the MP organization assures a certain autonomy from interference due to external policies, the same does not occur with the CP or judicial police.

The civil police is an auxiliary force of the judiciary which investigates crimes, prepares inquiries, and instructs in legal processes. Accordingly, this police force selects the cases to be sent to the judiciary, determines the profiling of the accused, and selects crucial evidence for trials. The civil police, subordinate to the political control of the state executives and acting simultaneously as an auxiliary force to the judiciary, raises enormous problems for democratic accountability (Lemos-Nelson 2000).

**Table 1 - Responsibilities of the Police Forces in the Federal Constitution of 1988**

<b>Federal Police</b>	<b>Military Police</b>	<b>Civil Police</b>	<b>Municipal Guards</b>
Policing of an investigative, ostensible, and preventive character; narcotics, smuggling, etc.	Ostensible police and preservation of public order.	Judiciary Police in investigations of penal infractions (except for those of the military).	For protection of goods, services, and municipal facilities.
Acts as marine, aerial, and border police.	Auxiliary Force of the Army.		In the municipalities, where organized, answerable to the Military Police
Exclusive responsibilities in the ambit of the Federal District and Brazilian Territories.	Commands the Fire Department.		

The police forces controlled by municipal districts are the Municipal Guards (Table 1) which only exist in some of the big cities in the country, and the so-called administrative police forces which investigate the use of public space and, more recently, urban traffic. These are unarmed, with fewer employees. They have acquired a negative image, and are thus derogatorily called *rapas* for the abuse of authority which they commit against informal street traders.

This negative image extends to the MP and the CP, whose performance was evaluated as bad and very bad for 41% of the population of the metropolitan area of Salvador (Noronha et al. 1997), making victims of theft (76%) and physical aggression (66%) avoid seeking their help (PNAD 1990).

Such discredit is reinforced by the lack of assistance to the complaints of the citizens, inefficacy in the investigation of crimes, and the behavior of the police force, who, seeking to work less and discouraging by means of public revelation of the identity of those who report crimes, the vital policing practice of reporting (Paes Machado et al. 1997; Noronha 2000).

### ***Human Resources and Compensation***

The most recent data on the policemen of the country reveal a much greater number of Military Policemen (345,487), than of Civil Policemen (67,525). Following these are the Firemen (57,605), which, although they exercise functions of civil defense, are subordinate in most states to the MP, and a subgroup of

investigative policemen called the Technical Police (4,772). The Federal Police is limited to a contingent of 8,000 employees.

This number of policemen summed together comes to an amount of almost half a million (483,389) distributed inequitably in regional and demographic terms. The distribution of accessing of services among social groups is similarly unequal, as the poorer population use the police less than the wealthier population.

In terms of private policing, information for Brazil indicates the existence of 313 companies, many of these controlled by public police force officers. There is suspicion, however, that another 300 are functioning illegally, without obeying the laws, and without the inspection of the Federal Police. These companies are responsible for 800,000 guards, many armed, of which only 500,000 are regularly authorized. They represent a quantity three and a half times greater than that of the armed forces of the country (Miranda 2001).

In Bahia, however, there are about 130,000 security guards, including those who work in non-regulated or unregistered companies. According to one of the largest companies in the security sector, only 89 companies possess qualification to sell security services, while more (111 companies) work in an illegal manner (c.f. article, “Vigilantes fazem protesto” – “Security guards protest”, 2001).

A significant number of the employees of these companies are policemen of low rank who complement their low pay (with an average national salary varying from US \$263 monthly to US\$ 1,529 monthly) through these companies, to the detriment of their activities in public policing and their personal health and safety.

Another consequence of the low salaries is their living conditions; the policemen live in slum areas dominated by street criminality where, exposed to the temptations of crime and fearing for their own safety and that of their families, they establish alliances with delinquents, or alternately engage in “social cleansing” (extermination).

The third effect of this situation is the vehement actions of protests and violent strikes in several states of the Federation, causing serious damage to public order and citizen safety. Initiated at the beginning of the 1980's, the police strikes, advocating better working conditions and promotional schemes, assumed major proportions in 2001 when the open contestation of hierarchy and discipline provoked the intervention of the armed forces in those states.

## **REGULATION AND MANAGEMENT OF THE USE OF FORCE**

### ***The Regulation Of The Use Of Force***

The use of force and firearms is regulated by penal law and through the disciplinary devices of the Police Force.

According to the Penal Code (article 23), the policeman, in order to use a weapon and/or force, must consider the legality and legitimacy of the action (Brasil 2000a). In this manner, all excess, disproportion, and unnecessary action constitute conduct classified as criminal, making it the responsibility of the Commander of the MP and the Chief of Police of the CP to investigate.

Making the employees legally answerable for excesses and abuse against delinquents as a way of controlling criminality (Gabaldón 1996; Paes Machado et al. 1997) however, is made difficult by the approval of the police, jurists and the public of such actions. Relying on this approval, the police may react disproportionately justifying themselves by the victim's social condition and not the act of aggression committed by themselves as representatives of the Union. There are often disputes as to the definition of the attacked person as a delinquent or not.

With regard to internal rules, the disciplinary regulation of the MP (Bahia 1996), makes the employee responsible for acts of abuse which go beyond stated orders, while the Statute of the Civil Public Service Officers (Bahia 1994) prohibits all action or omission contrary to the duties and dignity of the position.

Reflecting on the fragmentation of police work, various activities overlap such as the utilization of firearms in vehicles by civil policemen, and the temporary guarding of (or custody of) prisoners by military policemen. Both categories of policemen – military and civil – can exceed or commit acts contrary to their duties in activities which, while not abnormal to their work routine, are not seen as such officially or are not included in the specific regulations of the corporations.

Regulation of the MP is restricted to three succinct paragraphs on the circumstances in which it is not possible to use weapons. It specifies the prohibition of using arms beyond the work schedule, using private weapons on duty, or shooting at inappropriate times, but does not describe when, where, and how to shoot.

Focusing on the Statute which governs the CP insofar as deviation from duty is concerned, clauses of federal legislation condemn the abuse of authority (Brasil 2000b) referring to attacks against the physical and legal safety of individuals. However there is little on the illegal appropriation by extortion of citizens' goods by police officers.

International pressure against the physical and mental assaults on the population caused the federal government to approve a law against torture – to acquire information, declarations, or confessions from victims or from third parties (Brasil 2000c) – which, as with other multilateral conventions signed in Brazil, is extensively disobeyed, contributing to maintaining distance between the so-called “real country” and the “legal country”.

The bearing of firearms for self-defense is regulated by a law (Brasil 2000d), which exempts police authorities, MP officials, and common policemen (sergeants and soldiers) from having a license. Even licensed officers may only carry regular weapons when in service or with an order from superiors, and still need written permission to buy or carry personal weapons when not in service.

Such control of private weapons is respected very little due to various factors: a shortage of available official weapons, the perception of professional danger, the use of weapons by policemen at work for security companies, and the use of force by the policing groups.

## ***The Management Of The Use Of Force***

As a result of the aspects examined above - history, legislation, and specific responsibilities – the organizations of the two police forces show remarkable differences in terms of authority, centralization, and the exercising of police functions.

In copying the military model of organization, the MP characterizes itself by the concentration of decisions, inflexibility of communication, and standardization of procedures (Waddington 1982), giving more value to internal discipline than to the quality of the service rendered (Guimarães 2000) or the end product of policing (Mariano 2000; Soares 2000).

Among the consequences of this link between the MP and the Army, there is an organizational ladder in which mobility occurs by means of medals, badges, concluded courses, diplomas, complements, and reprehensions (Leirner 1997). In both sub-cultures, the effective code is that of classifying each individual in the organization, defining what he was, what he is, and what he will be. In the two cultures the *length of service* category is also counted in order that any officer of the army or the MP can be immediately *located* in the timeframe of his culture, will indicate the year of his graduation as an identifying code, and should only spend a designated period within a certain rank.

Taking the MP of the State of Bahia as an example, its commander in chief, a colonel, is responsible for the operational coordination, planning, teaching activities, and the Review Board. The hierarchy, following the pattern used by the Army, is

based on ranks such as colonel, lieutenant-colonel, major, captain, lieutenant, sergeants and “soldiers” (privates).

Although police reform in the 1990's has reduced the number of ranks – from 23 to 16 – the military police corporation maintains an ultra-centralized hierarchic structure which conditions the base of the pyramid toward passive behavior with little possibility of personal expression and contribution, and where all problems have stock solutions (Guimarães 2000).

The hierarchical regime is maintained and reinforced by the terms of entrance (long-term college education for officers, and short-term educational programs for sergeants and soldiers), remuneration, the promotion scheme, and the disciplinary code, which, based on the Penal Code of the armed forces, possesses a holistic character proposing that military police ethics be incorporated in all circumstances by the members of the corporation (Goffman 1996).

The application of this rigorous and detailed disciplinary code is more severe for the inferior ranks, subject to expulsion from the corporation, than for the superior ranks, subject, at most, to re-deployment and loss of bonuses. The difference of treatment generates hostility. Though taking up a great amount of time, these tensions do not prevent the lower officers from feeling part of the military police *family*, a uniformed and armed brotherhood with the power to enforce the law on civilians who are also called *carefree civilians (lazy)* to denote their illegitimacy as dependents on the Police (Paes Machado et al. 2001).

Among the models of conduct, that of the police hero or super-hero embodied in courageous men capable of committing aggressive and violent acts against delinquents, is most valued. This dominant model, prevalent across Brazilian society, prioritizes emotion, producing amateur and harmful actions with unexpected results and unnecessary consequences for policeman as well as for other involved persons (Guimarães 2000).

The power of this conception also permeates the performance evaluations and the results of inquiries resulting in the tolerance and approval of misconduct, including the awarding of badges to indicted policemen. As if this was not enough, mistakes in inquiries by the military courts have allowed policemen expelled from the corporation for serious violations of human rights to have recourse to civil courts, where they have won readmission to the MP.

This *homo hierarchicus* model, which is very valuable to the MP, is incomprehensible in the ambit of the organizational culture of the CP, stripped of the opulence of rites, myths, and symbols, and of the advantages provided by the pyramidal organization of the former.

Still using Bahia as our example, the CP, directed by the Chief of Police, includes intermediary organizations, departments, sub-district and specialized police stations, (Homicides, Protection for Women, Repression of Theft and Robbery, Protection for Tourists, etc.), and coordination of the inland municipal districts. The hierarchy is composed of chiefs of police (title holders) and common chiefs of police (clerks, commissaries, and investigators).

Like many government institutions, the police stations follow only partly the logic of Weberian bureaucracy, being permeated by aspects of Brazilian national culture in public administration, nurturing strategies and traditional practices of corruption by means of reducing obligations through friendship, kinship, patronship, creating an exchange of favors and a traffic of influences (DaMatta 1983). These practices impede any modernizing effort.

Where there is not a clear vertical model of organization, it is up to the chiefs of police to create personal management regimes, repeating the stereotype of the *hard line* model which controls the team of auxiliaries with an *iron hand*, oscillating between paternalism which pretends not to see their subordinates' excesses, or a demanding and tyrannical toughness imposed by means of coercion. This standard of personalized authority leads to “flexibility” from official written codes (DaMatta 1985; Barbosa 1992).

The “personalism” of management turns the police stations into true islands of an archipelago, operating on their own priorities as well as preventing the coordination of activities, the circulation of experiences, and evaluation of work production (Soares 2000).

Poorly paid and working under precarious and degrading conditions, the civil policemen, as well as the military policemen, accomplish their activities in an environment of dissatisfaction, mutual distrust, and fear of their colleagues or their hierarchical superiors. The enormous unsteadiness between expectations, institutional and professional, and material (as well as symbolic) compensations, encourages the

use of force in order to obtain personal advantages and to commit misconduct. Those policemen who, against such illegal methods, had better keep quiet so as not to be seen as traitors and be subject to retaliation (Skolnick 1966).

Investigative activity benefits fundamentally rich and influential citizens, not poor victims. One of the main resources of investigation, based on inquisitorial methods (Lima 1986), is torture – given other names by using such expressions as *make the suspect confess* and *stress the suspect* – applied by orders given by chiefs of police or on the initiative of subordinate policemen.

Torture is also used by the CP as a facilitator of extortion, serving to pressure delinquents, with or without the mediation of lawyers, to pay for or deliver the stolen products in exchange for freedom or the attenuation of charges (Mingardi 1991; Lemos-Nelson 2001). The suspects, which can be detained several times for the same reason, end up becoming clients and connections for the police with the world of crime (Paes Machado et al. 1996; Lemos-Nelson 2001).

In the CP, disciplinary penalties derive from the rules of the Statute of Civil Public Servants of the State applied after investigation or administrative process. In practical terms, the CP avoids applying disciplinary penalties so as not to harm corporatism, developing inquiry practices which are based more on personal criteria than on the seriousness of the facts.

This said, the modalities of the management of the use of force also depend on the type of training administered to the members of the two police forces.

## **Training**

As a result of the organizational division, the MP and the CP have their own academies and training programs which, besides representing a duplication of efforts, contribute to separatism between the two police forces.

In these programs they do work on the circumstances in which policemen can use force or firearms, but the lack of standardized procedures on the subject (Organization of the United Nations [1990] 2001 Australian Federal Police Legislation 2000; Ontario Police Services Act 1995), favors a variety of interpretations, many times guided by individual or standing corporate values.

The influence of military and warrior mentality (Kraska 1996; Franke 2000) is expressed in what little importance is given to the transmission of negotiation techniques (*de-escalation*) of conflicts, and moderate use of the so-called intermediary resources of force, between verbal commands and firearms, including billy clubs. In addition to this, silhouette models for shooting are used in training, giving priority to the lethal parts of the human body (Police Ombudsmen of the State of São Paulo 2001), not emphasizing the importance of preserving the lives of the suspects.

The almost complete lack of weapons and ammunition constitutes a serious obstacle for shooting training, causing policemen not to acquire proficiency (Linhares de Albuquerque 1999), and making them a threat to public safety when obliged to shoot.

In general, the reform of police teaching, aimed at compatibility with the new legal code, was restricted to general theoretical lines without modifying operational methods. It did not overcome resistance to the modification of police procedures so as to reduce the disproportional use of force (Linhares de Albuquerque et al. 2001).

## **ACCOUNTABILITY**

In the Brazilian administrative tradition, control of the public sphere is recent. Against the tendency towards increased control enhanced by the Constitution of 1988, various organizations of the Union continue to create obstacles to accountability. This clash between authoritarianism and the democratic practices of delegating responsibility permeates structures, operations and inter-institutional relations between internal and external accountability agencies (Chevigny 1995; Bisol 2001).

### ***Police Review Boards***

Created as a mediation between the police, the public, and the Judiciary, Review Boards have a weak and even opposite action to that which is expected, usurping the powers of other organizations of the judiciary system, and placing their administrative rules above the Brazilian Penal Code (Lemos-Nelson 2001).

There is excessive concentration of administrative and penal authority in the chief board reviewers. This contrasts with the lack of autonomy exhibited by most of the employees who, not having stability in their positions, can be transferred to other police departments and, therefore, are pressured to answer for decisions made while working in the Review Boards.

The fragility of the Review Boards is also expressed in the limited material and human resources for undertaking investigations, forcing them to concentrate the work in the capital cities of the state and in a few police activities.

With regard to the Review Boards of the MP, cases of police misconduct are tried more according to corporate and hierarchical criteria than with equality before the law (Zaverucha 1999). Of the total of all policemen punished by the MP Review Board in the state of São Paulo, only 10% were higher officials.

As for the CP Review Board, it was observed that it punishes less than that of the MP (Mariano 2000), protecting police agents accused of torture and summary executions by means of several methods: the archiving of accusations when the victims were suspects, torture, non-investigation of the deaths of suspects by the police, slowness and inefficacy in preventing new crimes by policemen under investigation, and lack of knowledge concerning the penal code (Lemos-Nelson 2001). Despite the risk factor for accusers, especially when they do not have external support, the CP of Bahia Review Board provided positive answers to the small number of accusations formulated by individuals supported by family members, friends, and institutions (Lemos-Nelson 2001; Tapparelli 2001).

Such characteristics of Review Boards, resulting from the lack of political will to make them work effectively, and from the lack of pressure by citizens, limit joint efforts between police forces and external mechanisms of supervision (Chevigny 1995).

## **Public Ministry**

The broadening of the responsibilities of the Public Ministry in the Constitution of 1988 caused it to become a fourth power of political society, responsible for consumer and environmental defense, control of public administration, and policing (Arantes 1999).

With powers to undertake inquiries about the police, the Public Ministry receives accusations, visits police stations, ascertains the legality of detentions, pressures for accelerating inquiries, and, in conformity with the importance of each case, designates prosecutors (Sanchez Filho 2000).

The important role of the Public Ministry in the inspection of executive and legislative powers, however, has not been much applied to the police forces for several reasons. Within the elitist tradition of Brazilian judiciary, the police continue to be seen as a secondary subject, dangerous and negligible, from which one should keep a distance. This distance is intensified by a relationship of competition and rivalry between prosecutors and police chiefs (Sanchez Filho 2000).

In addition to this, the lack of autonomy of the Public Ministry from the state executives who control the resources and promotions of employees impedes supervision, making the institution not have specific policies for the police forces or limiting itself to merely reactive actions (Sadek 1997; O'Donnell 2000; Sanchez Filhos 2000; Lemos-Nelson 2001).

In a distinct context of approximation between the Public Ministry and the police force, the Public Ministry of Rio Grande do Sul has been working with them in

order to legalize the procedures of penal persecution, reducing informal practices, generating reliable indicators of activities, and, at the same time, enabling supervision of the police force (Silva 2002).

### ***Ombudsmen***

The elevated number of police crimes, together with the existence of pressure from human rights protests, international agencies, and the police reform process from the second half of the 1980's, lead to the creation of the first Police Ombudsman in the state of São Paulo in 1995.

In the first five years of operation, the São Paulo Ombudsman (not yet studied here), documented police violence, registered abuses of authority, and announced and sent accusations to Review Boards and to the Public Ministry.

The National Forum of Police Ombudsmen was formed by the initiative of the Ombudsmen together with human rights groups (more than 80 NGOs in the entire country), and is regulated by the federal government which guided the creation of new Ombudsmen in the state of Pará, Minas Gerais, Espírito Santo, Rio de Janeiro, and Rio Grande do Sul.

Acquiring great visibility, the Ombudsmen elaborated proposals aiming at improving organization and police operation, and contributing to reforms carried out in other states such as Rio Grande do Sul (see the final section of this project; Police Ombudsmen of the State of São Paulo 2000).

In the case of the Ombudsmen in the State of Rio Grande do Sul, it was verified that their efforts have been encountering resistance by the board review which reinforces the need for reform in these organizations, so as to reduce the so-called institutional protectionism, or the protection of employees accused of conduct deviations (Goulart Filho 2002).

### ***Other Agencies***

Complementing the actions of these agencies are the Parliamentary Commissions of Inquiry (PCIs), and the Human Rights Commissions of State and Federal Assemblies, as well as NGOs.

The Parliamentary Commissions of Inquiry, particularly when they rely on the support of public opinion, have been an important instrument to investigate police misconduct. Although this has not culminated in the punishment of the guilty, a recent inquiry on narco-traffic activities in the country achieved exciting results. Besides clarifying the dangerous connections of drug traffic with other criminal activities and with government, this Parliamentary Commission of Inquiry led to the punishment of a federal deputy, an ex-commander of the MP connected with extermination groups and narco-traffic in the state of Acre, along with policemen from other states.

It was observed, however, that the Parliamentary Commission of Inquiries, even when relying on exposure to the media, were not able to fully reach their goals of investigation.

The Human Rights Commissions have been acting against serious human rights violations which, at some moments – as in the case of the accusation of the participation of a commander of the MP in the state of Bahia in an extermination group and drug traffic – caused the deputy president of the Commission to fear for his own personal safety. Overwhelmed by the volume of work and in a line of inevitable confrontation with the police forces, the Commissions have not achieved much so far.

Human rights NGOs, many of which arose in the 1980s, have varied purposes such as denouncing serious violations, helping vulnerable population segments, and social mobilization. Among the organizations directed towards mobilization, the community forums against criminal and police violence stand out. A brief evaluation of this type of forum in São Paulo and Salvador reveals both advances and limits in social participation in relation to the model of policing. The forums show that the poor communities do not agree with police excesses, but they have been impotent in modifying police practice.

Public media have played an important role in the publicizing of human rights violations and police corruption, contributing to the debate concerning the authoritarian model of policing and advocating initiatives for citizens' safety. However, journalistic work, extremely dependent on information supplied by the police and the involvement of the media with the “war against crime”, causes the police to continue to constantly legitimize serious human rights violations (Noronha 2000).

The system of accountability mechanisms still do not satisfactorily respond to the challenges established by the use of force. It is necessary to promote inter-institutional work and to advance reforms of the police model, since this model blocks the operation of the Review Board and its synergy with the Public Ministry and Ombudsmen.

## **CONCLUSION**

Among the many dimensions of exclusion and inequality (Drache 2002) in Brazilian society, violence is one of the most tragic due to the definite and temporary incapacity of tens of thousands of individuals annually, as well as the economic costs and the implication for democratic transition.

Within the view that the police force actively participates in the maintenance and reproduction of social order, the police was transformed into one of the main guarantees of the operation of a society overcome by unemployment, degradation of the public sphere, and exacerbation of relative deprivation in regard to access to public and private goods and services (Drache 2002).

Opposing the expectations initiated by political transition, both police forces transformed themselves into bastions of authoritarianism (Pineiro 1997), maintaining their arbitrary practices and becoming an important connection to criminal networks.

In this context, Brazilian society began to debate, in a broader sense, the arbitrary acts committed by the police among other modalities of abuse by force

including the executions of poor, young non-whites who have established themselves on a more elevated level (Chevigny 1995) this is, frankly, incompatible with the standards of democratic living and the rights of citizenship.

This policy of a “final solution” for crime evidences a procedure that attacks the symptoms of social crisis, but it does not face its causes. Acting in the void created by the lack of public policies, impunity, and idleness of the agencies of social control, police brutality is only aggravating the situation. Besides its illegality and inefficacy, it conceals police involvement in crime and increases social acceptance of violence for conflict solution (Paes Machado and Noronha 2002).

The positive side of this police crisis is growth, under the new Constitution, of citizens' participation in investigating the police forces, as well as the implementation of new police policies, with advances and retreats which depended on the force and scope of the reforms in several units of the Federation .

The extent of the changes was greater in states governed by leftist parties such as in Rio Grande do Sul where police reform was and is part of a broader democratic reform, aiming at de-privatizing or placing the state-owned organizations at the service of public interests. Consequently, substantial changes were made in terms of the integration of the activities of the two police forces, de-militarization of the MP, normalization of the use of weapons, and consolidation of accountable practices.

This success resulted in the mobilization of society and action by the executive power to neutralize, substitute, or remove groups formed around the so-

called police *caciques* (“honchos” or chiefs, who, accustomed to controlling the organizations, did not agree with the changes in policing).

Such success is in the origin of the formulation, by jurists and progressive policemen, of an Amendment to the Constitution for a New Police Model whose approval should broaden the legal mark for a security policy for citizens.

However, contrary to any juridical fetishism which separates the law from its context of application (Thompson 1987; Reiner 1978), it should be remembered that changes in standards regarding the use of police force depends on the democratization of society with the reduction of the inequalities between the privileged and the disenfranchised (rich and poor, whites and non-whites), democratic construction of mechanisms of social control, and redefinition of the role of policing.

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# POLICE USE OF FORCE AND HUMAN RIGHTS IN CANADA

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## **Introduction:**

### **Legal and policy regulation of use of force by police**

As a federal democracy, Canada has a system of government in which authority and responsibility for enacting laws and establishing policies with respect to the use of force is shared between different levels of government. Thus, while most police services in Canada are established under provincial police legislation, the criminal law powers of police are enacted in the federal *Criminal Code* (and thus apply equally to police throughout the country)<sup>26</sup>. In addition to specifying the enforcement powers of the police<sup>27</sup>, the *Criminal Code* also contains provisions

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<sup>26</sup> Police also exercise powers under provincial statutes (e.g. Highway Traffic Acts, and liquor control statutes) and under municipal by-laws (e.g. parking by-laws) which of course vary from one jurisdiction to another.

<sup>27</sup> Actually these powers are mostly conferred on “peace officers”, a category which includes, but is not limited to, public police officers (e.g. prison guards are also peace officers).

governing the use of force by police<sup>28</sup>, as well as permitting them to carry firearms in circumstances in which ordinary citizens are not permitted to do so<sup>29</sup>. These provisions of the *Criminal Code* are detailed and have been the subject of a considerable amount of interpretation by the courts over the years. Together, they and the case law through which they have been interpreted and applied, provide the essential legal framework within which the police are permitted to use force in Canada, as well as setting the limits for the legal use of force by police and providing for penalties for use of force that is deemed to be “excessive”<sup>30</sup>.

Since its entrenchment in the Canadian constitution in 1982, however, the *Canadian Charter of Rights and Freedoms* has provided a set of *constitutional* standards in conformity with which all such statutory laws are now required to be interpreted and applied by police and the courts alike, and against which all governmental actions (including those of police) may now be assessed. Most important of these *Charter* provisions, from the point of view of the use of force by police, is Section 7 which guarantees the right of every person not to be deprived of “life, liberty or security of the person” other than in accordance with “principles of fundamental justice”. The very general language of this provision leaves a very substantial role for the courts in defining the constitutional limits to the lawful use of force by police, and a burgeoning case law on this matter has evolved over the last twenty years as a result. Also of importance, however, is Section 1 of the *Charter*

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<sup>28</sup> See in particular Sections 25 – 33 of the *Criminal Code*.

<sup>29</sup> See Section 117.07 of the *Criminal Code*.

(which has no counterpart in the U.S. *Bill of Rights*), which permits laws and governmental actions which violate a person's *Charter* rights to nevertheless be upheld as lawful if they are "prescribed by law" and "can be demonstrably justified in a free and democratic society". This provision permits the courts to weigh what they perceive to be social, political and economic imperatives (e.g. the need for effective policing against organized crime or terrorism) against the rights of Canadians to be free from police use of force which deprives them of their Section 7 or other *Charter* rights. A citizen who is the object of police use of force that violates his or her *Charter* rights, and that is not held to be nevertheless justified under Section 1<sup>31</sup>, however, can seek redress from the courts under Section 24 of the *Charter*. This provision provides wide latitude to the courts to fashion remedies that they consider "appropriate and just in the circumstances" for citizens whose *Charter* rights have been violated. Such remedies may include striking down legislation, staying criminal proceedings (e.g. against a citizen who has resisted use of force by police which violated his or her *Charter* rights), an award of compensation, etc. Section 24 also permits a court to refuse to hear evidence which has been obtained as a result of a violation of an accused's constitutional rights if, in the opinion of the court, admitting such evidence would "bring the administration of justice into disrepute"<sup>32</sup>. All laws

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<sup>30</sup> See in particular Section 26 of the *Criminal Code*.

<sup>31</sup> The burden of establishing justification under Section 1 is on the party who claims it (i.e. in the case of police use of force, on the police). As might be expected, through a series of cases the Supreme Court has developed criteria for applying Section 1 of the *Charter*.

<sup>32</sup> This explicitly qualified ban on the admission of such evidence can be contrasted with the absolute prohibition of admission of such derivative evidence under the U.S. *Bill of Rights* (although this absolute prohibition has been tempered in recent years by the admission of derivative evidence obtained through "good faith" and "technical" violations of constitutional rights by police).

governing the use of force by police, and any actual use of force by police, therefore, are subject to constitutional review under these *Charter* provisions.

With the exception of the RCMP (whose duties are set out in the federal *RCMP Act*), the duties of police officers in Canada are set out in the various provincial policing statutes under which they are appointed. In all cases, there are also detailed regulations promulgated pursuant to these provincial policing statutes, and these regulations also typically contain provisions governing the use of weaponry and force by police officers to whom they apply<sup>33</sup>. Although provincial policing statutes provide for the establishment and maintenance of municipal and regional police services by municipalities and regions, the duties of these municipal and regional police officers are set out in the provincial legislation, and they are subject to all the provisions of the provincial policing statutes and regulations of the province in which they are appointed. Thus, for instance, the provisions of the Ontario *Police Services Act* and regulations concerning the use of weaponry and force by police officers apply equally to all police officers in the province of Ontario, whereas police officers in the province of Alberta are governed by the provisions of the Alberta *Police Act* and regulations. Such provisions dealing with the use of force and weaponry vary considerably from one province to another.

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<sup>33</sup> For two examples of such provincial regulations, see: Ontario's *Equipment and Use of Force Regulation*, R.R.O. 926, as amended to O.R. 361/959 (accessible at: [http://192.75.156.68/DBLaws/Regs/English/900926\\_e.htm](http://192.75.156.68/DBLaws/Regs/English/900926_e.htm)), and British Columbia's *Use of Force Regulation*, B.C. Reg. 203/98, as amended to B.C. Reg. 211/2000 (accessible at: [http://www.qp.gov.bc.ca/statreg/reg/P/Police/203\\_98.htm](http://www.qp.gov.bc.ca/statreg/reg/P/Police/203_98.htm)). Such provisions in provincial statutes and regulations (which typically include codes of conduct and disciplinary procedures) can complement or add to, but not conflict with, the provisions of the *Criminal Code* concerning the use of force by police officers. In the event of conflict, the *Criminal Code* provisions will prevail.

Municipal and regional police services are usually directly governed by local special purpose bodies called police commissions or police services boards<sup>34</sup>. These local police governing authorities are authorized to enact by-laws governing the administration of their police services and the conduct of their police officers, and in many cases these by-laws also contain provisions which govern the use of weaponry by police officers<sup>35</sup>. In addition, they typically allow the local chief of police to issue “standing orders” as well as “daily orders”, which may also sometimes contain provisions relating to the use of weaponry and/or force by the officers under their command.

Finally, in terms of the legal regime governing the use of force by police in Canada, it should be noted that Canada is a signatory to the United Nations’ *Code of Conduct for Law Enforcement Officials*<sup>36</sup>, Article 3 of which provides that “Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty”, and Article 5 of which prohibits the use of “torture or other cruel, inhuman or degrading treatment or punishment.”

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<sup>34</sup> These are typically made up of a mix (which varies greatly from one jurisdiction to another) of locally elected municipal or regional councillors and/or persons appointed by the municipal or regional council, and some persons appointed by the provincial government. In some jurisdictions, however, municipal police services are governed directly by locally elected councils.

<sup>35</sup> Again, such by-laws must be consistent with applicable provincial policing statutes and regulations, as well as with the provisions of the *Criminal Code*.

<sup>36</sup> Adopted by U.N. General Assembly resolution 34/169 of 17<sup>th</sup> December, 1979. See also *Guidelines for the Effective Implementation of the Code of Conduct for Law Enforcement Officials*, adopted by the UN Economic and Social Council on 24<sup>th</sup> May, 1989, and *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, and welcomed by the UN General Assembly in its resolution 45/166 of 18<sup>th</sup> December, 1990. All these documents can be viewed at <http://www.uncjin.org/Standards/Conduct/compendium.pdf>.

It can thus be seen that in addition to the relevant provisions of the *Charter*, the *Criminal Code* and the U.N. *Code of Conduct* (which apply equally to all police officers in Canada), police officers are subject to a wide variety of more local statutory, regulatory and by-law provisions touching on the use of weaponry and force, which vary greatly, in scope, specificity and content, from one local jurisdiction to another<sup>37</sup>. To be valid, however, any local by-law concerning the use of weaponry or force by police must be not inconsistent with more general provincial laws and regulations on this subject, which in turn will not be valid if they are inconsistent with the provisions of the *Criminal Code* referred to above. And all of these laws must conform to the constitutional standards set out in the *Charter of Rights and Freedoms*. To a great extent, therefore, despite their considerable variety and differential specificity in different police jurisdictions, all laws governing the use of force by police are required to reflect some common values set out in the *Charter* and the federal *Criminal Code*, as interpreted and applied by the courts<sup>38</sup>.

Because of this considerable local variety in the legal regulation of the use of force by the police, however, Canada potentially<sup>39</sup> constitutes an ideal laboratory for comparative research on the governance of the use of weaponry and force by police.

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<sup>37</sup> For instance, until quite recently, members of the Royal Newfoundland Constabulary, unlike members of other police services in the country, did not regularly carry sidearms while on duty, because of a service-specific regulation that did not permit this.

<sup>38</sup> A good summary of all the law in this respect can be found in Ceysens, P. *Legal Aspects of Policing in Canada* (Saltspring Island, B.C.: Earls court Press). This is a loose-leaf volume which is regularly updated. The last revision was issued in November 2000.

<sup>39</sup> “Potentially” because there are major obstacles to adequate access to data which have to be addressed by any proposed research (see below).

## “Force”

While a great deal of literature on the use of force by police focuses on the use of physical force (including “brutality”), and in particular “deadly” (or lethal) force, physical force (with or without weaponry) is of course not the only means of effective coercion available to police. Research in Canada and elsewhere has documented (to some extent) the role of verbal threats, intimidation, harassment and humiliation as means whereby police secure compliance with their demands<sup>40</sup>. One example of this form of coercion, for instance, which has recently become the subject of considerable debate and controversy in several Canadian jurisdictions, concerns police policies with respect to strip-searches of detainees. Another police practice, which is not typically considered under the rubric of “use of force”, but which nevertheless generates a considerable amount of deaths and injuries of members of the public (as well as of police officers themselves) and a lot of controversy in Canada, is high-speed police automobile pursuits. Many jurisdictions in Canada now have detailed and strict regulations governing the conduct and control of such pursuits<sup>41</sup>, and there have been proposals to make failure to stop when being pursued by police under such circumstances a separate criminal offence with harsh penalties. Another police practice, which recently surfaced in the province of Saskatchewan and is currently

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40 See e.g. Stenning, P. *Police Use of Force and Violence Against Members of Visible Minority Groups in Canada* (Ottawa: Ministry of the Solicitor General of Canada, 1994), in which accounts by Black, White and Oriental detention centre inmates of their experiences when they were arrested are compared.

41 The most recent policy review of this issue in Canada is a report prepared by the RCMP Public Complaints Commission entitled *Police Pursuits and Public Safety* (Autumn 1999) which is accessible online at: [www.cpc-cpp.gc.ca/epub/epursuit.pdf](http://www.cpc-cpp.gc.ca/epub/epursuit.pdf).

under investigation, involved police driving “trouble-makers” out of town and dropping them off, leaving them to make their own way back to town in sub-zero temperatures when they were intoxicated and not properly dressed for the weather conditions<sup>42</sup>.

## **Recent Canadian developments with respect to police use of force**

Recently, public discussion about the use of force by police in Canada has arisen in a variety of contexts. In this part of my paper, I discuss five of these: public order policing, high speed chases, strip searches, prosecutions of police officers for excessive use of force, and the development of a National Use of Force Framework.

### ***(i) Public order policing***

Questions about police use of force to control demonstrations and protests have arisen in connection with a number of high profile international meetings that have been held in Canada in recent years. The first of these that brought the issue of use of force to the fore was the Asia-Pacific Economic Co-operation (APEC) meeting held in Vancouver in 1997, in which a substantial number of protesters were arrested, forcibly removed from the meeting venue and, on one occasion, pepper-sprayed. Following their arrest, several of the protesters were strip-searched. These police actions led to formal complaints being lodged against members of the RCMP, that

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<sup>42</sup> At least one of these hapless victims froze to death.

were the subject of a lengthy inquiry by the Commission for Public Complaints Against the RCMP (CPCAR), headed up by the Hon. Ted Hughes, Q.C.

The Hughes Inquiry, in its report submitted in July 2001, concluded that some of the use of pepper spray to disperse protesters who were blocking the exit to the meeting venue had been “unnecessary”, and that the conditions that had led to its use had been a product of “the inadequacy of police planning and delivery of the security package”<sup>43</sup>. It concluded, however, that other instances of the use of pepper spray had been “justified and necessary”<sup>44</sup>. It also concluded that the strip-searching of female protesters “would not have been considered necessary, unless unforeseen circumstances were to arise”, had the Detachment at which they occurred “been notified in advance of what to expect”, and that “the differential treatment of male and female prisoners would not have occurred”<sup>45</sup>. Despite these conclusions, the Inquiry’s report did not include any specific recommendations with respect to the use of force by police when engaged in such public order policing beyond generalizations<sup>46</sup>.

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<sup>43</sup> Commission for Public Complaints Against the RCMP, *Commission Interim Report* (File No.: PC 6910-199801, July 31, 2001), p. 436.

<sup>44</sup> *Ibid.*, p. 437.

<sup>45</sup> *Ibid.*, pp. 436-437.

<sup>46</sup> Its recommendations made no mention of the use of pepper spray. With respect to body searches, its recommendation simply stated that: “RCMP policy with respect to body searches of persons in custody, whether formulated at the national, division or detachment level, should record the need for attending officers to take into account, when deciding the type of body search to be conducted, all relevant factors, including the circumstances that gave rise to the arrest and that will involve, when the arrest has been made at a public order event, the subject matter of the event, its location, the role of civil disobedience and the extent of violence involved, if any” (*Ibid.*, p. 449). Also, that “Detachment facilities should contain a private area for conducting personal searches of prisoners in order to respect the privacy and dignity of those being searched” (*Ibid.*, p. 452).

Another CPCAR Inquiry report that examined the use of force by members of the RCMP in responding to demonstrations against the closing of two schools in New Brunswick in 1997, was more specific in both its findings and its recommendations. It concluded that in one case “[d]eployment of the tactical troop, the Emergency Response Team and the Police Service Dog team was improper use of force and not justified by the situation”<sup>47</sup>, and that the operational commander “failed in his duty to warn the crowd to disperse and failed to give the people sufficient time to disperse before giving the order to fire tear gas cartridges”<sup>48</sup>. In the other case, in which demonstrators had been bitten by police dogs when being arrested, it concluded that the police dog handlers had “used their police service dogs...as offensive rather than defensive weapons” and had “used excessive force by letting their police service dogs come into direct contact with the individuals apprehended”<sup>49</sup>. It also concluded that in this case the deployment of the Emergency Response Team had been “absolutely unnecessary and, to the citizens of that community, an unjustified and improper use of force”<sup>50</sup>, and that the police had not followed force policy with respect to ensuring prompt access to medical assistance for injured demonstrators<sup>51</sup>. The Inquiry recommended that the RCMP’s *Tactical Operations Manual* be amended to stipulate that “only exceptional circumstances are grounds for allowing Police Service Dogs to

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<sup>47</sup> RCMP Public Complaints Commission, Chair’s Interim Report with respect to events of May 2 to 4, 1997 in the communities of Saint-Sauveur and Saint-Simon in New Brunswick, March 28, 2000, p. 169.

<sup>48</sup> *Ibid.*, p. 173.

<sup>49</sup> *Ibid.*, p. 170.

<sup>50</sup> *Ibid.*, p. 171.

<sup>51</sup> *Ibid.*, p. 176.

be in direct contact with demonstrators at the time of an assembly or riot”<sup>52</sup>. The Inquiry also made recommendations for improved training of dog handlers and tactical operation commanders, and for routine reporting if incidents in which police dogs are used directly in the arrest of individuals<sup>53</sup>.

Since the APEC meeting in 1997, there have been two other major international meetings in Canada that have posed major challenges for police – the 16<sup>th</sup> World Petroleum Congress in Calgary in June 2000, and the Summit of the Americas in Quebec City in April 2001<sup>54</sup>. Although the Hughes Inquiry report on the APEC meeting had not been issued by the time either of these meetings took place, there is little doubt that the experience of the earlier meeting, and the inquiry process following it, as well as the experience of police in policing such events in other countries, had caused police, especially the national RCMP, to review and revise their policies and strategies with respect to public order policing at such events<sup>55</sup>. In particular, it has become known that set of detailed guidelines with respect to the use of force in policing such events was drawn up prior to the Summit of Americas in April 2001, to which all participating police services were expected to adhere<sup>56</sup>. These

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<sup>52</sup> *Ibid.*, p. 170.

<sup>53</sup> *Ibid.*, pp. 169-174.

<sup>54</sup> Another comparable meeting, the G8 Summit, was held in Kananaskis, Alberta, in June 2002. There had been discussion about the possible use of so-called “stun guns” (Taser guns) as a tactical crowd control weapon at this meeting. See Rego, C. “Taser guns - Newest Addition to Tactical Units”, *Canadian Police Chief Magazine*, Fall 2002, pp. 22-23.

<sup>55</sup> See “Commissioner’s response to the Interim APEC Report”, at [www.rcmp-grc.gc.ca/news/apec\\_comm\\_e.htm](http://www.rcmp-grc.gc.ca/news/apec_comm_e.htm), and Pugliese, D. & J. Bronskill, “Mounties create unit to control public protests”, *National Post*, 18<sup>th</sup> August, 2001, p. A2.

<sup>56</sup> See MacKinnon, M. & B. McKenna, “Behind Police Lines: Use of lethal force was an option”, *Globe and Mail*, 23<sup>rd</sup> April, 2001, p. A7.

guidelines have not been published, however, and so far my attempts to obtain a copy of them have not been successful.

Following the Summit of the Americas, however, a group of independent observers created by the Quebec Ministry of Public Security to monitor the actions of police forces and correctional services during the Summit issued a report that was critical of the frequency with which gas canisters were fired by police, the use of rubber or plastic bullets, and the use of pepper spray, to control crowds. The group concluded, however, that the use of water cannon and dogs by the police had been reasonable, and that police had not used unnecessary force in making arrests<sup>57</sup>. These and other observations by the Observers Group have subsequently formed the basis of formal complaints by the Canadian Civil Liberties Association to the RCMP Public Complaints Commission and the Quebec Commissaire a la deontologie policiere respectively<sup>58</sup>.

**(ii) High-speed chases**

High-speed police vehicle pursuits have been a controversial exercise of police power in Canada for many years, and have been the subject of numerous inquiries<sup>59</sup>. While not usually thought of in terms of police use of force, they may legitimately be considered in this context since they have been the cause of many

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<sup>57</sup> Report of the Group of Independent Observers, “Respecting Basic Rights at the Third Summit of the Americas: a Matter of Security and Dignity”, Montreal, 26<sup>th</sup> April, 2001, pp. 7-13.

<sup>58</sup> Letters to the Chair of the Commission and the Commissaire respectively, dated 25<sup>th</sup> July, 2001.

<sup>59</sup> See, e.g. McBeth, J. *A Report from the Solicitor-General’s Special Committee on Police Pursuits* (Toronto: Ministry of the Solicitor General of Ontario, 1985); and British Columbia, Ministry of the

deaths, not only of those being pursued but also of innocent bystanders and of police officers themselves<sup>60</sup>. Also, policies to regulate high-speed pursuits are in some respects analogous to policies to regulate the use of force by police.

Most jurisdictions in Canada now have formal policies in place designed to regulate police pursuits<sup>61</sup>. Despite this, controversy over such practices has not significantly abated, and in the late 1990's the RCMP Public Complaints Commission undertook a systematic review of the police policy and practice in this regard. As a result, the Commission issued a document in 1999, entitled *Police Pursuits and Public Safety*<sup>62</sup>, which provides a valuable contemporary review of this issue in Canada. In its report, the Commission concluded that the RCMP's national policy on police pursuits was "both vague and confusing", and that RCMP officers were not given "adequate, consistent and continuous training in this area". In particular, the Commission criticized the policy for not requiring officers to give enough consideration to the seriousness of the suspected offence before initiating a pursuit of

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Attorney General, Police Services Branch, "High-Speed Pursuit Survey: Independent Municipal Forces and RCMP "E" Division Totals" (1998).

<sup>60</sup> A review of statistics for the years 1991-1997 in Ontario, for instance, revealed that 2,415 people were injured as a result of police pursuits in the province during those years, of whom 1,481 (61%) were suspects, 736 (31% were police officers, and 198 (8%) were innocent bystanders. Of 33 fatalities, 26 (79%) were suspects, 1 (3%) was a police officer, and 6 (18%) were innocent bystanders: see Ontario, Ministry of the Solicitor General and Correctional Services, "Summary of the Suspect Apprehension Pursuits Report" (1999).

<sup>61</sup> See e.g. Ontario, Ministry of the Solicitor General, Policing Services Branch, *Policing Standards Manual*, Standard 0207.00 "Pursuits Vehicle" (31<sup>st</sup> March 1992); Alberta Solicitor General, "Motor Vehicle Pursuit Guidelines" (1990).

<sup>62</sup> This document can be viewed on the Commission's website at <http://www.cpc-cpp.gc.ca/epub/epursuit.pdf>.

a suspect<sup>63</sup>. The report recommended that: “hazardous” pursuits should only be undertaken in response to a “serious” offence, and that a clear definition of what constitutes a “serious” offence should be provided; that use of emergency equipment (flashing lights, sirens etc.) should be mandatory in “routine” pursuits; that all RCMP members undertaking pursuits should have completed an Advanced Driver Training Program that should include better risk assessment and decision-making training; and that refresher training should be required, at minimum, every three years of service.

**(iii) Strip searches**

Several instances of strip-searching by police have raised questions about this practice in recent years. As I have noted above, this practice was addressed in the report of the Hughes Inquiry into the policing of the 1997 APEC meeting<sup>64</sup>. The strip-searching of an innocent British visitor to Toronto who had erroneously been identified as a suspect in October 1998, and the fact that the police dismissed his subsequent complaint<sup>65</sup>, led to a review of the police service’s policy and practices with respect to such searches, ordered by the Toronto Police Services Board, as a result of which the Board issued a new policy in July 1999<sup>66</sup>.

Two years earlier, however, Toronto Police officers had strip-searched a male suspect, whom they suspected of trafficking in crack cocaine, in a Subway sandwich shop. At trial, his lawyer argued that the search had violated the accused’s *Charter*

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<sup>63</sup> *Ibid.*, at p. i.

<sup>64</sup> See footnote 45, above, for the text of the Inquiry’s recommendation on this matter.

<sup>65</sup> See Makin, K. “Police dismiss strip-search complaint”, *Globe and Mail*, 5<sup>th</sup> March, 1999, p. A6.

right against unreasonable search and was illegal. This argument was rejected by the trial judge and the accused was convicted of possession of a narcotic for the purpose of trafficking and assaulting police. The case was appealed all the way to the Supreme Court of Canada, which held, by a narrow 5:4 majority, that the strip search had violated the accused's constitutional rights and that the evidence that was obtained as a result of it was consequently inadmissible. The Court ordered that the convictions be overturned and acquittals entered. The Court held that while strip searches without warrant are legal as an incident to a lawful arrest, they should only be conducted at a police station, except where there are exigent circumstances requiring that the detainee be searched prior to being taken to a station, and that strip searches "in the field" could only be justified where there is a demonstrated necessity and urgency to search for weapons or objects that could be used to threaten the safety of the accused, the arresting officers or other individuals. In the course of their opinion, the majority of the Court cited the guidelines for strip-searches that are in force in England as providing "a framework for the police in deciding to conduct a strip search incident to an arrest in compliance with the *Charter*"<sup>67</sup>. The Court thus set out a detailed prescription for lawful strip searches that now constitutes the law with respect to this police practice<sup>68</sup>.

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<sup>66</sup> Toronto Police Service, *Policy and Procedures Manual*, "Search of Persons" (July 1999).

<sup>67</sup> R. v. Golden [2001] S.C.J No. 81 [QuickLaw], at para. 101.

<sup>68</sup> The Ontario Civilian Commission on Police Services is conducting hearings into the strip-searching of five women who had been taking part in demonstrations against the Ontario government: see Abbate, G., "Stripped protesters will have hearing", *Globe and Mail*, 23rd May, 2001, p. A7. See also, Bourette, S., "Faculty backs Trent student protesters", *Globe and Mail*, 13th March, 2001, detailing the strip-searching of university students protesting cutbacks and university links with corporate donors, and Gadd, J. "When she whistled while they worked", *Globe and Mail*, 20th April, 2001, p. A21,

While this case dealt with strip searches as an incident to a lawful arrest, another controversial case raised questions about the practice of police depriving arrested persons of their clothing while detained in police cells. In *Eutenier v. Lee*<sup>69</sup>, the plaintiff sued members of the Halton Regional Police Service and the Halton Regional Police Services Board for negligence, assault and breach of her *Charter* rights, as a result of having been detained without clothes in a police cell that was being monitored by a video camera for several hours during the night, having previously been strip-searched at the police station. She had been arrested on a charge of failing to appear in court on a previous charge. At one point she had apparently<sup>70</sup> attempted to hang herself from the cell bars, using her brassier, and it was this incident which led the police to remove her clothes for the rest of the night. The court found that for a period of approximately twenty minutes she had been handcuffed naked to the bars of the cell while still in view of the video camera. It held that the actions of the police in this case had been “reasonable and prudent to protect the plaintiff from foreseeable risks”<sup>71</sup>, and did not violate the plaintiff’s *Charter* rights. Her action was accordingly dismissed. The fact that this judgment, which is now on appeal, was handed down a year before the Supreme Court of Canada’s ruling in the

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recounting the strip-searching of a 52-year-old woman who allegedly disrupted activities at a film set on a public street by whistling.

<sup>69</sup> [2000] O.J. No. 4533 [QuickLaw].

<sup>70</sup> She later claimed that this had simply been a desperate attempt to attract attention and get released from jail, and was not a serious suicide attempt (*Ibid.*, para. 35).

<sup>71</sup> *Ibid.*, para. 84.

*Golden* case, however, raises the possibility that it might be resolved differently today<sup>72</sup>.

**(iv) Prosecutions of police officers for excessive or unjustified use of force**

Despite a significant array of laws and regulations concerning police use of force, and a criminal prohibition against its excessive use, prosecutions of police officers for excessive or unjustified use of force have been very rare in Canada. In recent times, however, this appears to have been changing somewhat. In 1997, an Ontario Provincial Police officer was convicted of criminal negligence causing death<sup>73</sup>. This case involved the fatal police shooting of an Aboriginal man during a police operation arising from the occupation of a provincial park by Aboriginal protesters who claimed that the park was Aboriginal land. The officer received a conditional sentence of two years less a day, to be served in the community. He was then charged with a disciplinary offence (discreditable conduct) under the Ontario *Police Services Act*, because of the conviction. Those proceedings are still ongoing at time of writing.

In 2000, an Edmonton City Police constable was prosecuted and convicted for common assault for kicking a suspect in the chest while arresting him. The

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<sup>72</sup> The majority of the Supreme Court in the *Golden* case noted that “it may be useful to distinguish between strip searches immediately incidental to arrest, and searches related to safety issues in a custodial setting” (*R. v. Golden* [2001] S.C.J. No. 81, at para. 96). In the *Eutenier* case, however, it was not the strip search of the plaintiff, as such, that was in issue, but rather the fact that her clothes had been forcibly removed, supposedly for her protection, and whether her rights had been violated by her subsequent detention without them, under video surveillance.

<sup>73</sup> *R. v. Deane* [1997] O.J. No 3057 (appeals dismissed [2000] O.J. No. 403 (Ont. C.A.), and [2001] S.C.J. No 6 (S.C.C.)).

conviction, however, was overturned on appeal, the Alberta Court of Appeal unanimously holding that this use of force was reasonable and justified under the circumstances (the suspect had been attempting to hide under a vehicle and had refused to come out when ordered to do so)<sup>74</sup>.

In 2001, two Saskatoon police officers were convicted of unlawfully confining an Aboriginal man whom they had taken to the outskirts of the city on a cold (-22° Celsius) Winter night, and left him there dressed in nothing more than a T-shirt, jeans and sneakers. They were sentenced to eight months in jail and fired from the police service. The two officers had also been charged with assaulting the man, but were acquitted on that charge<sup>75</sup>. The victim had come forward after news that another man had been found frozen to death near where he had been dropped off by police.

Also in 2001, an RCMP officer faced trial on a charge of murder in connection with the shooting death of a suspect in a jail cell in an RCMP detachment in Alberta. His trial had to be abandoned, however, after the jury announced that it could not agree on a verdict<sup>76</sup>. I have not been able to ascertain whether the officer is to face a new trial.

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<sup>74</sup> R. v. Yum [2001] A.J. No. 365 [QuickLaw].

<sup>75</sup> See Moore, O. "Eight months for fired Saskatoon police officers", *Globe and Mail*, 7th December, 2001.

<sup>76</sup> See "Mountie may face new murder trial after hung jury", *Globe and Mail*, 10<sup>th</sup> November, 2001, p. A7.

**(v) National Use of Force Framework**

Up to now, policy with respect to the use of force by police has largely been locally determined, with widely divergent policies applying in different police services across the country. Recently, however, there has been an attempt to develop a model “framework” for training with respect to police use of force, in the hope that it may be adopted as a uniform policy by all police services in the country. In 1999, the Canadian Association of Chiefs of Police (CACP) endorsed a proposal to hold a national conference on use of force by police, that was sponsored by the Canadian and Ontario Police Colleges, and held at the Ontario Police College. After eighteen months of refinement by a working committee and consultation, a National Use of Force Framework was endorsed by the CACP’s Board of Directors in November 2000<sup>77</sup>. It remains to be seen whether the development of this framework, and its endorsement by the CACP, will indeed lead to some uniformity in the way police across Canada are trained with respect to the use of force.

**Conclusion**

There is, of course, much more that can be written about police use of force and human rights in Canada. What I have tried to illustrate in this short presentation, however, is that despite an impressive array of laws, regulations and policies on the subject that has been developed here in recent years, controversies, uncertainties and inconsistencies in this tricky aspect of policing are still with us, and research on the

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<sup>77</sup> See “National Use of Force Framework Approved by CACP Executive”, *CACP Newsletter*, Spring/Summer 2001, p. 12.

topic has continued to be all too rare in Canada<sup>78</sup>. The kind of international comparative research which is contemplated by the group assembled here in Vancouver could therefore not be more timely, nor more potentially valuable. Despite a significant shift towards a philosophy of “community policing”, and the fact that most of our police organizations have now chosen to call themselves “police services” rather than “police forces”, the use of force by the police is no less salient or important now as a matter of public policy, in Canada and elsewhere, than it has ever been.

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<sup>78</sup> See most recently, Ross, J. *Making News of Police Violence: A Comparative Study of Toronto and New York City* (New York: Praeger Publishers, 2001).

## **APPENDIX**

### **SUMMARY REPORT ON THE 1<sup>ST</sup> MEETING OF THE INTERNATIONAL COMPARATIVE RESEARCH PROJECT ON THE USE OF FORCE BY POLICE**

**Mérida, Venezuela, March 5-7, 2001**

**Organizers: Luis Gerardo Gabaldón and Christopher  
Birbek, Universidad de Los Andes**